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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.

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**I. Call to Order**

Dr. Gleaton called the meeting to order at 9:01 a.m.
A. Amendments to Agenda

Mr. Ross moved to amend the application of Semena Curlik M.D. for an active status license and a proposed consent agreement amendment regarding CR15-77 onto the agenda. Dr. Dumont seconded the motion, which passed unanimously.

B. Scheduled Agenda Items

II. Licensing

1. Informal Conference (CR17-39)

A. Applications for Individual Consideration

1. Initial Applications

a. Humaira Ashraf M.D.

The Licensure Committee moved to table the application pending receipt of additional information and offer Dr. Ashraf leave to withdraw her application. The motion passed unanimously.

b. John P. Powell, M.D.

The Licensure Committee moved to table the application and offer Dr. Powell leave to withdraw his application. The motion passed unanimously.

c. Tarik Qasim, M.D.

The Licensure Committee moved to approve Dr. Qasim’s license application. The motion passed unanimously.

d. Diane Tran, M.D.

The Licensure Committee moved to approve Dr. Tran’s request to extend her temporary license. The motion passed unanimously.

e. Eldad Vered, M.D.

The Licensure Committee moved to approve Dr. Vered’s license application. The motion passed unanimously.
f. John Maskell, M.D.

The Licensure Committee moved to table the application pending receipt of additional information. The motion passed unanimously.

g. Luis Aponte, M.D.

The Licensure Committee moved to approve Dr. Aponte’s request for a waiver for more than three attempts to pass the USMLE Step 3 examination and approve his license application. The motion passed unanimously.

2. Reinstatement Applications (none)

3. Renewal Applications

a. Don Kerson, M.D.

The Licensure Committee moved to approve Dr. Kerson’s application for an inactive status license. The motion passed unanimously.

b. Bethany A. Richman, M.D.

The Licensure Committee reviewed Dr. Richman’s request for a waiver of the renewal fee because her license was issued in November of 2017 and was due for renewal in March of 2018. The Licensure Committee moved to assess a $100 processing fee and refund a prorated portion of the renewal application fee. The motion passed unanimously.

The Board instructed staff that all licenses renewed within six months of the date of initial licensure should be assessed a $100 processing fee and a prorated renewal application fee.

4. Requests to Convert to Active Status

a. Semena Curlik, M.D.

The Licensure Committee moved to approve Dr. Curlik’s request for an active status license based on the reentry to practice plan submitted. The motion passed unanimously.

5. Requests to Withdraw License/License Application

a. George Shanlikian, M.D.

The Licensure Committee moved to approve Dr. Shanlikian’s request to withdraw his license application. The motion passed unanimously.
b. Shani Francis, M.D.

The Licensure Committee moved to approve Dr. Francis’ request to withdraw his license application. The motion passed unanimously.

6. Requests for Supervisory Relationships (none)

B. Other Items for Discussion

1. Active Clinical Practice Question

The Board reviewed a request from a physician inquiring if running a flu clinic would constitute active clinical practice to meet the requirement of the Chapter 1 Rule Regarding Physicians that physicians must engage in the active clinical practice of medicine during the twenty-four months prior to application in order to maintain an active status license. Following discussion, the Board concluded that running a flu clinic does not constitute active clinical practice.

2. Opioid CME Requirement

Board staff sought clarification concerning the statutory requirement for licensees to complete 3 hours of continuing medical education (CME) regarding prescribing opioid medication. Following discussion, the Board instructed staff that a licensee holding an active DEA registration is required to complete the 3 hours of CME regarding opioid prescribing.

C. Citations and Administrative Fines

The Board reviewed information regarding a physician assistant who practiced from July 2017 through December of 2017 without a registration. The Board instructed staff to issue a complaint against the physician assistant (CR18-32) and the primary supervising physician (CR18-33).

III. Consent Agreements/Resolution Documents for Review

A. CR17-169 Michael S. Berry, M.D. [Appendix A]

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

B. CR10-581 Kevin G. Miller, M.D. [Appendix B]

Dr. Dumont moved to approve the signed consent agreement amendment. Ms. Weinstein seconded the motion, which passed unanimously.
C. CR16-49 Donald B. Shea, M.D. [Appendix C]

Dr. Dumont moved to approve the signed consent agreement amendment. Ms. Dench seconded the motion, which passed unanimously.

