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Board of Licensure in Medicine
137 SHS, 161 Capitol Street
Augusta, Maine 04333-0137
Minutes of October 10, 2017

State of Maine
Board of Licensure in Medicine
137 SHS, 161 Capitol Street
Augusta, Maine 04333-0137
Minutes of October 10, 2017

Board Members Present
Maroulla S. Gleaton, M.D., Chair
Louisa Barnhart, M.D., Secretary
Susan Dench
David H. Dumont, M.D.
Christopher Ross, P.A.
Peter J. Sacchetti, M.D.
Michael P. Sullivan, M.D.
Brad E. Waddell, M.D.
Lynne M. Weinstein

Board Staff Present
Timothy E. Terranova, Assistant Executive Director
Margaret L. Duhamel, M.D., Medical Director
Julie A. Best, Consumer Assistance Supervisor
Savannah Okoronkwo, Consumer Assistance Specialist
Tracey A. Morrison, Licensing Specialist
Elena I. Crowley, Licensing Specialist

Attorney General’s Office Staff Present
Michael Miller, Assistant Attorney General

The Board met in public session, with the exception of the times listed below, which were held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (e.g., 1 M.R.S. § 405; 10 M.R.S. § 8003-B; 22 M.R.S. § 1711-C; 24 M.R.S. § 2510; 32 M.R.S. § 3282-A). The Board moved, seconded, and voted the following executive session times. During the public session of the meeting, actions were taken on all matters discussed during executive session.

EXECUTIVE SESSIONS
1:10 p.m. – 2:07 p.m. Pursuant to 32 M.R.S. § 3282-A(1) to conduct an informal conference

RECESSES
12:00 p.m. – 12:30 p.m. Lunch

I. Call to Order

Dr. Gleaton called the meeting to order at 9:07 a.m.

A. Amendments to Agenda

Mr. Ross moved to amend AD17-189 onto the agenda. Dr. Dumont seconded the motion, which passed unanimously.
B. Scheduled Agenda Items

1. 9:30 a.m. Adjudicatory Hearing regarding Stanley Dwayne Roberts MD (CR16-260)
2. 1:00 p.m. Informal Conference (CR17-50)

II. Licensing

A. Applications for Individual Consideration

1. Initial Applications

   a. Paul C. Rainier, M.D.

      The licensure committee moved to grant Dr. Rainer a permanent license. The motion passed unanimously.

   b. Jacqueline Brown, M.D.

      The licensure committee moved to grant Dr. Brown’s license application pending a reference from an OBGYN or chief of staff from the location where she is currently working. The Board Secretary may approve the application upon receipt of an acceptable reference. The motion passed unanimously.

   c. Gretchen Gimbel, P.A.

      The licensure committee moved to grant Ms. Gimbel’s application for licensure. The motion passed unanimously.

   d. Constance Tambakis-Odom, M.D.

      The licensure committee moved to table Dr. Tambakis-Odom’s application and obtain additional information. The motion passed unanimously.

   e. Jeffrey L. Tong, M.D.

      The licensure committee moved to preliminarily deny Dr. Tong’s license application with leave to withdraw. The motion was made based on the fact that Dr. Tong does not meet statutory qualifications for licensure. The motion passed unanimously.

   f. Intentionally left blank

2. Reinstatement Applications (none)

3. Renewal Applications (none)

4. Requests to Convert to Active Status (none)
5. Requests to Withdraw License/License Application

   a. Jane Garfield, M.D.

      Mr. Ross moved to approve Dr. Garfield’s request to withdraw her license. Dr. Dumont seconded the motion, which passed unanimously.

   b. John Costa, M.D.

      Dr. Dumont moved to approve Dr. Costa’s request to withdraw his renewal application while under investigation. Dr. Sacchetti seconded the motion, which passed unanimously.

   c. Dana Y. Stewart, M.D.

      The licensure committee moved to allow withdrawal of the license application. The motion passed unanimously.

6. Requests for Supervisory Relationships (none)

B. Other Items for Discussion

1. Unrestricted licenses with the potential to return to specialty care

      The Board asked staff to obtain additional information and bring it back to a future meeting.

2. Duties of the Board Secretary

      The licensure committee moved to approve the Board Secretary Duties document. The motion passed unanimously.

C. Withdraw License from Registration

      Mr. Ross moved to approve the following licensees’ requests to withdraw their licenses from registration. Ms. Weinstein seconded the motion, which passed unanimously.

      | NAME                  | LICENSE NUMBER |
      |-----------------------|----------------|
      | Hoerth, Matthew T.    | MD20334        |
      | Jadusingh, Inderman H.| MD9929         |
      | Manning, Charles Jr.  | MD10915        |
      | McAfee, Robert        | MD5759         |
      | Parekhji, Nilima      | MD8628         |
      | Wohlwend, John R.     | MD18857        |
III. Consent Agreements/Resolution Documents for Review

1. CR16-49 Donald B. Shea, M.D. [Appendix A]

   Dr. Waddell moved to approve the consent agreement. Mr. Ross seconded the motion, which passed unanimously.

   Ms. Weinstein moved to approve Dr. Choi as the practice monitor. Dr. Sacchetti seconded the motion, which passed unanimously.

   Dr. Sullivan moved not to issue a press release. Dr. Sacchetti seconded the motion, which passed unanimously.

IV. Complaints

1. CR17-58

   Dr. Dumont moved to investigate further. Mr. Ross seconded the motion, which passed 8-0-0-1. Dr. Sacchetti was recused from the matter and left the room.

2. CR17-134

   Dr. Sacchetti moved to investigate further. Dr. Dumont seconded the motion, which passed 8-0-0-1. Dr. Waddell was recused from the matter and left the room.

3. CR17-143

   Dr. Waddell moved to dismiss the complaint. Dr. Sacchetti seconded the motion, which passed unanimously.

   MOTION: A patient’s mother complains that her son’s foreskin was inappropriately retracted during a routine well baby exam. Review of the records indicates that reasonable care was provided. However, the physician acknowledges that current pediatric practice guidelines suggest that this component of physical exam is outdated and he has altered his practice accordingly.

4. CR17-141

   Dr. Waddell moved to dismiss the complaint. Dr. Dumont seconded the motion, which passed unanimously.

   MOTION: A patient’s widow complains that a neurosurgeon inappropriately and unethically recommended a second operative resection for recurrent brain tumor. Final pathology showed radiation necrosis, but no viable malignant tumor. The patient has since succumbed to his malignancy. Review of the records reveals that multiple involved specialty
physicians believed that the patient indeed had a recurrent tumor. All agreed that repeat surgery was reasonable and advisable. Appropriate care was provided.

5. **CR16-176**

Dr. Dumont moved to investigate further. Mr. Ross seconded the motion, which passed 8-0-0-1. Dr. Sacchetti was recused from the matter and left the room.

6. **CR17-34**

Dr. Sacchetti moved to dismiss the complaint. Ms. Dench seconded the motion, which passed unanimously.

**MOTION:** The licensee was alleged to have self-prescribed a controlled substance. The physician retired and the Board determined no further action was necessary.

7. **CR17-49**

Ms. Weinstein moved to table the matter. Mr. Ross seconded the motion, which passed 8-0-0-1. Dr. Sullivan was recused from the matter and left the room.

8. **CR17-76**

Mr. Ross moved to dismiss the complaint. Ms. Weinstein seconded the motion, which passed 8-0-0-1. Dr. Barnhart was recused from the matter and left the room.

**MOTION:** A patient complains that the physician was rude and unprofessional. The patient also states that the physician did not want to submit a prior authorization when the patient felt it was appropriate. The physician responded that the patient’s complaint was not a legitimate reason to submit the prior authorization. The physician stated that the patient also had other issues that led to his dismissal from the practice. Review of the records revealed that the patient received reasonable care.

9. **CR17-90**

Dr. Dumont moved to dismiss the complaint. Dr. Sacchetti seconded the motion, which passed unanimously.

**MOTION:** This case involves an anonymous complaint against a physician based on her prescribing practices in the care of a very complex patient with multiple medical problems. The medical records and the extensive response from the physician show thoughtful medical care. Despite several short term “crises” the physician managed to avoid increasing the use of controlled substances. The medical care is deemed to be reasonable. To better manage these situations, the physician has also completed additional education in the safe prescribing of controlled substances.
10. CR17-113

Dr. Sacchetti moved to dismiss the complaint. Dr. Dumont seconded the motion, which passed unanimously.

**MOTION:** At the ER, a patient complains he did not receive a thorough examination and the provider only focused on a small part of his life. Review of the records reveals the provider reviewed the medical records prior to seeing the patient and took past history into consideration. The patient expressed a desire to leave, and upon discharge the provider made sure the patient understood that it would benefit him to be followed in an outpatient program. Appropriate and reasonable care was provided.

11. CR17-115

Dr. Waddell moved to dismiss the complaint. Dr. Dumont seconded the motion, which passed unanimously.

**MOTION:** A patient complains that she was inappropriately discharged from the practice of her primary care provider. The provider contends that the patient was discharged from the practice due to violation of a controlled substances agreement and other agreed upon practice policies. Review of the medical records reveals appropriate care was provided.

12. CR17-123

Dr. Gleaton moved to dismiss the complaint. Mr. Ross seconded the motion, which passed 8-0-0-1. Dr. Dumont was recused from the matter and left the room.

**MOTION:** A patient complains about the care he and his wife received from their new primary care physician. They accuse the physician of transmitting Influenza B to them 2 days after their exam with the physician. This condition was diagnosed at the Emergency Room and confirmed through laboratory studies. The physician responded that it is quite unlikely that she transmitted Influenza B to her patients since she had the Influenza vaccine; had been sick with an upper respiratory illness without fever, muscle aches, or gastrointestinal symptoms for 5 days before seeing the couple; and uses universal precautions stipulated by her employer concerning prevention in transmitting disease. There is simply no way to truly know how this couple contracted Influenza B since there were several cases of Influenza B in the community at the time.

13. CR17-131

Dr. Barnhart moved to dismiss the complaint. Dr. Sullivan seconded the motion, which passed unanimously.

**MOTION:** A patient accuses his physician of falsifying urine tests for opiates. The physician halted prescription of opiates when the urine result was reported as negative. The physician even got a second sample as this result seemed unlikely. Upon more careful
inspection, both urines had not been tested for the correct opiate. Upon discovery of this issue, and receipt of the confirmatory appropriate urine drug test, the prescription was restored. Records were reviewed and were appropriate.

14. CR17-136

Mr. Ross moved to dismiss the complaint. Dr. Dumont seconded the motion, which passed unanimously.

**MOTION:** The patient’s daughter complains that the physician never reviewed the hospital records and allowed the patient to continue to make her own medical decisions. The patient’s daughter also states that the family was not made aware of the patient’s psychological issues and that some of her medical complaints were never addressed. The physician responded that the patient had significant psychological issues, but was able to function. The physician stated that the patient’s issues were addressed and evaluated. Review of the records revealed that the patient received reasonable care.

15. CR17-144

Dr. Sullivan moved to dismiss the complaint. Dr. Dumont seconded the motion, which passed 8-0-0-1. Dr. Waddell was recused from the matter and left the room.

**MOTION:** The patient complains about a radiology transcription error on an abdominal ultrasound report which incorrectly read “hepatic carcinoma” instead of “hepatocellular disease.” Investigation reveals that the physician dictated the report correctly, but did not detect the transcription error prior to signing the report. When notified of the error, the physician immediately added an addendum to the report and offered to contact the patient to explain the error and apologize. The physician acknowledges the error and the need to ensure detailed review of transcribed reports before signing.

16. CR17-147

Dr. Barnhart moved to dismiss the complaint. Dr. Sacchetti seconded the motion, which passed unanimously.

**MOTION:** A grieving mother asks for a review of her son’s case because of his recent psychiatric care and unfortunate death by suicide. The records reveal a very high risk situation with active mania, psychosis, and alcohol use. The patient had been seen weekly since a recent hospitalization for similar issues with a drug overdose. The care was attentive and thoughtful. There was appropriate medication management with an attempt to limit or change to medications the patient was using from friends. Medication to limit alcohol intake seemed to be somewhat successful. The patient seemed to have future plans. He refused hospitalization. The attending physician admits there was an error in balance of freedom from involuntary commitment and its harm to the physician-patient relationship and the risk of relying on the patient to seek help. The case is sad and unfortunate. There do not appear to be issues which rise to the level of discipline.
17. CR17-148

Ms. Dench moved to dismiss the complaint. Dr. Sacchetti seconded the motion, which passed unanimously.

**MOTION:** The husband of a patient complains that a family practice physician who was providing coverage for the patient’s primary care physician did not refill the patient’s medication in a timely fashion. Review of the records indicates that the covering physician and others in his practice tried to follow best practice guidelines with regards to prescribing sedatives responsibly. There is evidence that the prescription monitoring program was accessed and revealed unexpected amounts of medication were purchased and this might have led the patient to request refills at unexpected times. There is no evidence that the provider did not try to refill the prescription reasonably.

18. CR17-56

Dr. Barnhart moved to dismiss the complaint. Ms. Weinstein seconded the motion, which passed unanimously.

**MOTION:** A patient complains her physician abruptly discontinued her medication and abandoned her. The physician reports difficulty managing a controlled substance with infrequent visits and many cancellations. The patient was seen during the worst of these withdrawal symptoms and they were not reported to the physician. There was a failure to obtain psychiatric consultation despite direct referral from the physician to another team. The patient had been discharged for failure to follow-up. There appeared to be a considerable lack of communication between this pair with issues on both sides. The issues do not rise to a level of discipline.

19. CR17-86

Dr. Barnhart moved to dismiss the complaint. Mr. Ross seconded the motion, which passed unanimously.

**MOTION:** A patient complains that his physician took urine for diabetes and did a urine drug screen after specifically being told one was not needed. Investigation reveals several human errors out of the physician’s control and the physician’s documented attempt to cancel the order once it had been discovered. Good documentation was provided. This is a case of complex but unintentional error.

20. CR17-110

Ms. Dench moved to dismiss the complaint. Mr. Ross seconded the motion, which passed 8-0-0-1. Dr. Sacchetti was recused from the matter and left the room.

**MOTION:** A chronic pain patient is referred to, and visits, a new physician as her current physician can no longer prescribe narcotics. The patient, who mistakenly believed she was at
a “pain clinic” not a family practice, claims the new physician was verbally abusive and unprofessional in his behavior when telling her she could not be accepted as a patient until her medical records were made available to him. A practice receptionist corroborates the patient’s disruptive behavior in the waiting room, both before and after the appointment, as she was asked to leave by the physician. The physician admits that in this final encounter a “shouting match” ensued. The physician sympathized in retrospect with the patient as she had been unable to obtain pain medicine, and he also expressed regret for the way things escalated. He has now adopted a policy which states that the practice will not even schedule a patient until the records are in hand and he has had an opportunity to speak directly with the referring provider.

This appears to be an unfortunate incident in which tempers flared on both sides with the physician finally reacting in kind to a loudly frustrated patient. However, the practice acted appropriately in not prescribing any sort of narcotic before getting a full medical record and history.

21. CR17-126

Ms. Dench moved to dismiss the complaint. Mr. Ross seconded the motion, which passed 8-0-0-1. Dr. Sacchetti was recused from the matter and left the room.

MOTION: The complainant claims that his new physician “abandoned” him, subjected him to “patient profiling,” and refused to renew his prescriptions. The patient refused at all three visits to sign a Controlled Substances Agreement as well as to provide a urine specimen, which is a standard practice for those taking a controlled substance. He states reasons why he was unable to provide a urine sample but no reason why he wouldn’t sign the agreement. Given the patient’s prescription history and the increased focus on controlled substance prescribing, appropriate care was given.

22. CR17-125

Mr. Ross moved to investigate further. Ms. Weinstein seconded the motion, which passed unanimously.

23. CR17-137

Ms. Dench moved to dismiss the complaint. Dr. Sacchetti seconded the motion, which passed unanimously.

MOTION: A patient complains that a physician’s office is unsanitary and that the physician looked unkempt. The physician responded that although they try to be mindful of such things, at the end of the day the trashcan may indeed have been overflowing and his clothes a tad rumpled. They have implemented some simple fixes, such as wiping down the chin bar when a new patient enters the room, and are considering an office spruce-up.
24. CR17-140

Dr. Sacchetti moved to table the matter. Ms. Weinstein seconded the motion, which passed unanimously.

25. CR17-146

Dr. Sacchetti moved to table the matter. Dr. Barnhart seconded the motion, which passed unanimously.

26. CR17-149

Dr. Sullivan moved to dismiss the complaint. Dr. Dumont seconded the motion, which passed unanimously.

**MOTION:** A patient complains the physician inappropriately treated a wrist and finger fracture. The physician acknowledges a sub-optimal outcome and admits that he should have discussed and offered a surgical option to the patient, which could possibly have resulted in a better outcome. Investigation reveals that care and documentation was reasonable.

27. CR17-160

Ms. Weinstein moved to investigate further. Mr. Ross seconded the motion, which passed unanimously.

28. Intentionally left blank

29. Intentionally left blank

V. Assessment and Direction

30. AD17-167

Dr. Dumont moved to issue a complaint (CR17-215). Dr. Sullivan seconded the motion, which passed unanimously.

31. AD17-192

Dr. Dumont moved to close the matter with no further action. Dr. Waddell seconded the motion, which passed 8-1.

32. AD17-190

Dr. Barnhart moved to issue a complaint (CR17-216). Ms. Dench seconded the motion, which passed unanimously.
33. AD17-189 Reinaldo O. de los Heros, M.D. [Appendix B]

Dr. Waddell moved to suspend the physician’s license. Dr. Barnhart seconded the motion, which passed 8-1.

Mr. Ross moved to authorize AAG Miller to negotiate a consent agreement and delegated authority to sign the consent agreement to Board Chair Maroulla S. Gleaton, M.D. Ms. Weinstein seconded the motion, which passed unanimously.

34. Intentionally left blank

35. Pending Adjudicatory Hearings and Informal Conferences report

This material was presented for informational purposes. No Board action was required.

36. Consumer Assistance Specialist Feedback

This material was presented for informational purposes. No Board action was required.

37. Other Items for Discussion (none)

VI. Informal Conference

A. CR17-50

At 1:10 p.m. Dr. Dumont moved to enter executive session pursuant to 32 M.R.S. 3282-A(1) to conduct an informal conference. Mr. Ross seconded the motion, which passed unanimously.

At 2:07 p.m. Dr. Barnhart moved to come out of executive session. Dr. Waddell seconded the motion, which passed unanimously.

Following the informal conference, Dr. Dumont moved to table the matter for seven months. Ms. Weinstein seconded the motion, which passed unanimously.

VII. Minutes for Approval

Dr. Dumont moved to approve the minutes of the September 12, 2017 meeting. Ms. Weinstein seconded the motion, which passed 8-0-1-0 with Dr. Sacchetti abstaining.

VIII. Board Orders & Consent Agreement Monitoring

A. Board Orders

1. Jessica Cyr, P.A. [Appendix C]
This material was presented for informational purposes. No Board action was required.

B. Monitoring Reports

1. **Kevin Miller, M.D.**

   The Board reviewed the report and took no action pending further information.

2. **Geeta Godara, M.D.**

   Dr. Sacchetti moved to terminate the consent agreement. Ms. Weinstein seconded the motion, which passed 7-0-0-2. Dr. Barnhart and Dr. Dumont were recused from the matter and left the room.

3. **Michael Bruehl, M.D.**

   This material was presented for informational purposes. No Board action was required. Dr. Barnhart was recused from the matter and left the room.

4. **Whitney Houghton, M.D.**

   Dr. Sacchetti moved to terminate the consent agreement. Mr. Ross seconded the motion, which passed 7-0-0-2. Dr. Barnhart and Dr. Gleaton were recused from the matter and left the room.

5. **Intentionally left blank**

IX. **Adjudicatory Hearing**

   A. **9:30 a.m. CR16-260 Stanley Dwayne Roberts, M.D.**

      Rebekah J. Smith, Esq., Hearing Officer, convened the hearing at 9:53 a.m.

      Dr. Roberts participated by telephone and was not represented by legal counsel. AAG Michael Miller represented the State.

      After deliberation by the Board, the following motions were made:

      Dr. Sacchetti moved that the preponderance of evidence did support the allegation that Dr. Roberts engaged in the practice of fraud, deceit, or misrepresentation in obtaining a license or in connection with service rendered within the scope of the license issued. Dr. Sullivan seconded the motion, which passed 5-3-0-1. Ms. Weinstein was recused from the matter and left the room.

      Dr. Waddell moved that the preponderance of evidence did support the allegation that Dr. Roberts engaged in the misuse of alcohol, drugs, or other substances that has resulted or may
result in the licensee performing services in a manner that endangers the health or safety of patients. Ms. Dench seconded the motion, which passed 8-0-0-1. Ms. Weinstein was recused from the matter and left the room.

Dr. Sullivan moved that the preponderance of evidence did support the allegation that Dr. Roberts engaged in unprofessional conduct. Dr. Waddell seconded the motion, which passed 8-0-0-1. Ms. Weinstein was recused from the matter and left the room.

Dr. Waddell moved that the preponderance of evidence did not support the allegation that Dr. Roberts prescribed controlled substances for other than therapeutic purposes. Dr. Dumont seconded the motion, which passed 7-1-0-1. Ms. Weinstein was recused from the matter and left the room.

Dr. Barnhart moved that the preponderance of evidence did support the allegation that Dr. Roberts has been subject to revocation, suspension, or restriction of a license to practice medicine or other disciplinary action by another state for conduct that would constitute grounds for discipline under the laws of this state if committed in this state. Dr. Waddell seconded the motion, which passed 8-0-0-1. Ms. Weinstein was recused from the matter and left the room.

Dr. Barnhart moved that the preponderance of evidence did support the allegation that Dr. Roberts failed to timely respond to a complaint notification sent by the Board. Mr. Ross seconded the motion, which passed 8-0-0-1. Ms. Weinstein was recused from the matter and left the room.

Dr. Barnhart moved to revoke Dr. Robert’s Maine medical license. Dr. Waddell seconded the motion, which passed 8-0-0-1. Ms. Weinstein was recused from the matter and left the room.

Dr. Barnhart moved not to impose any other sanctions. Mr. Ross seconded the motion, which passed 8-0-0-1. Ms. Weinstein was recused from the matter and left the room.

X. Remarks of Chair

A. Report on Citizen Advocacy Center annual meeting

Ms. Weinstein provided an oral report on the CAC Annual Meeting.

XI. Remarks of Executive Director (none)

XII. Assistant Executive Directors Report

The Board reviewed Mr. Terranova’s written report.

A. Complaint Status Report
As of October 1, 2017 there are one hundred eight complaints outstanding. Fifteen complaints were opened during the month of September and fifteen were closed.

B. Licensing Feedback

The Board recognized the positive comments Ms. Morrison and Ms. Crowley received.

C. 2018 Board Meeting Dates

This material was presented for informational purposes. No Board action was required.

XIII. Medical Director’s Report (none)

XIV. Remarks of Assistant Attorney General

AAG Miller reported legal issues before the courts.

XV. Rulemaking

A. Chapter 1 Rule Regarding Physicians

Mr. Ross moved to accept the basis statement and response to comments document as drafted and provisionally adopt the rule. Ms. Weinstein seconded the motion, which passed unanimously.

B. Draft Chapter 12 Medication-Assisted Treatment of Opioid Use Disorder

The Board reviewed the draft and took no action. Staff will bring the draft chapter back for review after soliciting comments from Board members.

XVI. Policy Review

A. Jurisprudence Exam Failing Score

Dr. Sacchetti moved to approve a new policy, Jurisprudence Exam Failing Score. Ms. Dench seconded the motion, which passed unanimously.

XVII. Requests for Guidance (none)

XVIII. Standing Committee Reports

A. Licensure and CME Committee

1. Licensing Status Report [Appendix D]

This material was presented for informational purposes. No Board action was required.
XIX. Board Correspondence (none)

XX. FSMB Material (none)

XXI. FYI

This material was presented for informational purposes. No Board action was required.

XXII. Other Business (none)

XXIII. Adjournment 5:38 p.m.

Respectfully submitted,

Timothy E. Terranova
Assistant Executive Director
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re: DONALD B. SHEA, M.D. ) CONSENT AGREEMENT
Complaint No. CR16-49 )

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to practice medicine in the State of Maine held by Donald B. Shea, M.D. The parties to the Consent Agreement are: Donald B. Shea, M.D. ("Dr. Shea"), 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. Shea has held a license to practice medicine in the State of Maine since December 17, 2008 (license number MD18015), and specializes in cardiovascular diseases.

2. On November 2, 2015, the Board of Licensure in Medicine ("the Board") received a report from the Maine Medical Professionals Health Program (MPHP) reporting that Dr. Shea was returning to work following a leave of absence from work in September 2015, and that Dr. Shea had admitted to consuming alcoholic beverages while on leave in violation of an agreement. After considering the information contained in the report, the Board reviewed MPHP's recommendations and voted to take no further action at that time regarding the report.
3. On January 21, 2016, the Board received an email from Thomas Avery, Board of Pharmacy Investigator, reporting that a pharmacist had contacted him and alleged that, on January 20, 2016, Dr. Shea attempted to fill a prescription that he had written for his girlfriend at two pharmacies for oxycodone. Mr. Avery further reported that the pharmacist stated that she called Dr. Shea’s medical practice and was told that he was on leave and should not have written the prescription.

4. On January 25, 2016, the Board received a report from the MPHP stating that Dr. Shea was not currently practicing medicine, and was on leave from work. In addition, the MPHP stated that when confronted he admitted that he had suffered a relapse.