D. AD17-130 Thomas J. Keating, M.D. [Appendix D]

At 9:31 a.m. Ms. Weinstein moved to enter executive session pursuant to 1 M.R.S. § 405(6)(F) and 24 M.R.S. § 2510 for discussion of confidential patient information. Dr. Sacchetti seconded the motion, which passed 7-0-0-1. Dr. Dumont was recused from the matter and left the room.

At 9:40 a.m. Dr. Sacchetti moved to come out of executive session. Dr. Waddell seconded the motion which passed 7-0-0-1. Dr. Dumont was recused from the matter and left the room.

Dr. Sacchetti moved to approve the signed consent agreement. Dr. Sullivan seconded the motion, which passed 7-0-0-1. Dr. Dumont was recused from the matter and left the room.

E. CR15-77 Elmer H. Lommler, M.D. [Appendix E]

Dr. Sullivan moved to approve the signed consent agreement amendment. Ms. Weinstein seconded the motion, which passed 7-0-0-1. Dr. Dumont was recused from the matter and left the room.

IV. Complaints

1. CR17-224

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

MOTION: The patient complains of substandard care from his treating psychiatrist with the primary complaint being the lack of adequate laboratory monitoring while on Lithium therapy. The physician acknowledges the deficiency in monitoring a patient on Lithium and documents a performance improvement process to include, at minimum, yearly monitoring of renal, thyroid, and Lithium levels for all patients on Lithium therapy.

2. CR17-248

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

MOTION: The parents of a pediatric patient with a long-standing history of complicated hydrocephalus requiring several shunt revisions complain that the neurosurgeon failed to detect and intervene appropriately when the patient presented with symptoms that the parents felt were secondary to a shunt malfunction. Review of the records reveals that this is a very
complex case with a complicated decision-making process involved in the decision as to when to intervene surgically. The physician provides a detailed and thoughtful response outlining his decision-making processes with the patient over the years, including the final interaction in question. The physician also acknowledges an opportunity for improvement in his choice of words and final interaction with the patient and family.

3. **CR16-138 Jeffrey P. Thurlow, M.D.**

Dr. Waddell moved to dismiss the complaint with a letter of guidance. Ms. Dench seconded the motion, which passed 7-0-0-1. Dr. Sacchetti was recused from the matter and left the room.

**MOTION:** In this case, a hospital suspended the physician’s clinical privileges alleging that he was unavailable to cover two acutely ill patients under his care, and he had not made adequate arrangements for coverage in his absence. In his response, the physician identified the existence of an adversarial relationship between him and the hospital administrator that significantly influenced the events. He also explained the arrangements for coverage that he believed were sufficient under the circumstances.

As a result of review of all information submitted, the Board recognized that there were mitigating factors pertaining to cross coverage of surgical patients at the hospital and other issues that were beyond the physician’s control.

The letter of guidance will advise the physician that: Postoperative care of patients should comply with the American College of Surgeons – Code of Professional Ethics, Section II E which states:

The responsibility for the patient’s postoperative care rests primarily with the operating surgeon. The emergence of critical care specialists has provided important support in the management of patients with complicated systemic problems. It is important, however, that the operating surgeon maintain a critical role in directing the care of the patient. When the patient’s postoperative course necessitates the involvement of other specialists, it may be necessary to transfer the primary responsibility for the patient’s care to another physician. In such cases, the operating surgeon continues to be involved in the care of the patient until surgical issues have been resolved. Except in unusual circumstances, it is unethical for a surgeon to relinquish responsibility for the postoperative surgical care to any other physician who is unqualified to provide similar surgical care.

If the operating surgeon must be absent during a portion of the critical postoperative period, coverage should be provided by another surgeon who is skilled and who can render surgical care – including reoperation, if necessary – equivalent to that provided by the surgeon who performed the operation. The patient should be informed of this arrangement in advance.

The surgeon’s responsibility extends throughout the surgical illness. When this period has ended, it is appropriate for the surgeon to relinquish the responsibility for management of the
patient. When a patient is ready for discharge from the surgeon’s care, it may be appropriate to transfer the day-to-day care to another physician.