5. Further investigation revealed that Dr. Shea regularly self-prescribed several medications during the period 2013-2016. In addition, on January 20, 2016, Dr. Shea also attempted to fill an oxycodone prescription in the name of a patient.

6. At its meeting on February 9, 2016, the Board reviewed the investigation information, and voted to initiate a complaint. The Board docketed that complaint as CR16-49, and sent the complaint to Dr. Shea for a response.

7. On April 12, 2016, Dr. Shea entered into an Interim Consent Agreement with the Board which imposed an immediate suspension of his license to practice medicine.
8. By letter dated May 5, 2017, Dr. Shea responded to the complaint. In his response, Dr. Shea explained his medical conditions and admitted self-prescribing many medications which had been prescribed to him previously. Dr. Shea also acknowledged that on January 26, 2016, he attempted to fill prescriptions in the name of his girlfriend and a patient.

Dr. Shea explained in his response that he has been a participant with MPHHP for many years as he has struggled over the years with opioid addiction as a result of having been prescribed opioids to treat the severe pain of biliary colic from primary sclerosing cholangitis, a condition he was born with and which required a liver transplant in 1991. Dr. Shea admitted to having relapsed into opioid addiction in January 2016 after devastating attacks of cholangitis in September 2015 and January 2016, both of which required biliary ductal dilatation at the Lahey Clinic in Burlington, MA and treatment with pain medications.

On February 8, 2016, Dr. Shea entered inpatient treatment at the Florida Recovery Center in Gainesville, FL where, for the first time, he did an intensive ninety-nine (99) day inpatient treatment program for healthcare providers with substance abuse disorders. On May 17, 2016 Dr. Shea was discharged from the Florida Recovery Center program having successfully completed the program. He returned to Maine to intensive monitoring by MPHHP, including undergoing random drug testing four times a month. In addition to participation with the MPHHP, since his discharge from inpatient treatment, Dr. Shea has continued to attend regular AA meetings, and treats with an
addictionologist, a psychiatrist, and a cognitive behavioral therapist. Dr. Shea worked with his doctors to develop a pain protocol designed to prevent substance abuse relapses should he suffer subsequent attacks of cholangitis requiring pain management.

9. By letter dated May 30, 2017, Dr. Shea submitted a request for reinstatement of his suspended license. With his request, Dr. Shea included a re-entry plan, a supplemental response to the complaint, and an appendix of supporting documentation, including the UF Health Florida Recovery Center discharge summary, the “Pain Protocol for Donald Brian Shea, MD”, and a letter of support from Dr. Shea’s MPHP case manager which noted his “new and different commitment to maintaining his recovery,” which she considers remarkable.

10. Pursuant to 32 M.R.S. § 3282-A(2)(A), the Board may impose discipline for fraud, deceit or misrepresentation in obtaining a license or in connection with service rendered within the scope of the license issued.

11. Pursuant to 32 M.R.S. § 3282-A(2)(B), the Board may impose discipline for misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients.

12. Pursuant to 32 M.R.S. § 3282-A(2)(F), the Board may impose discipline for unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established for the practice of medicine.
13. At its meeting on July 11, 2017, the Board reviewed Complaint CR 16-49, and voted to set this matter for an adjudicatory hearing. In addition, the Board voted to offer Dr. Shea this Consent Agreement to resolve this matter without further proceedings. Absent Dr. Shea's acceptance of this Consent Agreement by signing and dating it in front of a notary and mailing it to Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before October 6, 2017, the matter will be scheduled for an adjudicatory hearing.

COVENANTS

14. Dr. Shea admits the facts stated above and that such conduct constitutes grounds for discipline pursuant to 32 M.R.S. §§ 3282-A(2)(A) (for engaging in fraud, deceit or misrepresentation in connection with a service rendered within the scope of the license issued), (2)(B) (for misuse of alcohol, drugs or other substances that may result in the licensee performing services in a manner that endangers the health or safety of patients), and (2)(F) (for engaging in unprofessional conduct).

15. As discipline for the conduct described above, Dr. Shea agrees to accept the following discipline:

a) A CENSURE for engaging in fraud, deceit, or misrepresentation in connection with service rendered, for misuse of alcohol, drugs or other substances that may result in performing services in a manner that endangers the health or safety of patients, and for unprofessional conduct.

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b) A LICENSE PROBATION for at least five (5) years subject to the following terms and conditions:

   1) Dr. Shea must comply with all requirements of and maintain a monitoring agreement with the MPHP or an equivalent program approved by the Board ("Physician Health Program"), the terms of which are fully incorporated herein as if fully set forth. Prior to engaging in the practice of medicine, Dr. Shea shall ensure that the Board has received a copy of his Physician Health Program monitoring agreement, and any amendments or revisions thereto.

   Dr. Shea hereby authorizes the Physician Health Program to disclose and release to the Board all information obtained by Physician Health Program relating to his participation with Physician Health Program, which authorization shall remain in effect for any period during which he has a license to practice medicine in the State of Maine. Dr. Shea shall execute any and all releases necessary for the Board, Board staff, and the Board's assigned Assistant Attorney General to: a) communicate directly with the Physician Health Program regarding his compliance with that program; b) review and obtain copies of any and all documentation regarding his participation in the Physician Health Program; c) communicate directly with anyone who is involved with his care and treatment; and d) review and obtain copies of any and all documentation regarding his medical care and treatment for substance misuse issues.
Within forty-eight (48) hours of being informed that a toxicology test result has been reported as positive for alcohol or a non-prescribed substance, Dr. Shea shall report such test result to the Board.

So long as this Consent Agreement remains in effect, Dr. Shea agrees and understands that any positive toxicology result confirmed by a blood, hair or nail toxicology test, that is reported to the Board for alcohol or any drug not known to be prescribed to him, shall result in the automatic and immediate suspension of his license to practice medicine in Maine, which suspension shall continue so long as determined by the Board, in its sole discretion, and is not appealable.

2) Dr. Shea shall notify the Board within three (3) days of: a) any arrest, summons, information or indictment for any crime; b) any summons or other charge for any civil violation that involves alcohol or drugs, including driving or operating under the influence; and c) any conviction or court decision pertaining thereto.

3) Dr. Shea shall provide a copy of the “Pain Protocol for Donald Brian Shea, MD” to all health care treatment providers and any pharmacy at which he obtains prescription drugs prior to receiving any treatment or the dispensing of any prescription drugs to him.

4) Prior to engaging in the practice of medicine, Dr. Shea must engage a Board approved physician practice monitor who shall monitor his medical practice. In complying with this requirement, Dr. Shea shall submit to the Board for its approval the name of a licensed physician willing to
serve as a proposed physician practice monitor. The Board or the Board's
designee has the sole discretion to approve or reject the physician practice
monitor. The physician practice monitor must meet at least weekly with Dr.
Shea and review at least ten percent (10%) of all patient charts for a period of
six (6) months. Dr. Shea understands that the physician practice monitor is
an agent of the Board pursuant to 24 M.R.S. § 2511. The physician practice
monitor shall provide the Board with monthly reports regarding Dr. Shea's
practice beginning thirty (30) days after the date on which Dr. Shea begins
practicing medicine. The reports shall include the physician practice monitor's
assessment of Dr. Shea's practice, to include the review of patient charts, and a
discussion of any issues, concerns, or deficiencies related to Dr. Shea's medical
knowledge, judgment, clinical skills, or documentation. Dr. Shea must provide
a copy of this Consent Agreement, together with any amendments hereto, to
his physician practice monitor. The physician practice monitor shall include
with his sixth monthly monitoring report a recommendation to the Board
regarding the continuation, modification, or elimination of the monitoring
requirements. Upon receipt of the physician practice monitor's
recommendation, the Board shall review all information, and in its sole
discretion, maintain, modify, or eliminate the requirements of this
subparagraph for any remaining period of probation. After an initial period of
six months, Dr. Shea may submit a written request to modify or eliminate the
requirements of this subparagraph. Upon receipt of such request, the Board
shall review all information, and in its sole discretion, may maintain, modify, or
eliminate the requirements of this subparagraph for any remaining period of probation.

5) While this Consent Agreement is in effect, Dr. Shea must communicate directly with the Board or Board staff, and must respond to any request for information or documentation within the timeframe specified or requested. Failure to comply with or respond to any request will be considered a violation of this Consent Agreement.

6) The duration of any probationary period shall be tolled for:
   a) any absence from the state that exceeds thirty (30) continuous days; b) any absence from the state that exceeds sixty (60) aggregate days in a single year;
   c) any period in which Dr. Shea does not hold an active license; and d) any period that Dr. Shea takes a leave of absence from the practice of medicine.
   Dr. Shea shall provide the Board with advance written notice of any absence from the state or of any leave of absence from the practice of medicine within two (2) business days, unless circumstances exist that are beyond Dr. Shea’s control which do not reasonably permit notice to be provided within two (2) business days in which case notice shall be provided as soon as circumstances allow and may be provided by a family member or representative of the Physician Health Program.

7) After the expiration of five (5) years of probation, Dr. Shea may request that the Board terminate probation. Upon receipt of such request, the Board shall review all information relevant to the request, and shall approve or deny the request which may include maintaining, modifying, or
eliminating the requirements of probation for a specified term. The Board shall provide a written response to Dr. Shea's request stating the basis for the Board's determination. Dr. Shea understands and agrees that there is no right of appeal regarding the Board's determination.

c) Dr. Shea shall not prescribe to self or family members.

d) If in the course of receiving medical treatment, it is necessary for Dr. Shea to receive or take any opiate except buprenorphine, he shall immediately cease practicing medicine during the period of opiate use. Dr. Shea shall notify the Board within two (2) business days of a leave of absence pursuant to this subparagraph, unless circumstances exist that are beyond Dr. Shea's control which do not reasonably permit notice to be provided within two (2) business days in which case notice shall be provided as soon as circumstances allow and may be provided by a family member or representative of the Physician Health Program. Dr. Shea must notify the Board upon resuming practice and provide any releases necessary for the Board to discuss his treatment with all treatment providers.

16. The Board and the Department of the Attorney General may communicate and cooperate regarding Dr. Shea 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-A.
18. This Consent Agreement constitutes discipline and is an adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB), the Federation of State Medical Boards (FSMB), and other licensing jurisdictions.

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

20. Dr. Shea 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.

21. Dr. Shea has been represented by Alice E. Knapp, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

22. For the purposes of this Consent Agreement, the term “execution” means the date on which the final signature is affixed to this Consent Agreement.
I, DONALD B. SHEA, 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: October 2, 2017

DONALD B. SHEA, M.D.

STATE OF MAINE
SAGADAHOC, S.S.

Personally appeared before me the above-named Donald B. Shea, 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: October 2, 2017

NOTARY PUBLIC

MY COMMISSION ENDS: _______________________

DATED: October 2, 2017

ALICE E. KNAPP, Esq.
Counsel for Donald B. Shea, M.D.
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 10/10/17

MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: October 10, 2017

MICHAEL MILLER
Assistant Attorney General

Effective Date: 10/10/2017
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

IN RE: 

REINALDO O. DE LOS HEROS, M.D. 

ORDER OF IMMEDIATE SUSPENSION

AD17-189

On October 10, 2017, the Maine Board of Licensure in Medicine ("the Board") met and reviewed investigation materials regarding Reinaldo O. de los Heros, license number MD17206 ("Dr. de los Heros"). On the basis of its review of these materials, the Board concludes that the continued ability of Dr. de los Heros to practice as a physician in the State of Maine constitutes an immediate jeopardy to the health and physical safety of the public who might receive his medical services, and that it is necessary to immediately suspend his ability to practice medicine in order to adequately respond to this risk.

This suspension is issued pursuant to 5 M.R.S. § 10004(3). Dr. de los Heros’ ability to practice medicine will be suspended effective immediately upon issuance of this Order for a thirty (30) day period ending on November 9, 2017, at 11:59 p.m., pending further Board action at an adjudicatory hearing, which will be scheduled shortly. A formal notice of hearing will be transmitted, which will outline the issues and procedures for that hearing.

PRELIMINARY FINDINGS

Specifically, the Board preliminarily finds for purposes of this Order and pursuant to the materials reviewed as follows:

1. The Board first licensed Dr. de los Heros, who specializes in psychiatry, on July 17, 2006, pursuant to a Consent Agreement for Conditional Licensure ("2006 Consent Agreement"). A copy of the 2006 Consent Agreement is attached as Exhibit 1. The 2006 Consent Agreement identified Dr. de los Heros’ prior criminal and disciplinary history. On March 13, 1997 Dr. de los Heros was convicted in Massachusetts of Medicaid Fraud and Larceny, both felonies. The felony convictions served as the basis for the 1997 revocation of his Massachusetts medical license, the 1997 surrender of his New Hampshire medical license, and the 1999 revocation of his North Carolina medical license. The 2006 Consent Agreement granted Dr. de los Heros a conditional Maine medical license, and required that he practice only in a "supervised relationship under another Maine licensed psychiatrist" pursuant to a written monitoring agreement approved by the Board. The consent agreement required, among other things, that Dr. de los Heros’ supervising psychiatrist conduct a review of patient charts. On December 11, 2007, following a request from Dr. de los Heros, the Board terminated the consent agreement and issued Dr. de los Heros a full and unrestricted license to practice medicine.