4. **CR16-139 Christopher P. O’Brien, Jr., M.D.**

Dr. Sacchetti moved to unset the adjudicatory hearing to discuss a proposed resolution to the complaint. Ms. Weinstein seconded the motion, which passed 6-0-0-2. Dr. Gleaton and Mr. Ross were recused from the matter and left the room.

Dr. Sacchetti moved to dismiss the complaint with a letter of guidance. Ms. Dench seconded the motion, which passed 6-0-0-2. Dr. Gleaton and Mr. Ross were recused from the matter and left the room.

**MOTION:** In this case, a complaint alleged that the physician wrote a prescription for ophthalmic lenses without conducting an appropriate eye examination or interacting directly with the patient. The physician responded that he conducted an examination that included an assessment of the patient’s ocular health and visual status based on a review of the patient’s medical history, information on current eye condition, prior prescription information, subjective data from interactive, adaptive online refractive error, color vision, and visual acuity test, and additional information provided by the patient.

The letter of guidance will advise the physician that: the prescribing of drugs or medical devices should follow an evaluation of the patient that includes obtaining a medical history and conducting an appropriate examination which is documented in the medical record. Regarding the issuance of a prescription for ophthalmic lenses, a physician “may not issue a prescription for ophthalmic lenses…solely in reliance on a measurement of the eye by a kiosk…without conducting an eye examination…” 32 M.R.S. § 3300-E. An eye examination as defined in 32 M.R.S. § 2411(8) “means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated testing device, including an autorefractor, in order to establish a medical diagnosis or for the determination of refractive error.”

5. **CR17-111 Charles T. McHugh, M.D.**

Mr. Ross moved to dismiss the complaint with a letter of guidance. Ms. Dench seconded the motion, which passed 7-0-0-1. Dr. Gleaton was recused from the matter and left the room.

**MOTION:** In this case, a complaint alleged that the physician made inappropriate comments of a sexual nature to patients. The physician admitted that he made “personal and graphic comments,” but stated that the statements were meant to be motivational for the patients. The physician has taken a course in professional boundaries and explained changes that have been incorporated into his medical practice.

The letter of guidance will advise the physician: 1) to continue to be mindful of boundary issues with patients. In cases were boundary questions arise, reference to the American Medical Association Code of Medical Ethics may provide guidance; 2) to be aware that
highly confrontative methods have been abandoned as ineffective; and 3) education about motivational interviewing would be useful going forward.

6. **CR17-151**

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

7. **CR17-164**

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

**MOTION:** A patient complains that a physician assistant working in an emergency department made errors when prescribing him a narcotic cough medication. The physician assistant admitted writing the wrong frequency on the prescription and the emergency department acknowledges that it may not have destroyed the first prescription upon providing the patient with a corrected version. Unfortunately, certain mistakes were made that inconvenienced the patient. Upon being made aware of the complaint, the physician assistant met with the director of the department to review his handling of the encounter and formulate a plan to prevent a reoccurrence. In addition, the charge for the visit was reversed as a courtesy to the patient.

8. **CR17-173**

Dr. Sacchetti moved to dismiss the complaint. Ms. Dench seconded the motion, which passed 7-0-0-1. Dr. Waddell was recused from the matter and left the room.

**MOTION:** A patient complains that an orthopedic surgeon did not address his shoulder concerns which left him in unnecessary pain for an extended time. The patient contends that a retained needle fragment from a prior surgery performed by the physician was a chronic source of pain and produced extensive scarring, and that a subsequent shoulder surgery with a different surgeon resulted in resolution of his symptoms. The physician has extensive involvement in the care of the patient who is medically complex with multiple orthopedic problems. The record does not support the notion that the foreign body was the source of the patient’s pain or that the physician mismanaged any portion of the patient’s care. The second shoulder surgery was indicated for progressive degenerative changes.

9. **CR17-178**

Ms. Dench moved to table the matter pending receipt of the physician’s request to withdraw his license. Mr. Ross seconded the motion, which passed unanimously.
10. CR17-206

Ms. Dench moved to dismiss the complaint. Mr. Ross seconded the motion, which passed unanimously.

**MOTION:** A patient complains about the care she received from her primary care physician. The patient feels that she did not have timely communication of lab results and appropriate, timely referrals to other providers accomplished by her physician. Review of the records reveals reasonable, timely, and appropriate testing, communication and referrals on behalf of the patient.