2. On July 23, 2009, Dr. de los Heros entered into a consent agreement with the Board in lieu of an immediate suspension of his license to practice medicine ("2009 Consent
Agreement”). A copy of the 2009 Consent Agreement is attached as Exhibit 2. The 2009 Consent Agreement restricted Dr. de los Heros to “working in a supervised relationship under another Maine licensed psychiatrist” pursuant to a written monitoring agreement approved by the Board. The 2009 Consent Agreement required, among other things, that Dr. de los Heros’s supervising psychiatrist conduct a review of patient charts. On May 11, 2010, following a request from Dr. de los Heros, the Board terminated the 2009 Consent Agreement and issued Dr. de los Heros a full and unrestricted license to practice medicine.

3. On February 29, 2016, Dr. de los Heros entered into a consent agreement with the Board for engaging in unprofessional conduct (“2016 Consent Agreement”). The 2016 Consent Agreement imposed a license probation, and required that Dr. de los Heros’s practice be monitored by a “Board approved physician practice monitor” who was also a psychiatrist. The Board subsequently received and reviewed written reports from the approved practice monitor, which included reviews of Dr. de los Heros’s medical records and prescribing practices. On March 14, 2017, the Board reviewed Dr. de los Heros’ compliance with the consent agreement and the reports and recommendations of the Board approved monitoring psychiatrist, and voted to amend the consent agreement by eliminating the requirement that Dr. de los Heros have a Board approved monitor. A copy of 2016 Consent Agreement, and First Amendment is attached Exhibit 3.

4. On October 10, 2017, the Board reviewed information regarding AD17-189. That information included:

a. Emails from Detective Cheryl Holmes of the Cumberland County Jail to Detective James Gioia of the Office of Attorney General;

b. An audio recording of a telephone call made on August 31, 2017, from an incarcerated male patient of Dr. de los Heros to a female patient who was present with Dr. de los Heros at the time of the call. During the telephone call, Dr. de los Heros discusses issuing prescriptions both for the female and for the male, knowing that he was in jail. Dr. de los Heros acknowledges in the call that the prescription he issues for the controlled substance Adderall for the incarcerated male patient was early;

c. Dr. de los Heros’s medical records for the male patient include an entry for an in person 25 minute office visit dated August 31, 2017, the date of the call referenced in subparagraph b above. According to the medical records, Dr. de los Heros had seen the patient on two prior occasions, as a new patient on July 28, 2017, with a second visit on August 11, 2017; and

d. A copy of a prescription for Adderall 20 mg dated August 31, 2017, issued to the male patient by Dr. de los Heros.

5. For the purposes of this Order of Immediate Suspension and subject to holding the aforementioned full adjudicatory hearing on this matter to determine if any violations have
actually occurred, the Board preliminarily finds that the actions of Dr. de los Heros constitute an immediate jeopardy to the health and physical safety of the public who might receive his medical services, and that delaying imposition of a license suspension until holding a hearing would not adequately respond to this known risk. It is of great concern that the information received reflects that Dr. de los Heros issued a prescription on August 31, 2017, for the controlled substance Adderall to a patient knowing that the patient was in jail, and then falsified the patient’s medical record by documenting that he had seen that patient on that date for a 25 minute office visit.

6. The Board finds that the above referenced conduct of Dr. de los Heros constitutes violations of the following provisions:

   A. 32 M.R.S. § 3282-A(2)(A) by engaging in the practice of fraud, deceit or misrepresentation in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued.

   B. 32 M.R.S. § 3282-A(2)(F)(1) by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public.

   C. 32 M.R.S. § 3282-A(2)(E)(2) by engaging in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed.

   D. 32 M.R.S. § 3282-A(2)(F) by engaging in unprofessional conduct by violating a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice of medicine. For purposes of this paragraph, “disruptive behavior” means aberrant behavior that interferes with or is likely to interfere with the delivery of care.

ORDER OF IMMEDIATE SUSPENSION

The Board ORDERS as follows:

Dr. Reinaldo O. de los Heros’s license to practice medicine in Maine is suspended immediately and he may not practice medicine upon issuance of this Order for a thirty (30) day period ending on November 9, 2017, at 11:59 p.m. pending further Board action at an adjudicatory hearing, which shall be scheduled shortly.

Dated: October 10, 2017

[Signature]

Maroulla S. Gleaton, M.D., Chair
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:  
Reinaldo O. de los Heros, M.D.  
Application for Licensure  

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CONSENT AGREEMENT FOR  
CONDITIONAL LICENSE  

This document is a Consent Agreement regarding licensing action involving the license application of Reinaldo O. de los Heros, M.D. to practice medicine in the State of Maine. The effect of this Consent Agreement is to issue a conditional license to practice medicine to Reinaldo O. de los Heros, M.D. The parties to this Consent Agreement are: Reinaldo O. de los Heros, M.D. ("Dr. de los Heros"), 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 pursuant to 10 M.R.S.A. § 8003(5)(B) and 32 M.R.S.A. § 3282-A.

FACTUAL BACKGROUND

1. On September 29, 2005, the Board received an application from Reinaldo O. de los Heros, M.D. to practice medicine in the State of Maine. His medical specialty is psychiatry, in which he is board certified.

2. On April 11, 2006, the Board reviewed Reinaldo O. de los Heros' application for licensure. As part of that review, the Board noted: (a) his prior disciplinary history, which included: the 1997 revocation of his license to practice medicine in Massachusetts; the 1997 surrender of his license to practice medicine in New Hampshire; the 1999 revocation of his license to

Exhibit 1
practice medicine in North Carolina; and his March 13, 1997 criminal felony convictions of one count of Medicaid Fraud and one count of Larceny under Massachusetts law, which formed the basis of all of the foregoing adverse licensing actions; (b) the fact that he has not been eligible to participate in Medicaid and/or Mainecare since 1997, when he was excluded from those programs; (c) the fact that he had last treated a patient ten (10) years ago; (d) the fact that he has been an active participant in the Massachusetts Physician Health Services between 1997 and 2003; (e) the fact that he has been an active participant in the Maine Physician Health Program since 2004; (f) the fact that he has been in counseling with Charles Johnson, M.D., P.A. since August 1997; and (g) the fact that in February 2006, the Massachusetts Board of Registration in Medicine reinstated his medical license pursuant to a probation agreement.

3. In lieu of denying Reinaldo O. de los Heros' application for licensure, the Board voted to offer him this Consent Agreement in order to grant him a conditional license to practice medicine in this State. Absent Reinaldo O. de los Heros' acceptance of this proposed Consent Agreement on or before July 15, 2006, by signing and dating it in front of a notary public, and returning it to Daniel Sprague, Assistant Executive Director, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137, the Board shall deny Reinaldo O. de los Heros' application for licensure.
COVENANTS

4. Dr. de los Heros admits that his prior disciplinary history and lack of recent medical practice could constitute grounds for the denial of his application for medical licensure pursuant to 32 M.R.S.A. § 3282-A(2)(E) & (F).

5. In light of the admission in paragraph 4 above, the Board and Dr. de los Heros agree that Dr. De Los Heros will be issued a conditional license to practice medicine in the State of Maine. Until this Consent Agreement is modified in writing by all of the parties hereto, Dr. de los Heros' license to practice medicine shall be subject to the following condition(s):

   a. Dr. de los Heros will restrict his practice to working in a supervised relationship under another Maine licensed psychiatrist. Because he has been out of practice since March 1997, Dr. de los Heros' re-entry into medical practice will be monitored, pursuant to a written monitoring agreement, by a supervising psychiatrist who, while acting in that capacity as supervising/monitoring psychiatrist, will be an agent of the Board pursuant to Title 24 M.R.S.A. § 2511. Dr. de los Heros' supervising/monitoring psychiatrist(s) and the written monitoring agreement must be approved by the Board before he is issued a license to practice medicine in this State;

   b. Dr. de los Heros shall ensure that the duties of his

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1 A copy of the Board-approved written monitoring agreement is attached to this Consent Agreement as "Exhibit A."
supervising/monitoring psychiatrist shall include: on-going, regular supervision; review of patient charts (including clinical scales performance, patients' responses to outcome, and satisfaction reviews); review of the efficacy of prescribed medications; and consultation with other mental health providers involved in the patients' care. In complying with this requirement, Dr. de los Heros shall permit his supervising/monitoring psychiatrist full access to all patient information;

c. If Dr. de los Heros' psychiatric practice supervisor(s)/monitor(s) raises a concern about any aspect of Dr. de los Heros' medical practice or ethics, he/they shall immediately notify the Board in writing;

d. Dr. de los Heros shall ensure that his Board-approved supervising psychiatrist(s) provide the Board with quarterly reports concerning his participation and progress towards eventual independent practice;

e. The Board may, at any time, order a neuropsychiatric evaluation of Dr. de los Heros pursuant to 32 M.R.S.A. § 3286. If so ordered by the Board, Dr. de los Heros shall submit to and fully cooperate with such evaluation;

f. Dr. de los Heros will abstain from consuming alcohol and mood or mind altering substances or medications, illicit or not (collectively referred to as "illicit substances") for the term of this Consent

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Agreement. Dr. de los Heros may only take medications that are prescribed by a physician who is knowledgeable about Dr. de los Heros' disciplinary history on file with the Board. Further, Dr. de los Heros shall not prescribe any medication(s) for himself or his family members and/or any fiancés or girlfriends;

g. Dr. de los Heros shall continue to participate in the Maine Medical Association's Committee on Physician Health (CPH);

h. Dr. de los Heros shall submit to testing by the CPH for the presence of alcohol or mind altering substances. Dr. de los Heros shall submit to random monthly urine monitoring for the presence of alcohol or mind altering substances. All costs associated with such monitoring shall be paid for by Dr. de los Heros.

i. If a urine specimen produced pursuant to this Consent Agreement tests positive for the presence of any illicit substance, Dr. de los Heros shall ensure that the positive test shall be reported to the Board within 24 hours. The report shall be in writing and by telephone, and shall include a copy of the positive test result;

j. All positive test results received by the Board shall constitute a rebuttable presumption and prima facie evidence that Dr. de los Heros violated the terms and conditions of this Consent Agreement, and that he consumed alcohol or an illicit substance prohibited by this Consent Agreement;
k. Upon report of a positive test, the Board may, in the exercise of its discretion and without hearing, decide that Dr. de los Heros poses a risk of harm to patients or himself, and may take any actions permitted by law, including but not limited to an immediate, automatic suspension of his license to practice medicine in this State. In the event that the Board suspends Dr. de los Heros' license based upon a positive urine test, it shall endeavor to hold a hearing within thirty (30) days of the notice of any such license suspension;

l. If Dr. de los Heros leaves the State, he is required maintain his random urine monitoring schedule pursuant to this Consent Agreement and shall comply with all terms of this Consent Agreement while he is out of State;

m. Dr. de los Heros shall ensure that, each calendar quarter following the execution of this Consent Agreement, the Board receives the results of all of his urine tests administered by the CPH;

n. If Dr. de los Heros moves out of State or ceases the practice of medicine, he shall immediately report such facts to the Board;

o. Dr. de los Heros agrees and understands that during the term of this Consent Agreement, the Board will have complete access to his present and future personal medical and counseling records regarding matters related to this Consent Agreement and to all otherwise confidential data related to treatment or monitoring under this Consent Agreement.
Dr. de los Heros agrees that during the term of this Consent Agreement, he shall provide a copy of this Consent Agreement to any employers, partners or peers with whom he intends to practice medicine. He will also provide a copy of this Consent Agreement to any person involved in the monitoring, treatment or counseling of him pursuant to the terms of this Consent Agreement;

Dr. de los Heros agrees that during the term of this Consent Agreement, he shall, through a document approved by the Board\(^2\), advise all other professionals with whom he has a consulting relationship that he is working under the supervision of Dr. Sullivan;

Dr. de los Heros agrees that he shall apply for Medicare and Medicaid (Mainecare) certification on May 15, 2007, and shall immediately thereafter provide documentary proof of such application to the Board;

Dr. de los Heros agrees that, following the execution of this Consent Agreement and upon receipt of his Maine medical license, he will treat without charge 15% of indigent patients, and shall provide documentary proof of his treatment of indigent patients to the Board each calendar quarter following the execution of this Consent Agreement.

\(^2\) A copy of the Board-approved document is attached to this Consent Agreement as "Exhibit B."
Dr. de los Heros shall continue to treat without charge 15% of indigent patients until such time as he becomes an approved and participating member in Medicare and Medicaid (Mainecare);

6. Pursuant to 10 M.R.S.A. § 8003(5)(B) the Board and Dr. de los Heros agree that, in addition to any other disciplinary action available to it by law, the Board has the authority to issue an order modifying, suspending, or revoking his license in the event that he fails to comply with any of the terms or conditions of this Consent Agreement.

7. After successfully completing one year of practice under this Consent Agreement, Dr. de los Heros may apply to the Board to modify the terms and conditions of this Consent Agreement. Upon receipt of a request, the Board may grant or deny the request without hearing.

8. This Consent Agreement may only be modified in writing by all of the parties hereto.

9. Dr. de los Heros waives any further hearings before the Board or appeal to the Courts regarding all terms and conditions of this Consent Agreement.

10. The Board and the Attorney General may communicate and cooperate regarding Dr. de los Heros' practice or any other matter relating to this Consent Agreement.

11. 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.

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

I, REINALDO O. DE LOS HEROS, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, 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: 7/11/06

REINALDO O. DE LOS HEROS, M.D.

STATE OF Maine

Kennebec, S.S.

Personally appeared before me the above-named Reinaldo O. de los Heros, 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: 7/11/06

Jean M. Greenwood
NOTARY PUBLIC/ATTORNEY
MY COMMISSION ENDS:

Jean M. Greenwood
State of Maine Notary Public
My Commission Expires 9/25/07
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED:  7-11-06
EDWARD DAVID, M.D., Chairman

STATE OF MAINE OFFICE
OF THE ATTORNEY GENERAL

DATED:  7/11/06
DENNIS E. SMITH
Assistant Attorney General

APPROVED
EFFECTIVE:
MONITORING AGREEMENT

AGREEMENT dated this 26th day of June, 2006 by and between Reinaldo de los Heros, M.D., a physician with an office in Portland, Maine ("Dr. de los Heros") and William M. Sullivan, M.D., a physician with an office in Portland, Maine ("Dr. Sullivan")

PREAMBLE:
A. Dr. de los Heros is in the process of returning to the practice of medicine after an absence of ten years

B. Dr. de los Heros is subject to the terms of a Consent Agreement for Conditional Licensure effective July 11th, 2006 (the "Consent Agreement"), issued by the State of Maine Board of Licensure in Medicine. (the "Board").

C. The Consent Agreement requires that re-entry into practice be monitored by another physician, and subject to peer supervision.

D. Dr. Sullivan has reviewed the Consent Agreement and has agreed to monitor and supervise Dr. de los Heros’ re-entry into practice.

E. The Parties to this Monitoring Agreement are Dr. de los Heros and Dr. Sullivan.

NOW THEREFORE, in consideration of One Dollar and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Scope: Dr. Sullivan will monitor and supervise Dr. de los Heros as follows:

   a) There will be regular meetings, both in Dr. Sullivan’s and Dr. de los Heros’ respective offices for practice monitoring. There will also be periodic, unscheduled visits by Dr. Sullivan to Dr. de los Heros’ office for observation of office atmosphere and for other purposes as Dr. Sullivan deems appropriate.

   b) Dr. de los Heros shall provide Dr. Sullivan access to a complete deidentified list of all of Dr. de los Heros current and prospective patients, which for all current patients he shall include patient’s age, presenting problem, diagnosis and treatment plan, including medications and for prospective patients he shall include such of this information as available at the time.

   c) Dr. Sullivan shall be able to review with Dr. de los Heros all new patients accepted into Dr. de los Heros’ practice since their last meeting and shall assist Dr. de los Heros in developing strategies for practice management as Dr. de los Heros resumes practice and increases the number of patients he is treating or evaluating over the term of this Agreement. Practice management shall include patient mix, managing an increasing
number of patients, scheduling, timeliness of sessions, management of phone calls and of all other patient contacts including after-hours care, and billing and collection fees;

d) Dr. de los Heros shall notify all referral sources by written correspondence Dr. Sullivan’s monitoring/supervisory relationship to Dr. de los Heros as requested by Board, with complete description of Dr. Sullivan’s role and availability for possible reciprocal feedback between Dr. Sullivan and referral sources.

e) At Dr. Sullivan’s discretion, he may instruct Dr. de los Heros to audiocassette specific patient sessions, if Dr. Sullivan believes it will assist in their work. This will only occur with the patient’s advanced full agreement and written consent.

f) At their meetings, Dr. Sullivan shall review and discuss with Dr. de los Heros his care and treatment of any patients on the list referenced in paragraph b) above. Dr. de los Heros shall make available to Dr. Sullivan a deidentified copy of treatment records, as requested by Dr. Sullivan. Patient issues to be discussed shall be raised by Dr. Sullivan regarding any of Dr. de los Heros patients. Case review shall include exploration of patient care issues, general and specific clinical judgment and competency issues.

2. No PHI. The parties will make reasonable attempts to discuss cases without disclosing Protected Health Information, as such terms is defined in the regulation of the Health Insurance Portability and Accountability Act of 1996 relating to the privacy of individually identifiable health information (“PHI”).

3. Frequency of Meetings: The parties shall meet in person at the following frequency: for the first three months at least once a week and more often as determined by either physician; for the next three months at least every other week; and for the remainder of the Term at least monthly. At these meetings, the parties shall discuss the matters set forth in section 1. If Dr. de los Heros has concerns he would like to discuss with Dr. Sullivan between scheduled meetings, he will contact Dr. Sullivan by e-mail or phone and Dr. Sullivan will make reasonable efforts to meet or speak with Dr. de los Heros as soon as possible.

4. Terms and Termination: The term of this Agreement shall commence upon approval by the Board and shall end when the Board lifts the monitoring agreement set forth in the Consent Agreement. This Monitoring Agreement may be terminated by Dr. Sullivan prior to the end of the term upon ninety (90) days written notice. This Agreement may be terminated by Dr. de los Heros also at any time, but Dr. de los Heros understands that it is his responsibility to remain in compliance with the Consent Agreement. Such termination does not relieve Dr. de los Heros of the obligation to pay Dr. Sullivan for all services provided during the monitoring period.

5. Payment: Dr. Sullivan shall bill Dr de los Heros $ 150.00 per hour for services provided pursuant to this Agreement. It is understood by the parties that Dr. Sullivan’s services shall include review of reports, preparation of reports and correspondence, along
with actual time spent in face to face supervision. This shall be billed monthly and paid by Dr. de los Heros immediately upon receipt.

6. Reports.
   a) Dr. Sullivan shall make quarterly reports to the Board regarding Dr. de los Heros participation under this Monitoring Agreement. It is understood that this may be a simple form document regarding Dr. de los Heros participation and compliance with this Monitoring Agreement.

   b) Dr. Sullivan shall make only the following other reports to the Board with respect to Dr. de los Heros (i) any report required under the Consent Agreement, and (ii) any report required by law (i.e. pursuant to the Maine Health Security Act, 24 M.R.S.A. & 2501 et seq.). The following procedure shall be used if Dr. Sullivan believes such a report may be needed:

      1) If Dr. Sullivan determines that there may be grounds for making a report to the Board, he will first review the matter with Dr. de los Heros, unless Dr. Sullivan concludes the situation poses an emergent or urgent patient care issue.

      2) The decision to file a report is in the sole discretion of Dr. Sullivan and any report will be processed as a report received by the Board pursuant to 24 M.R.S.A. & 2505.

7. Confidential Arrangement. At all times the parties are, and will hold themselves out to the public, other practitioners and their patients as, separate and unaffiliated practitioners. Neither party shall encourage third parties to assume that their practices are combined or affiliated in any manner.

8. Dr. de los Heros is solely responsible for his patient care and he agrees to indemnify and hold Dr. Sullivan harmless for any and all care, treatment decisions, clinical outcomes, and interactions regarding his patients that are not covered by Dr. Sullivan’s insurance. Dr. Sullivan does not assume any responsibility for any issues with Dr. de los Heros’ patient care.

9. Insurance Coverage and Premiums: This Agreement is conditional on Dr. Sullivan being able to obtain reasonable malpractice insurance and general liability insurance coverage for all risks reasonably related to this Agreement. If Dr. Sullivan’s premium for malpractice or general liability insurance is raised directly as a result of this Agreement, Dr. de los Heros shall reimburse Dr. Sullivan for the portion of the increase related to this Agreement. Should Dr. Sullivan’s role under this Agreement require any appearance at the Board or any response to any complaint to or inquiry by the Board arising out of this Agreement with Dr. de los Heros, Dr. de los Heros agrees to pay Dr. Sullivan for his services reasonably related thereto, and for any reasonably out of pocket expenses including legal fees incurred by Dr. Sullivan in this regard.

10. Independent Contractor Status: The parties shall at all times remain independent contractors and not employees of one another.

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11. Mediation: If a dispute arises under this Agreement which the parties are unable to resolve through direct negotiations, the parties agree to engage jointly the services of a professional mediator and to participate in good faith in such mediation and to abide by its outcome or decision.

12. Access to information and outside communication with referral sources: Dr. de los Heros shall provide any and all access to records authorizing Dr. Sullivan to obtain records from or to discuss in person or by phone with the referral sources of ancillary psychotherapist or physician under the terms of this Consent agreement information regarding the status or progress of Dr. de los Heros' patients as independently assessed by such clinicians.

13. Dr. de los Heros shall provide releases of information to Dr. Sullivan to talk in person or by phone with any of Dr. de los Heros' treating medical specialists, primary care physician or any therapist from whom Dr. de los Heros is receiving any treatment, drug or alcohol monitoring or therapy, including substance abuse, mental health or counseling.

14. Dr. Sullivan as Board's Agent: It is understood between the parties that the Maine board of Licensure in Medicine considers Dr. Sullivan's services under this Monitoring Agreement to be performed as an Agent of the Board, pursuant to the Maine Health Security Act, 24 M.R.S.A. & 2501 et seq., and more specifically pursuant to 24 M.R.S.A. & 2511.

15. This Agreement contains all of the material terms of the parties to the subject matter hereof and may not be modified or changed, waived, or terminated orally or in any other handwritten instrument executed by both parties to be given notice by certified or registered mail return receipt requested.

16. This Agreement shall be governed by and construed in accordance with the laws of Maine. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above,

WITNESS:

[Signature]

Name: DAVID JANGELS, M.D.

[Signature]

Name: Reinaldo de los Heros, M.D.

[Signature]

Name: William M. Sullivan, M.D.
Dear Dr.,

I appreciate your referral and request for evaluation and psychopharmacology management of Mr./Mrs._________. Per my agreement with The Maine Licensure in Medicine dated June 2006, and in consideration of the fact that after several years of not having practiced psychiatry, Dr. William Sullivan has kindly agreed to provide formal supervision as needed. Among other things, his role will include review of patient charts and the possibility of requesting some feedback from my referral sources, regarding patient outcome and satisfaction with the evaluation and treatment provided.

This approach should well complement the very intensive and thorough continuing medical education training which I have obtained for the past several years, with major emphasis in the fields of Neuropsychiatry, Neurology, Primary Care and Preventive Medicine, among others.

As a very conscientious physician, who trained in Sheppard Pratt, John Hopkins and Boston University Hospitals, was faculty member of The Boston University Medical School, was research collaborator with Harvard Medical school, and had a private practice for over seventeen years, I believe that this approach will provide the highest quality of care that any physician should provide for his patients.

Once I have completed my evaluation of Mr./Mrs._________, with his/her permission I will be forwarding you a copy of the clinical findings, initial treatment plans and recommendations, which will be followed with the routinely administered clinical scales and patient satisfaction appraisal forms. By using this approach, you should be able to have a fairly clear and objective appraisal of the patient's clinical progress.

If at any point you have any questions or concerns of any type, please feel free to contact me and/or Dr. Sullivan directly at _________.

Sincerely,

Reinaldo de los Heros, M.D.
Board Certified in Psychiatry
In re: Reinaldo O. de los Heros, M.D. ) CONSENT AGREEMENT

This document is a Consent Agreement regarding the ability of Reinaldo O. de los Heros, M.D. to practice medicine in the State of Maine. The effect of this Consent Agreement is to allow Reinaldo O. de los Heros, M.D. to continue to practice medicine while still protecting the public until further investigation on his complaint CR-08-118 is complete, including a Title 32 § 3286 evaluation, and until the complaint can be resolved either by subsequent consent agreement or by an adjudicatory hearing. This Consent Agreement does not prohibit the Board from taking future disciplinary action against Reinaldo O. de los Heros, M.D. regarding CR-08-118. The parties to this Consent Agreement are: Reinaldo O. de los Heros, M.D. ("Dr. de los Heros"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Office of the Attorney General ("the Attorney General").

FACTUAL BACKGROUND

1. At its meeting on July 14, 2009, the Board met with Dr. de los Heros at an informal conference to discuss the pending complaint against him, CR-08-118. In lieu of immediately suspending Dr. de los Heros' license to practice medicine, the Board voted to offer him this Consent Agreement in order to allow him to safely continue to practice medicine in this State. Absent

Exhibit 2
Dr. de los Heros' acceptance of this proposed Consent Agreement on or before July 22, 2009, by signing and dating it and faxing a copy to Randal Manning, Executive Director, Maine Board of Licensure in Medicine, at (207) 287-6590 and sending the signed original Consent Agreement to Randal Manning, Executive Director, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137, the Board will meet at its earliest convenience to determine whether or not the license of Dr. de los Heros should be immediately suspended.