11. CR17-216

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

**MOTION:** A complaint alleged unprofessional behavior by the physician. The physician admits straying into an issue he shouldn’t have and apologized. He explained his background and personal beliefs, and what he arranged upon his hiring with the hospital in regard to prescribing abortifacients. The physician also appears to have given this incident a great deal of reflection and consideration, even coming up with a suggested script of what he should say should another patient present in a similar situation.

12. CR17-218

Mr. Ross moved to dismiss the complaint. Ms. Dench seconded the motion, which passed 7-0-0-1. Dr. Dumont was recused from the matter and left the room.

**MOTION:** A patient’s spouse complains the physician shared personal information about her to her husband. There is no evidence that a violation of confidentiality occurred. Appropriate care was provided.

13. CR17-219

Dr. Dumont moved to dismiss the complaint. Ms. Dench seconded the motion, which passed 7-0-0-1. Dr. Sacchetti was recused from the matter and left the room.

**MOTION:** This complaint involves the care of a 57-year-old male who died unexpectedly after being treated for cellulitis of the leg. Review of the records shows appropriate diagnostic and lab testing, evaluation, and treatment with reasonable referrals. Unfortunately, it is not clear what the actual cause of death was as the patient’s cellulitis appeared to be improving. There was nothing suspicious about the cause of death, so it was not a medical examiner case. Autopsy was considered but was not performed.

Through no fault of the physician, the family received conflicting information about the cause of death and this created additional confusion. There was also a misunderstanding
about the reason for a subsequent office appointment by the patient’s wife. She just wished to obtain clarity on these issues, but was thought to be there for her medical needs. The physician expressed regret for this misunderstanding and has expressed his sympathy to the family. The medical care was appropriate.

14. CR17-199

Dr. Waddell moved to investigate further. Ms. Weinstein seconded the motion, which passed unanimously.

15. CR17-200

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

**MOTION:** A patient underwent laparoscopic nephrectomy by a urologist and suffered an apparent iatrogenic injury to blood vessels supplying other abdominal organs. Once the situation was recognized the next day, a general surgeon and vascular surgeon were consulted. Appropriate care was provided by this specialist.

16. CR17-201

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

**MOTION:** A patient underwent laparoscopic nephrectomy by a urologist and suffered an apparent iatrogenic injury to blood vessels supplying other abdominal organs. Once the situation was recognized the next day, a general surgeon and vascular surgeon were consulted. Appropriate care was provided by this specialist.

17. CR17-220

Dr. Dumont moved to investigate further. Dr. Sacchetti seconded the motion, which passed unanimously.

18. CR17-221

Ms. Weinstein moved to dismiss the complaint. Mr. Ross seconded the motion, which passed unanimously.

**MOTION:** A patient’s husband complains his wife was not treated properly for her pain and requested opioids as she had been prescribed in the past. Current guidelines do not support the use of opioid treatment and many other options were suggested. Additionally, a referral to rheumatology was put on hold by the complainant. Appropriate treatment and follow up were offered and guidelines were followed.
19. CR17-222

Mr. Ross moved to dismiss the complaint. Ms. Weinstein seconded the motion, which passed 7-0-0-1. Dr. Dumont was recused from the matter and left the room.

MOTION: A patient complains about the care she received in the emergency department and states the physician refused to see her. The patient, who has a long and complex medical history, has been seen many times in the emergency department. After the patient was triaged she elected to leave before an examination was conducted, although she was encouraged to stay. Review of the records reveals evaluation in triage was appropriate and she would have been examined had she stayed.

20. CR17-112

Dr. Waddell moved to investigate further, order that the physician undergo a § 3286 evaluation, and to include allegations of misrepresentation in the notice of adjudicatory hearing. Mr. Ross seconded the motion, which passed unanimously.

21. CR17-183

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

MOTION: A patient complains that his physician did not properly evaluate and treat him for diabetes and back pain and that he refused to refill his Cymbalta. Review of the record shows that the patient did not present with symptoms of diabetes and that he failed to follow up as scheduled so labs were not completed. The patient’s back pain was long standing and he was referred to a pain clinic where an MRI would have been ordered if indicated, as it had been in the past. The Cymbalta had been prescribed once, but was primarily being prescribed by behavioral health, and they were weaning him off. Care of the patient was challenging but reasonable.

22. CR17-230

Mr. Ross moved to dismiss the complaint. Dr. Sacchetti seconded the motion.

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

23. CR17-253

Dr. Gleaton moved to investigate further. Dr. Dumont seconded the motion, which passed unanimously.
24. CR17-233 John B. McGuckin, M.D.

Ms. Weinstein moved to dismiss the complaint with a letter of guidance. Mr. Ross seconded the motion, which passed unanimously.

MOTION: In this case, a mother complains that the physician behaved unprofessionally during a physical examination of her teenage son. She felt that some of his questions and comments were inappropriate. The physician responded that in the course of doing an in-depth family and social history, he asked routine questions about sexual activity and drug and alcohol use and did not intend to cause any embarrassment.

The letter of guidance will advise the physician to: 1) consider the assistance of a chaperone other than a parent when conducting an examination of a minor patient that might result in either discomfort or a lack of candor with the parent present; and 2) consider geographical or cultural differences in addition to the sensitive nature of certain questions when meeting a parent for an initial visit as doing so may alleviate communications being misconstrued.

25. CR17-237

Ms. Weinstein moved to investigate further. Dr. Dumont seconded the motion, which passed 7-0-0-1. Dr. Waddell was recused from the matter and left the room.

26. Intentionally left blank

27. Intentionally left blank

V. Assessment and Direction

28. AD17-264

Dr. Sacchetti moved to issue a complaint (CR18-27). Ms. Dench seconded the motion, which passed unanimously.

29. AD17-228

Dr. Dumont moved to close the matter with no further action. Dr. Sacchetti seconded the motion, which passed unanimously.

30. AD17-241

Dr. Dumont moved to issue a complaint (CR18-28). Ms. Weinstein seconded the motion, which passed 7-0-0-1. Dr. Waddell was recused from the matter and left the room.

31. AD17-245

Dr. Dumont moved to incorporate the information from this investigation into the existing complaint (CR17-88). Dr. Sacchetti seconded the motion, which passed unanimously.
32. AD17-250

Dr. Waddell moved to issue a complaint (CR18-30). Dr. Dumont seconded the motion, which passed 6-0-0-2. Dr. Sacchetti and Dr. Sullivan were recused from the matter and left the room.

33. AD18-13

Dr. Sacchetti moved to issue a complaint (CR18-31). Ms. Dench 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 (none)

37. Other Items for Discussion (none)

VI. Informal Conference

A. CR17-39

At 1:01 p.m. Dr. Dumont moved to enter executive session pursuant to 32 M.R.S. § 3282-A(1) to conduct an informal conference. Dr. Sullivan seconded the motion, which passed 7-0-0-1. Mr. Ross was recused from the matter and left the room.

At 1:49 p.m. Dr. Dumont moved to come out of executive session. Ms. Weinstein seconded the motion, which passed 7-0-0-1. Mr. Ross was recused from the matter and left the room.

Following the informal conference, Dr. Dumont moved to dismiss the complaint. Ms. Dench seconded the motion, which passed 7-0-0-1. Mr. Ross was recused from the matter and left the room.

MOTION: This case involves a complaint from the patient’s husband about the care she received during the last few months of her life including a request to be admitted to hospice, which was denied. The physician’s opinion was that the patient was primarily suffering from depression and did not have a terminal condition that would qualify her for hospice. Communication between the physician and the family was difficult for a variety of reasons, but after meeting with the physician the Board believes she was doing her best under trying conditions. The physician admits she has learned from this experience.
VII. Minutes for Approval

Dr. Dumont moved to approve the minutes of the January 9, 2018 meeting. Ms. Dench seconded the motion, which passed 7-0-1-0 with Dr. Sacchetti abstaining.

VIII. Board Orders & Consent Agreement Monitoring

B. Board Orders (none)

C. Monitoring Reports

1. Catherine Crute, M.D.

   Dr. Sacchetti moved to terminate Dr. Crute’s license probation. Ms. Weinstein seconded the motion, which passed unanimously.

2. Donald B. Shea, M.D.

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

3. Kevin M. Kendall, M.D.

   Dr. Dumont moved to accept the proposed modifications to the Medical Professionals Health Program contract. Dr. Sacchetti seconded the motion, which passed unanimously.