COVENANTS

2. Dr. de los Heros agrees that he will not practice medicine until all conditions of this Consent Agreement are in place.

3. Dr. de los Heros will be allowed to practice medicine in the State of Maine subject to the following condition(s):
   a. Dr. de los Heros will restrict his practice to working in a supervised relationship under another Maine licensed psychiatrist. Dr. de los Heros' practice of medicine will be monitored, pursuant to a written monitoring agreement, by a supervising psychiatrist who, while acting in that capacity as supervising/monitoring psychiatrist, will be an agent of the Board pursuant to Title 24 M.R.S. § 2511. Dr. de los Heros' supervising/monitoring psychiatrist and the written monitoring agreement must be approved by the Board case reporter for this matter, Dr. George Dreher;
b. Dr. de los Heros shall ensure that the duties of his supervising/monitoring psychiatrist shall include: on-going, regular supervision; review of patient charts (including clinical scales performance, patients' responses to outcome, and satisfaction reviews); review of some tape-recorded sessions with patients; review of the efficacy of prescribed medications; and consultation with other mental health providers involved in the patients' care. In complying with this requirement, Dr. de los Heros shall permit his supervising/monitoring psychiatrist full access to all patient information;

c. The first two weeks of monitoring shall include a review of all patient charts and review of at least one tape-recorded session between Dr. de los Heros and a patient. At the end of the two week time period, the case reporter, with the input of the monitor, will assess Dr. de los Heros' situation and determine whether or not the terms of monitoring can be made less stringent;

d. Dr. de los Heros shall ensure that his supervising/monitoring psychiatrist provides written reports of his progress to the Board once per month and verbal reports of his progress to Dr. Dreher twice per month;

e. If Dr. de los Heros' psychiatric practice supervisor/monitor raises a concern about any aspect of Dr. de los Heros' medical practice or ethics, he or she shall immediately notify the Board in writing;
f. Dr. de los Heros agrees that during the term of this Consent Agreement, he shall provide a copy of this Consent Agreement to any employers, partners or peers with whom he intends to practice medicine, any person involved in the monitoring, treatment or counseling of him and to all other professionals with whom he has a consulting relationship;

g. Dr. de los Heros shall bear any and all costs accrued as a result of monitoring by the monitoring/supervising psychiatrist.

4. Dr. de los Heros shall submit to and fully cooperate with a neuropsychiatric evaluation pursuant to 32 M.R.S. § 3286. Dr. de los Heros shall be responsible for the cost of this evaluation.

5. This Consent Agreement does not prohibit the Board from taking further disciplinary action against Dr. de los Heros regarding CR-08-118.

6. If the Board receives a report from the supervising/monitoring psychiatrist that raises concerns about Dr. de los Heros' ability to practice medicine, or the Board receives a report from a credible source that Dr. de los Heros has violated the terms of this Consent Agreement, the Board will, without a hearing, summarily and immediately suspend Dr. de los Heros' license to practice medicine until the credible reported event and/or CR-08-118 can be resolved either by consent agreement or an adjudicatory hearing. The immediate and summary suspension of Dr. de los Heros' license will become effective at the time Dr. de los Heros
receives actual notice from the Board, Board staff, the Case Reporter or counsel for the Board that a report of violation has been made and the suspension has been imposed. Actual notice can be provided by telephone, in person, in writing, by facsimile, e-mail or other means or any combination of the above-referenced means.

7. This Consent Agreement shall remain in effect until CR-08-118 can be resolved either by consent agreement or an adjudicatory hearing, or until the Board determines that a summary suspension of Dr. de los Heros’ license to practice medicine is necessary to protect the public.

8. The Board and the Attorney General may communicate and cooperate regarding Dr. de los Heros’ practice or any other matter relating to this Consent Agreement.

9. 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.

10. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.
I, REINALDO O. DE LOS HEROS, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, 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: 7/21/09

REINALDO O. DE LOS HEROS, M.D.

STATE OF Maine

Cumberland S.S.

Personally appeared before me the above-named Reinaldo O. de los Heros, 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: 7/21/09

LYNNA HOLLAND
Notary Public/Attorney

MY COMMISSION ENDS: LYNNA HOLLAND
Notary Public, Maine
My Commission Expires April 21, 2012

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE
STATE OF MAINE OFFICE OF THE ATTORNEY GENERAL

DATED: 7-23-09

CARRIE L. CARNEY
Assistant Attorney General

APPROVED EFFECTIVE:

Gary R. Hatfield, M.D.
Acting Chairperson
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re: Reinaldo O. de los Heros, M.D. Complaint No. CR15-75

CONSENT AGREEMENT

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to practice medicine in the State of Maine held by Reinaldo O. de los Heros, M.D. The parties to the Consent Agreement are: Reinaldo O. de los Heros, M.D. (“Dr. de los Heros”), 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. de los Heros has held a license to practice medicine in the State of Maine since July 17, 2005 (license number MD17206), and specializes in psychiatry.

2. On May 6, 2015, the Board received a complaint from the mother of Patient A informing the Board that her adult daughter had died April 19, 2015, and that the police found 19 bottles of prescription medications at the scene, all of which medications were prescribed within roughly a five week timeframe by Dr. de los Heros. The complaint further alleged that Dr. de los Heros was responsible for her daughter’s death, and that he had a fraud conviction, that there were “drug abuse concerns,” and that he had lost “his rights” in New Hampshire, Massachusetts, North Carolina and Maine. The
Board docketed that complaint as CR15-75, and sent it to Dr. de los Heros for a response.

3. By letter dated July 13, 2015, Dr. de los Heros responded to the complaint. Dr. de los Heros explained that he first saw Patient A on March 10, 2015, for a psychiatric diagnostic evaluation and that the patient had previously completed an intake package that included screening questionnaires. He reported that he reviewed her responses to the questionnaires with her at that initial visit. He also reported that Patient A had a history of opioid and alcohol dependence, and that he discussed with her, her medication management for her conditions.

Dr. de los Heros described in his response to the Board the medications that he prescribed to Patient A, and changes made based upon Patient A's description of results, side effects and ongoing symptoms. He reported that he discussed with Patient A the overall treatment guidelines, including being closely monitored, clinically assessed, and reassessed each visit (weekly in the beginning until stable enough to modify the frequency of these sessions to twice a month) and using only one pharmacy. He further reported that he had Patient A sign a "Prescription Agreement for Drugs of Potential Abuse" at the first visit on March 10, 2015.

Dr. de los Heros also reported to the Board that Patient A showed clinical improvement in her various conditions, and did not show evidence of a relapse into substance abuse. He noted that Patient A "was closely and frequently
monitored.” He noted that Patient A was “clinically stable” and doing well when he last saw her on April 1, 2015.

Dr. de los Heros stated that he understood that Patient A’s cause of death was “determined to be acute intoxication due to the intentional over-ingestion of medications and the combined effects of alprazolam, methadone, morphine (reflecting possible heroin use), quetiapine, topiramate and mirtazapine,” and that she was found with pill bottles and a possible suicide note. He noted that “at no time during the short period of time [he] treated this patient did [he] feel she posed a risk of suicide” or received any information that she was taking her medications inappropriately or unsafely.

4. Patient A’s mother filed a reply to Dr. de los Heros’s response to her complaint by letter dated August 9, 2015. She stated that Dr. de los Heros was not an honest, responsible or trustworthy doctor, and asserted that Dr. de los Heros did not review Patient A’s questionnaires, over prescribed medications to Patient A, and did not closely monitor her. In support of these assertions, she provided supplemental information to the Board including:

a) prior action by the Massachusetts Board of Registration in Medicine (“Massachusetts Board”) imposing a reprimand pursuant to a November 14, 2007 Consent Order;

b) the Consent Agreement for Conditional License entered with the Board on July 11, 2006, requiring supervision, monitoring and participation in the Maine Medical Association’s Committee on Physician Health;
c) Patient A's questionnaire responses and identification of alleged inconsistencies between the questionnaire responses and Dr. de los Heros's response to the Board;

d) a list written by Patient A of "People Who Passed", including her ex-husband;

e) a prescription profile for Patient A listing the medications prescribed by Dr. de los Heros filled at a Portland pharmacy;

f) a statement of costs for Patient A's prescriptions reflected in the prescription profile;

g) records from other providers for Patient A prior to her being treated by Dr. de los Heros;

h) information obtained on the Internet regarding Dr. de los Heros;

and

i) A note written by Patient A dated March 21, 2015, which has been characterized as a suicide note.

5. On September 22, 2015, counsel for Dr. de los Heros submitted a report prepared by Harrison G. Pope, Jr., M.D., Professor of Psychiatry at Harvard Medical School and Director of Biological Psychiatry Laboratory at McLean Hospital, providing opinions regarding the care provided by Dr. de los Heros to Patient A. In his report, Dr. Pope addressed three primary issues raised by the complainant: a) whether Dr. de los Heros prescribed excessive amounts of medication to the patient, either by prescribing too many medications or excessive doses of these medications; b) whether Dr. de los
Heros failed to monitor the patient closely enough; and c) whether Dr. de los Heros failed to become adequately acquainted with the patient, such that he failed to anticipate and prevent her suicide.

After identifying the six current diagnoses reflected in Patient A's initial evaluation, Dr. Pope reviewed the medications prescribed by Dr. de los Heros to Patient A. His report noted that Dr. de los Heros prescribed two medications, omeprazole and fish oil, that are not psychiatric medications and do not require a prescription so that they would be covered by the patient's insurance. Dr. Pope also noted that Dr. de los Heros prescribed amantadine, a non-psychiatric medication to Patient A as well, and that although there is some evidence that this medication might possibly benefit impulse control disorders such as binge eating, the evidence for efficacy of amantadine in binge eating remains speculative. Nevertheless, Dr. Pope did not find it unreasonable or inappropriate for Dr. de los Heros to have considered a trial of "this relatively benign substance."

Dr. Pope reviewed the seven psychiatric medications that Dr. de los Heros prescribed to Patient A, and concluded that none of Patient A's doses exceeded the normal daily maximum, and that the medications have scientific evidence of efficacy for the psychiatric disorders that Dr. de los Heros diagnosed in Patient A. Dr. Pope indicated that gabapentin, alprazolam and quetiapine can all have some sedative effects, but did not see any evidence in the record that Patient A complained that she was excessively sedated. Dr. Pope stated that topiramate can sometimes cause forgetfulness or confusion.
and the effect might be “hypothetically increased” if one were also taking alprazolam or clomipramine, but he did not see evidence in the medical records created by Dr. de los Heros regarding Patient A that she complained of confusion. Dr. Pope indicated that he was not aware of any serious danger from the combination of drugs prescribed. Dr. Pope also noted that Patient A’s toxicology report results were notable for the presence of morphine — a drug that had not been prescribed for the patient — indicating that she was taking illicit drugs, in violation of medical orders, in conjunction with the prescribed drugs at the time of her death, and that he could not be certain that Patient A’s death was caused purely by an overdose of the drugs prescribed by Dr. de los Heros.

With respect to the question whether Dr. de los Heros monitored Patient A closely enough, Dr. Pope stated that Dr. de los Heros saw the patient every week and obtained urine toxicology screens every week to confirm that she was not ingesting prohibited or illicit substances, and that this degree of monitoring was superior to what he has witnessed of similar practitioners in the community. Finally, with respect to the question whether Dr. de los Heros failed to become adequately acquainted with the patient such that he failed to anticipate and prevent her suicide, Dr. Pope reviewed the medical records created by Dr. de los Heros, and concluded that he could not find that Dr. de los Heros performed a faulty diagnostic evaluation.

6. Dr. de los Heros’s records for Patient A reflected that she disclosed that she was on methadone, and Dr. de los Heros increased some of the
medication prescribed during the period that he was treating her beginning on March 10, 2015. Dr. de los Heros saw Patient A weekly for four visits and obtained urine drugs screens at each visit. The records for the first visit do not document a conversation with the patient about her responses to the screening questionnaires or that Dr. de los Heros took and recorded a psychosocial history. Dr. de los Heros's treatment notes reflect that subsequent to the first visit, Patient A indicated that she was dealing and coping with mood swings, depression, anxiety and stress, and that she reported that she was doing better. In addition, there is no indication in the records that Dr. de los Heros coordinated care with Patient A's other health care providers, including her methadone provider, or that Patient A was informed about who Dr. de los Heros had made arrangements with to provide coverage during his vacation or unavailability.

7. The Board received a copy of the Office of Chief Medical Examiner Investigative Report for Patient A which reported that she died on April 19, 2015, and her cause of death was acute intoxication due to the combined effects of alprazolam, methadone, morphine, quetiapine, topiramate and mirtazapine. The report stated that Patient A's manner of death was suicide.