4. Thomas R. DeFanti, M.D.

   Dr. Dumont moved to terminate the consent agreement based upon the affirmative representations made by Dr. DeFanti in his letter received by the Board on February 12, 2018. Dr. Sacchetti seconded the motion, which passed unanimously.

5. Intentionally left blank

IX. Adjudicatory Hearing (none)

X. Remarks of Chair (none)

XI. Remarks of Executive Director

A. New MPHP Director

   This material was presented for informational purposes. No Board action was required.
B. Draft MPHP Protocols

Mr. Ross moved to approve the proposed Protocols for the Committee on Medical Professionals’ Health. Ms. Dench seconded the motion, which passed unanimously.

C. Request for Opinion Regarding Anesthesiologist Assistants

The Board reviewed and approved the letter prepared by Mr. Smith in response to the inquiry.

XII. Assistant Executive Director’s Report

A. Federation of Associations of Regulatory Boards (FARB) Annual Forum

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

B. Jurisprudence Exam Update

Mr. Ross moved to approve the jurisprudence exam with two minor corrections. Dr. Sacchetti seconded the motion, which passed 7-1.

C. Complaint Status Report

As of February 1, 2018, there are ninety complaints outstanding. Seven complaints were opened during the month of January and seventeen were closed.

D. Licensing Feedback (none)

XIII. Medical Director’s Report

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

XIV. Remarks of Assistant Attorney General (none)

XV. Rulemaking

A. Draft Chapter 10 Sexual Misconduct

Dr. Dumont moved to formally propose the rule. Ms. Weinstein seconded the motion, which passed unanimously.

XVI. Policy Review
A. PA Supervision – New Graduates Chart Reviews

Mr. Ross moved to approve amendments to the PA Supervision – New Graduates Chart Reviews policy. Ms. Dench seconded the motion, which passed unanimously.

B. Late Renewals

Dr. Dumont moved to approve a new policy, Late Renewals. Ms. Weinstein 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 F]

   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 2:40 p.m.

Respectfully submitted,

Maureen S. Lathrop
Administrative Assistant
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re: 
MICHAEL S. BERRY, M.D. ) CONSENT AGREEMENT
Complaint No. CR17-169 )

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 Michael S. Berry, M.D. The parties to the Consent Agreement are: Michael S. Berry, M.D. ("Dr. Berry"), 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. Berry has held a license to practice medicine in the State of Maine since June 9, 2006 (license number MD17153), and specializes in diagnostic radiology. Dr. Berry entered into a prior October 14, 2008 consent agreement with the Board for substance misuse, unprofessional conduct, and other conduct, the terms of which were completed on October 13, 2013.

2. On August 28, 2017, the Board of Licensure in Medicine ("the Board") initiated a complaint following Dr. Berry's self-report of a clinical privilege suspension and relapse of a substance use disorder on his application to renew his license. The Board docketed that complaint as CR17-169, and sent the complaint to Dr. Berry for a response.

-1-
3. Dr. Berry responded to the complaint by letter dated September 29, 2017. In his response, Dr. Berry provided an update regarding what he has done to address his relapse, including entering into a 5 year monitoring contract with the Maine Professionals Health Program ("MPHP"). Dr. Berry stated that he was never impaired at work and did not put any patients at risk.

4. By letter dated November 3, 2017, Dr. Berry was requested to specifically respond to the request contained in the complaint and provide an explanation regarding the substances that were abused and how they were obtained.

5. By letter dated November 21, 2017, Dr. Berry’s legal counsel respectfully declined to provide the information requested.

6. 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.

7. 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.

8. At its meeting on December 12, 2017, the Board reviewed Complaint CR 17-169, and voted to set this matter for an adjudicatory hearing. In addition, the Board voted to offer Dr. Berry this Consent Agreement to resolve this matter without further proceedings. Absent Dr. Berry’s acceptance -2-
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 17, 2018, the matter will be scheduled for an adjudicatory hearing.

COVENANTS

9. Dr. Berry admits the facts stated above and that such conduct constitutes grounds for discipline pursuant to 32 M.R.S. §§ 3282-A(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).