8. At its meeting on October 13, 2015, the Board reviewed Complaint CR 15-75, and voted to conduct an informal conference. In addition, due to illegibility of his treatment notes, the Board requested that Dr. de los Heros transcribe his treatment notes for Patient A and provide them to the Board in advance of the informal conference.
9. At its meeting on November 10, 2015, the Board reviewed Complaint CR 15-75 and conducted an informal conference. Following the informal conference, the Board voted to set this matter for an adjudicatory hearing and to offer Dr. de los Heros this Consent Agreement to resolve this matter without further proceedings. Absent Dr. de los Heros's acceptance of this Consent Agreement by signing and dating it in front of a notary and mailing it to Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before February 24, 2016, the matter will be scheduled for an adjudicatory hearing.

COVENANTS

10. Dr. de los Heros admits the facts stated above and agrees that the Board could conclude, and understands that the Board does hereby conclude that he engaged in conduct that constitutes grounds for discipline pursuant to 32 M.R.S. § 3282-A(2)(F), for engaging in unprofessional conduct.

11. As discipline, Dr. de los Heros agrees to accept the following:

A LICENSE PROBATION for at least six (6) months subject to the following terms and conditions:

a) Within thirty (30) days following the execution of this Consent Agreement, Dr. de los Heros must engage a Board approved physician practice monitor who shall monitor his medical practice. In complying with this requirement, Dr. de los Heros shall submit to the Board for its approval the name of a licensed psychiatrist as a
proposed physician practice monitor. The Board or the Board’s
designee has the sole discretion to approve or reject the physician
practice monitor. The physician practice monitor must meet at least
weekly with Dr. de los Heros and review at least five (5) patient charts.
Dr. de los Heros understands that the physician practice monitor is
an agent of the Board pursuant to 24 M.R.S. § 2511. The physician
practice monitor shall provide the Board with monthly reports
regarding Dr. de los Heros’s practice beginning thirty (30) days after
the date on which Dr. de los Heros receives Board approval of the
monitor. The reports shall include a statement identifying his or her
observations of Dr. de los Heros’s practice, the review of patient
charts, and a discussion of any issues related to patient treatment or
recordkeeping. The physician practice monitor shall also include in
the reports to the Board an assessment and confirmation of Dr. de los
Heros’s compliance with the requirements contained in subparagraph
(b) below. Dr. de los Heros must provide a copy of this Consent
Agreement, together with any amendments hereto, to his physician
practice monitor.

b) Dr. de los Heros shall document in all patient medical records the
patient’s psychosocial history and reflect that he has incorporated the
information into the patient’s treatment plan, which should include
referrals or consultation with other health care professionals as
necessary. Dr. de los Heros’s medical records shall be legible and
clearly state his rationale for prescribing medications, including any
dosage change.
c) The sixth monthly report from the physician practice monitor may
include a recommendation whether monitoring should be
discontinued. Following the receipt of the sixth monthly report from
the physician practice monitor, the Board shall review all information
received from the physician practice monitor and determine, in its
sole discretion, any continuation or modification of monitoring
requirements for Dr. de los Heros's practice.
d) Dr. de los Heros shall transition to and maintain typewritten medical
records within six weeks of the execution date of this Consent
Agreement.

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

13. This Consent Agreement is not appealable and is effective until
modified or rescinded in writing by the parties hereto.

14. The Board and the Department of the Attorney General may
communicate and cooperate regarding Dr. de los Heros 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.

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

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

18. Dr. de los Heros 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.

19. Dr. de los Heros has been represented by Elizabeth A. Olivier, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

20. For the purposes of this Consent Agreement, the term "execution" means the date on which the final signature is affixed to this Consent Agreement.
I, REINALDO O. DE LOS HEROS, 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: 02/14/16  
REINALDO O. DE LOS HEROS, M.D.

STATE OF Maine
Cumberland, S.S.

Personally appeared before me the above-named Reinaldo O. de los Heros, 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: 2/24/16  
Nancy N. Condon
NOTARY PUBLIC/ATTORNEY
My Commission Expires December 3, 2017

MY COMMISSION ENDS: ______________

DATED: 2/24/16  
ELIZABETH A. OLIVIER, ESQ.
Attorney for Reinaldo O. de los Heros, M.D.
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 2/29/16

MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: February 26, 2016

MICHAEL MILLER
Assistant Attorney General

Effective Date:
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re: Reinaldo O. de los Heros, M.D. )  FIRST AMENDMENT TO
Complaint No. CR15-75   )  CONSENT AGREEMENT

This document is the First Amendment to Consent Agreement
effective February 29, 2016, regarding disciplinary action against the
license to practice medicine in the State of Maine held by Reinaldo O. de
los Heros, M.D. ("First Amendment"). The parties to this First
Amendment are: Reinaldo O. de los Heros, M.D. ("Dr. de los Heros"), the
State of Maine Board of Licensure in Medicine ("the Board"), and the
Department of the Attorney General (the "Attorney General"). This First
Amendment is entered into pursuant to 32 M.R.S. § 3282-A and 10
M.R.S. § 8003(5).

BACKGROUND

1. On February 29, 2016, the parties entered into a Consent
Agreement regarding disciplinary action against the license to practice
medicine in the State of Maine held by Reinaldo O. de los Heros, M.D.
("the Consent Agreement").

2. On March 14, 2017, the Board reviewed Dr. de los Heros's
compliance with the Consent Agreement and the reports and
recommendations of his physician practice monitor, and voted to offer
Dr. de los Heros this First Amendment. Absent Dr. de los Heros's
acceptance of this First Amendment by signing and dating it in front of a
notary and mailing it to Maine Board of Licensure in Medicine, 137 State
House Station, Augusta, Maine 04333-0137 so that it is received on or
before April 10, 2017, the matter will be presented to the Board for
possible further action.

AMENDMENT

3. Dr. de los Heros, the Board, and the Department of the
Attorney General hereby agree to amend the Consent Agreement dated
February 29, 2016 as follows:

a) By deleting the requirement for a Board approved
physician practice monitor contained in paragraph 11(a) and inserting a
new paragraph 11(a) as follows:

Dr. de los Heros acknowledges that maintaining regular
contact with other Maine-licensed psychiatrists is important
and can improve his ability to provide appropriate care and
treatment. Therefore, he agrees to select (a) mentor(s) who is
a Maine-licensed psychiatrist with whom he will regularly
meet and consult with and share clinical experiences. Dr. de
los Heros shall provide the name of his mentor(s) to the
Board within fourteen (14) days of the execution of this First
Amendment and in the event of any change in mentor(s). In
addition, Dr. de los Heros shall attend the 2017 Maine
Association of Psychiatric Physicians Annual Spring
Conference.
b) By amending paragraph 11(b) to add the following sentence at the end of that paragraph:

Dr. de los Heros understands and agrees that he will comply with this requirement even after the termination of the probation imposed by the Consent Agreement, and that his failure to comply with this requirement may constitute unprofessional conduct and grounds for discipline of his medical license.

c) By deleting the requirement contained in paragraph 11(c) and inserting a new paragraph 11(c) as follows:

Dr. de los Heros shall attend a meeting of the Board that will be scheduled after six (6) months have elapsed from the effective date of this First Amendment. Prior to the scheduling of that meeting, Dr. de los Heros shall provide ten (10) patient records selected by the Board or Board staff for Board review. At the conclusion of that meeting, the Board shall, in its sole discretion, determine whether to terminate or continue probation with conditions for a specified period.

d) By amending paragraph 11(d) to add the following sentence at the end of that paragraph:

Dr. de los Heros understands and agrees that he will comply with this requirement even after the termination of the probation imposed by the Consent Agreement, and that his
failure to comply with this requirement may constitute unprofessional conduct and grounds for discipline of his medical license.

4. Dr. de los Heros acknowledges by his signature hereto that all other terms and conditions of the Consent Agreement effective February 29, 2016 remain in full force and effect.

5. Dr. de los Heros acknowledges by his signature hereto that he has read this First Amendment, that he has had an opportunity to consult with an attorney before executing this First Amendment, that he executed this First Amendment of his own free will and that he agrees to abide by all terms and conditions set forth herein.

I, REINALDO O. DE LOS HEROS, M.D., HAVE READ AND UNDERSTAND THE FOREGOING FIRST AMENDMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING I WAIVE CERTAIN RIGHTS INCLUDING THE RIGHT TO FURTHER HEARINGS REGARDING THIS FIRST AMENDMENT. I ALSO WAIVE THE RIGHT TO APPEAL TO THE COURT REGARDING THIS FIRST AMENDMENT. KNOWING THIS, I SIGN IT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS FIRST AMENDMENT, TOGETHER WITH THE CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN, OR OTHERWISE. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.

Dated: April 5th, 2017

REINALDO O. DE LOS HEROS, M.D.

STATE OF MAINE
Cumberland, SS.
Before me this 5th day of April, 2017, personally appeared Reinaldo O. de los Heros, M.D., who after first being duly sworn, signed the foregoing First Amendment to Consent Agreement in my presence or affirmed that the signature above is his own.

Nancy N. Condon
Notary Public/Attorney at Law
My commission expires:

DATED: April 5, 2017

ELIZABETH A. OLIVIER, ESQ.
Attorney for
Reinaldo O. de los Heros, M.D.

STATE OF MAINE BOARD
OF LICENSURE IN MEDICINE

DATED: 4/11/17

MAROULLA S. GLEATON, M.D.,
Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: April 11, 2017

MICHAEL MILLER
Assistant Attorney General

Effective Date: April 11, 2017
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In Re: Jessica L. Cyr, P.A.
CR16-155

) ) DECISION AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 10 M.R.S. Section 8003(5) and 32 M.R.S. Sections 3269, 3270-C and 3282-A, the Maine Board of Licensure in Medicine ("Board") met in public session at its offices in Augusta, Maine, on September 12, 2017. The purpose of the meeting was to determine whether to impose discipline upon the physician assistant license of Jessica L. Cyr and whether to grant Ms. Cyr's application for renewal of licensure.

By letter dated May 30, 2017, the Licensee was notified that the hearing in this matter would be held on September 12, 2017. On August 9, 2017, a prehearing conference was held and a Conference Order was issued setting deadlines for the filing of exhibit and witness lists. The State bears the burden to prove by a preponderance of the evidence any violation that would form the basis of discipline as well as any violation that would be the basis for a denial of licensure. The parties stipulated that the Licensee was eligible for renewal of licensure but for the pending matter.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Louisa Barnhart, M.D.; Susan Dench, Public Member; David Dumont, M.D.; Christopher Ross, P.A.-C.; Michael Sullivan, M.D.; Brad Waddell, M.D.; Lynne Weinstein, Public Member; and Maroulla Gleaton, M.D., Chair. The Licensee was present and was represented by Christopher Taintor, Esq. Michael Miller, Esq., Assistant Attorney General, represented the State of Maine. Rebekah Smith, Esq., served as Presiding Officer. The hearing was
held in accordance with the requirements of the Maine Administrative Procedure Act, 5 M.R.S.
Section 9051 to Section 9064.

State Exhibits #1 to #16 were admitted without objection. Licensee Exhibits #1 and #2 were
admitted without objection. The admitted exhibits are identified as follows:

State Exhibit #1: Notice of Hearing dated May 30, 2017
State Exhibit #2: ALMS Licensing Information
State Exhibit #3: July 8, 2016, Board Complaint
State Exhibit #4: July 21, 2016, Complaint Response
State Exhibit #5: February 21, 2015, Renewal Application
State Exhibit #6: July 22, 2015, Practice Closing Notice
State Exhibit #7: Physician Assistant/Primary Supervising Physician Plan of Supervision
       dated August 4, 2015
State Exhibit #8: May 5, 2016, Email from Assistant Attorney General to Board Staff
       Member
State Exhibit #9: Physician Assistant/Primary Supervising Physician Plan of Supervision
       dated January 15, 2016
State Exhibit #10: May 6, 2016, Letter from Steven Brewster, M.D., to Board
State Exhibit #11: 32 M.R.S. § 3270-C
State Exhibit #12: 32 M.R.S. § 3270-E
State Exhibit #13: 32 M.R.S. § 3282-A
State Exhibit #14: 10 M.R.S. § 8003
State Exhibit #15: Board Rules Chapter 2 in effect through July 17, 2016
State Exhibit #16: American Academy of Physician Assistants Guidelines for Ethical
       Conduct for the Physician Assistant Profession
Licensee Exhibit #1: Emails between the Licensee and Dr. Steven Brewster between July
       30, 2015, and August 13, 2015
Licensee Exhibit #2: Email from Dr. Steven Brewster to the Licensee dated July 30, 2015

The Board took notice of its statutes and rules and confirmed that no participating member
had any conflict of interest or bias that would prevent him or her from rendering an impartial
decision in this matter. Each party presented an opening statement. The State presented Steven
Brewster, M.D., and the Licensee as witnesses. The Licensee did not present any additional
witnesses. Each party made a closing argument. The Board then deliberated and made the
following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the allegations against the Licensee and her eligibility for renewal of licensure.¹

II. FINDINGS OF FACTS

1. Jessica L. Cyr, P.A.-C., was initially licensed as a physician assistant - clinical, in Maine on October 3, 2012. (State Exh. #2.) On February 21, 2015, the Licensee filed an application for renewal of her license, which was granted and which identified Catherine Crute, M.D., as her supervising physician. (State Exh. #5.) The Licensee’s current license expired on December 31, 2016, but she filed a timely renewal application on December 29, 2016. (State Exh. #2; Administrative File.) Her license remains active pursuant to 5 M.R.S. Section 10002 pending a final determination by the Board regarding her renewal application. (State Exh. #2.)