10. As discipline for the conduct described above, Dr. Berry agrees to accept the following discipline, which shall remain in effect for at least five (5) years subject to the following terms and conditions:

   a) Dr. Berry 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"), which terms shall include abstinence from all non-prescribed mind-altering substances and toxicological testing, the terms of which are fully incorporated herein as if fully set forth. Dr. Berry shall ensure that the Board has received a copy of his Physician Health Program monitoring agreement, and any amendments or revisions thereto.

   Dr. Berry 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 the 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. Berry 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. Berry shall report such test result to the Board.

So long as this Consent Agreement remains in effect, Dr. Berry 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.

b) Dr. Berry 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; c) any conviction or court decision pertaining thereto; and d) any loss, suspension, revocation or limitation of employment or clinical privileges with any health care provider or entity.

c) While this Consent Agreement is in effect, Dr. Berry 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.

d) The duration of any period during which the terms and conditions of the Consent Agreement apply 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. Berry does not hold an active license; and d) any period that Dr. Berry takes a leave of absence from the practice of medicine. Dr. Berry shall provide the Board with advance written notice of any absence from the state as described above or of any leave of absence from the practice of medicine within two (2) business days, unless circumstances exist that are beyond Dr. Berry’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.
e) Dr. Berry shall provide a copy of this Consent Agreement to any health care provider or entity that engages him to provide medical services within ten (10) days of the effective date of this Consent Agreement or of being engaged to provide medical services.

f) After the expiration of five (5) years, Dr. Berry may request that the Board terminate the terms and conditions of this Consent Agreement. Upon receipt of such request, the Board shall review all information relevant to the request, and shall in its sole discretion, approve or deny the request which may include maintaining, modifying, or eliminating the terms and conditions of this Consent Agreement for a specified term.

g) Dr. Berry shall not prescribe any medications to himself or family members.

11. The Board and the Department of the Attorney General may communicate and cooperate regarding Dr. Berry or any other matter relating to this Consent Agreement.

12. 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.

13. Any conduct of Dr. Berry described herein may be considered in future Board action(s) as evidence of a pattern of misconduct.

14. Violation by Dr. Berry 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.

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

16. 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.

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. Berry 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. Berry has been represented by Ronald W. Schneider, Jr., 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, MICHAEL S. BERRY, 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: 1/23/18  Michael S. Berry, M.D.

STATE OF Maine, S.S.

Personally appeared before me the above-named Michael S. Berry, 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: 1/23/18  Michelle M. Pinkham
NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: 9.24.22

DATED: 1/26/18

RONALD W. SCHNEIDER, JR., Esq.
Counsel for Michael S. Berry, M.D.
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 2/13/18

MAROULLA S. GLEATON, M.D., Chair

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 2/13/2018

MICHAEL MILLER
Assistant Attorney General

Effective Date: 2/13/2018
APPENDIX B

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re: KEVIN G. MILLER, M.D. ) FIRST AMENDMENT TO
Complaint No. CR10-581 ) CONSENT AGREEMENT

This document is a First Amendment to Consent Agreement for Discipline and Restricted/Conditional Licensure effective September 12, 2012, regarding disciplinary action imposed upon the license to practice medicine in the State of Maine held by Kevin G. Miller, M.D ("First Amendment"). The parties to this First Amendment are: Kevin G. Miller, M.D. ("Dr. Miller"), 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 September 12, 2012, the parties entered into a Consent Agreement for Discipline and Restricted/Conditional Licensure regarding the license to practice medicine in the State of Maine held by Dr. Miller ("the Consent Agreement").

2. On December 12, 2017, the Board considered a monitoring report from Board staff and a request from Dr. Miller to remove the restrictions imposed on his license. The Board voted to offer Dr. Miller this First Amendment. Absent acceptance of this First Amendment by Dr. Miller by signing it and dating it in front of a notary and returning it
to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before February 17, 2018, the Consent Agreement shall remain in full force and effect, and the Board may take such further action it deems necessary.

**AMENDMENT**

3. Dr. Miller, the Board, and the Department of the Attorney General hereby agree to amend the Consent Agreement for Discipline and Restricted/Conditional Licensure effective September 12, 2012 by:

1) Deleting paragraphs 10(b) and 11 in their entirety.