2. The Licensee worked in the private practice of Dr. Crute from the time that she was licensed in the fall of 2012 until September 30, 2015, when Dr. Crute’s practice closed. (Testimony of Licensee.) Dr. Crute was registered as the Licensee’s primary supervising physician throughout the period of the Licensee’s employment in Dr. Crute’s practice. (Testimony of Licensee.) While the Licensee was employed by Dr. Crute, staff members in Dr. Crute’s office filed all of the Licensee’s licensing documents with the Board on her behalf. (Testimony of Licensee.)

3. On July 3, 2015, the Licensee began the training process to work at Concentra Occupational Medical Centers (“Concentra”) as a per diem physician assistant. (Testimony of Licensee.) On approximately July 10, 2015, the Licensee was offered a full-time position at Concentra,

¹ On September 20, 2017, the Licensee filed a motion to reconsider the instruction given to the Board regarding whether it could issue a letter of guidance after it had found a violation. The State filed a response on September 27, 2017. The Hearing Officer issued an order denying the Licensee’s motion on October 4, 2017.
which she accepted with the condition that she could not begin full-time work until September 2015. (Testimony of Licensee; State Exh. #6.)

4. Throughout the month of July 2015, the Licensee engaged in training at Concentra, although not seeing patients, while working part-time at Dr. Crute’s practice. (Testimony of Licensee.)

5. On July 30, 2015, Dr. Brewster emailed the Licensee, indicating that they needed to transition her supervisory relationship with a physician at Concentra to Jeanne Scheddel, D.O. (Lic. Exh. #2.) Dr. Brewster stated that he had attached the necessary forms, which included the Plan of Supervision that Dr. Brewster had drafted, identifying Dr. Scheddel as the Licensee’s supervising physician, and Form C, a Board form. (Lic. Exh. #2.) Dr. Brewster indicated that Concentra would pick up the cost of that process, presumably referencing filing the documents with the Board. (Lic. Exh. #2.) Dr. Brewster requested that the Licensee complete the forms the following day and give them to Sue Britting, Executive Assistant at Concentra, indicating that Dr. Scheddel would sign the forms the next time she was in the office. (Testimony of Brewster.) Dr. Brewster had contacted Board staff to ensure that the Plan of Supervision had all the necessary elements, at which time he was informed that he should not allow the Licensee to see patients until the supervising physician was registered with the Board. (Testimony of Brewster.) The Licensee was the first physician assistant that Dr. Brewster had hired in Maine. (Testimony of Brewster.)

6. On July 31, 2015, Dr. Brewster indicated in an email to the Licensee that he had sent her another email with attachments, referencing his July 30, 2015, email, and indicated that if she could put all of it together that day, “we can submit that to the [s]tate of Maine Board of Medical Licensing and we’ll be set.” (Lic. Exh. #1.) The Licensee understood Dr.
Brewster’s email to mean that Concentra administrative staff would forward the paperwork related to her registration and supervision plan to the Board. (Testimony of Licensee.)

7. On August 2, 2015, the Licensee informed Dr. Brewster by email that she had completed the physician supervisor paperwork and left it on Ms. Britting’s desk. (Lic. Exh. #1.) The Licensee asked Concentra staff several times if there was anything else that she needed to do, particularly because she knew she was being supervised by two physicians in two different practices. (Testimony of Licensee.) The Licensee was told that Ms. Britting would finalize the paperwork after the Licensee had signed it. (Testimony of Licensee.) The Licensee assumed that Concentra staff had forwarded the documents to the Board. (Testimony of Licensee.) The Licensee did not receive a copy of the fully executed Plan of Supervision, which was maintained by Concentra once it had been signed by the supervising physician. (Testimony of Brewster; Testimony of Licensee.)

8. The Licensee began to see patients at Concentra in the beginning of August 2015. (Testimony of Licensee.) The Licensee did not begin seeing patients at Concentra until after the Plan of Supervision was in effect, having been executed by Dr. Scheddel on August 4, 2015. (Testimony of Brewster; State Exh. #7.) Pursuant to an internal policy, the Plan of Supervision had to be approved by Concentra’s credentialing committee before the Licensee could begin seeing patients. (Testimony of Brewster.)

9. The Licensee began as a full-time employee at Concentra on September 4, 2015, continuing to see some patients in Dr. Crute’s office until September 30, 2015, when the practice closed. (Testimony of Licensee; State Exh. #6.) The Licensee did not file a notice with the Board that Dr. Crute was no longer a supervising physician for her after September 30, 2015. (Testimony of Licensee.)
10. In January 2016, Dr. Brewster became the medical director at Concentra and became the Licensee’s supervising physician at Concentra pursuant to a Plan of Supervision executed on January 15, 2016. (Testimony of Licensee; State Exh. #9.) While he was the Licensee’s supervising physician, Dr. Brewster met with the Licensee routinely, saw her patients in follow up appointments, conducted formal chart reviews, and ensured that she had completed all training requirements. (Testimony of Licensee.)

11. In early May 2016, the Licensee received a phone call from the Board indicating that her certificate of registration was not up to date. (Testimony of Licensee.) The Licensee was shocked and went to Concentra immediately to obtain the documents from administrative staff. (Testimony of Licensee.)

12. On May 5, 2016, the Board received a Physician Assistant/Primary Supervising Physician Plan of Supervision identifying Dr. Brewster as the Licensee’s supervising physician effective January 15, 2016. (State Exh. #9.)

13. By letter dated May 6, 2016, Dr. Brewster apologized that the Licensee did not have paperwork on file with the Board identifying him as her supervising physician. (State Exh. #10.) He noted that the Licensee had completed her application and supervisory plan in July 2015 and had given the originals to Concentra’s administrative assistant, assuming that she would submit the paperwork to the Board. (State Exh. #10.) The administrative assistant, however, Dr. Brewster reported, thought that the Licensee was submitting the paperwork herself. (State Exh. #10.)

14. Dr. Brewster reported that he had oriented the Licensee to Concentra in July 2015 and had drafted her supervisory plan with her at the time. (State Exh. #10.) Dr. Brewster indicated that he had worked with the Licensee continuously since that time and when he was not in the office in person he was available to her via phone. (State Exh. #10.) He also noted that
the Licensee had worked closely with three other physicians in the office - Dr. Joseph Castorina, Dr. Jeanne Scheddel, and Dr. Alan Bean - and had been supervised in her practice at all times. (State Exh. #10.) Dr. Brewster reported that the procedural failure in the organization had been addressed to ensure that in the future providers submitted required paperwork in a timely manner. (State Exh. #10.)

15. On June 14, 2016, the Board voted to initiate a complaint against the Licensee based on information it received that although she had been registered under the supervision of Dr. Crute until May 5, 2016, Dr. Crute had closed her practice effective September 30, 2015, and the Licensee began working at Concentra Occupational Medicine Centers ("Concentra") in July 2015. (State Exh. #3.)

16. On July 15, 2016, the Licensee responded to the complaint. (State Exh. #4.) She indicated that she had always been under appropriate supervision as a physician assistant. (State Exh. #4.) The Licensee provided the Physician Assistant/Primary Supervising Physician Plan of Supervision that had been finalized on August 4, 2015, indicating that Dr. Scheddel was her supervising physician at Concentra as well as a newer Plan of Supervision identifying Dr. Brewster as her supervising physician effective January 15, 2016. (State Exh. #4.) She stated that with regard to both plans, she believed that Concentra’s administrative staff was forwarding the plans to the Board for approval. (State Exh. #4.)

17. On December 29, 2016, Dr. Joseph Castorina became the Licensee’s supervising physician at Concentra. (Testimony of Licensee; State Exh. #2.)

18. The Licensee testified at hearing that she understands that it is her personal responsibility to ensure that her licensure documents are filed with the Board. (Testimony of Licensee.) She acknowledged that she should not have assumed that Dr. Crute would provide the Board
with notice that she was no longer supervising the Licensee once her practice closed and should have filed all the necessary documents herself. (Testimony of Licensee.)

III. GOVERNING STATUTES AND RULES

1. The Board may refuse to issue, modify, restrict, suspend, revoke, or refuse to renew a license if the licensee engaged in unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if he or she violates a standard of professional behavior that has been established in the practice for which the licensee is licensed. 32 M.R.S. § 3282-A(2)(F).

2. The Board may refuse to issue, modify, restrict, suspend, revoke, or refuse to renew a license if the licensee violates a provision of the Board statute at Title 32, Chapter 48, or a Board rule. 32 M.R.S. § 3282-A(2)(H).

3. A physician assistant may not render medical services until issued a certificate of registration by the Board. 32 M.R.S. § 3270-E(1).

4. In order to practice as a physician assistant, an individual must have both a license and a certificate of registration. An individual may not practice until granted a license and a certificate of registration by the Board. To obtain a certificate of registration, among other items, an individual must provide a signed statement from the primary supervising physician agreeing to provide supervision. (02-373) Rules of Board of Licensure in Medicine (“Board Rules”) Chapter 2, § 2(B).


6. A physician assistant must notify the Board within 14 days of the effective date of any change in his or her supervising physician, as well as the reason for any termination. Board Rules Chapter 2, § 9.
7. Among other forms of discipline, the Board may issue a warning to a licensee. 10 M.R.S. § 8003(5)(A-1)(1).

IV. CONCLUSIONS OF LAW

The Board, considering the above facts and those alluded to in the record but not referred to herein, concluded that it had jurisdiction over Jessica L. Cyr, P.A., and found as follows by unanimous vote with regard to the statutory and rule violations alleged:

1. The Licensee did not commit unprofessional conduct by violating a standard of professional behavior that has been established in the practice for which the Licensee is licensed by representing to the public and Concentra Occupational Medical Centers patients that she held a valid certification of registration issued by the Board from August 2015 until May 5, 2016, in violation of the Guidelines for Ethical Conduct for the Physician Assistant Professional regarding Professional Identity.

2. The Licensee committed a violation of the Board statute at 32 M.R.S. Section 3270-E by rendering medical services without a certificate of registration from August 2015 to May 5, 2016, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H).

3. The Licensee committed a violation of Board Rule Chapter 2, Section 2(B) and Section 7, in effect during the period July 2015 until May 5, 2016, by practicing as a physician assistant without the approval by the Board of the primary supervising physician and without obtaining a certificate of registration from August 2015 to May 5, 2016, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H).

4. The Licensee committed a violation of Board Rule Chapter 2, Section 9, in effect during the period July 2015 until May 5, 2016, requiring notification to the Board of any change, including termination, of her supervising physician within 14 days of the effective date of the change by not notifying the Board of the termination of Dr. Crute’s supervision on
September 30, 2015; the initiation of Dr. Scheddel’s supervision at Concentra on August 4, 2015; and the transfer to Dr. Brewster’s supervision at Concentra on January 15, 2016, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H).

The Board unanimously imposed a warning as discipline upon the Licensee for the three violations as an appropriate sanction and approved the Licensee’s December 29, 2016, application for renewal of licensure.

Dated: October 10, 2017

Maroulla S. Gleaton, M.D., Chair
State of Maine Board of Licensure in Medicine

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. Section 8003(5-A) and 5 M.R.S. Section 11002(3), 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 State of Maine Board of Licensure in Medicine, all parties to the agency proceedings, and the Attorney General.
The following information is included:

A summary of all new licenses granted in September 2017 by license type (78);

A list of all individuals granted a new license in September 2017 by license type;

A summary of all pending applications by license type (180);

A list of online vs. paper renewals by license type (90.27); and

A list of licenses lapsed on October 2, 2017 (23).

In addition the overall licensing statistics include:

The number of active MD licenses (not including EC) October 2, 2017 (5830);

The number of active MD licenses with a Maine address (not including EC) on October 2, 2017 (3506);

The number of active PA/PAN licenses on October 2, 2017 (825);

The number of active PA/PAN licenses with a Maine address on October 2, 2017 (761); and

The number of licenses pending renewal on October 2, 2017 (45).

We look forward to your feedback.
### SUMMARY BY LICENSE PREFIX

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### SUMMARY BY LICENSE STATUS

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SUMMARY BY LICENSE PREFIX

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**MD - MEDICAL DOCTOR**
- P - Pending: 137
- SUBTOTAL: 137

**PA - PHYSICIAN ASSISTANT - CLINICAL**
- P - Pending: 10
- SUBTOTAL: 10

**TD - TEMPORARY LICENSE**
- P - Pending: 29
- SUBTOTAL: 29

SUMMARY BY LICENSE STATUS

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