2) Amending paragraph 12 to read as follows:

In order to ensure his compliance with controlled substances prescribing laws, regulations, and standards for the treatment of pain, Dr. Miller agrees to cooperate with the Board and to provide copies of patient medical records upon written request. After an initial period of six months, the Board or Board staff may select and request patient records for review. Upon receipt of all information requested, the Board shall review such information, and in its sole discretion, may reinstate, impose, maintain, modify, or eliminate controlled substances prescribing requirements or may terminate the Consent Agreement.

4. Dr. Miller acknowledges by his signature hereto that all other terms and conditions of the Consent Agreement for Discipline and
Restricted/Conditional Licensure effective September 12, 2012, as amended, remain in full force and effect.

5. Dr. Miller 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, KEVIN G. MILLER, M.D., HAVE READ AND UNDERSTAND THE FOREGOING FIRST AMENDMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS FIRST AMENDMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS FIRST AMENDMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS FIRST AMENDMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

Dated: 01/24/18

KEVIN G. MILLER, M.D.

STATE OF MAINE
Penobscot, SS.

Before me this 24th day of January, 2018, personally appeared Kevin G. Miller, 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.

Patricia G. Inman
Notary Public/Attorney at Law
My commission expires: 1/13/25

DATED: 01/24/18

SANDRA L. ROTHERA, ESQ.
Attorney for Kevin G. Miller, M.D.
STATE OF MAINE BOARD OF
LICENSURE IN MEDICINE

DATED: 2/13/18

MAROULLA S. GLEATON, M.D.,
Chair

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: February 13, 2018

MICHAEL MILLER
Assistant Attorney General

Effective Date: February 13, 2018
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

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

This document is a First Amendment to Consent Agreement effective October 10, 2017, regarding disciplinary action imposed upon the license to practice medicine in the State of Maine held by Donald B. Shea, M.D ("First Amendment"). The parties to this First Amendment are: Donald B. Shea, M.D. ("Dr. Shea"), 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 October 10, 2017, the parties entered into a Consent Agreement for discipline upon the license to practice medicine in the State of Maine held by Dr. Shea ("the Consent Agreement").

2. On November 14, 2017, the Board considered a request from Dr. Shea's physician practice monitor and voted to offer Dr. Shea this First Amendment. Absent acceptance of this First Amendment by Dr. Shea by signing it and dating it in front of a notary and returning it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before February 9, 2018, the Consent Agreement effective October 10, 2017 shall remain in full force and effect,
and the Board may take such further action it deems necessary.

**AMENDMENT**

3. Dr. Shea, the Board, and the Department of the Attorney General hereby agree to amend the Consent Agreement dated October 10, 2017 by:

   1) Amending paragraph 15(b)(4) to read as follows:

   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 shall meet weekly with Dr. Shea, either in person or via interactive audio/visual means, but must meet in person with Dr. Shea at least once a month. Telephone only monitoring is not acceptable. In the event that Dr. Shea’s approved physician practice monitor is unavailable to perform the weekly monitoring, Dr. Shea must submit the name of a proposed covering physician monitor who shall be available to monitor Dr. Shea. Dr. Shea shall provide the name of the proposed covering monitor and the dates of coverage in advance in writing to Julie Best, Complaint Coordinator, who shall confer with the Board Chair or Board
Chair’s designee regarding the approval or disapproval of the proposed covering physician monitor. The physician practice monitor shall 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.

4. Dr. Shea acknowledges by his signature hereto that all other terms and conditions of the Consent Agreement effective October 10, 2017, as amended, remain in full force and effect.

5. Dr. Shea 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, DONALD B. SHEA, M.D., HAVE READ AND UNDERSTAND THE FOREGOING FIRST AMENDMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS FIRST AMENDMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS FIRST AMENDMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS FIRST AMENDMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

Dated: 1/19/18

[Signature]

DONALD B. SHEA, M.D.

STATE OF MAINE
KENNEBEC, SS.

Before me this 19th day of January, 2018, personally appeared Donald B. Shea, 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.

[Signature]

PAULA A. DENIS
Notary Public/Attorney at Law
My commission expires 3-7-2021

DATED: January 24, 2018

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

DATED: 2/13/18

MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT OF THE ATTORNEY GENERAL

DATED: February 13, 2018

MICHAEL MILLER
Assistant Attorney General

Effective Date: February 13, 2018
APPENDIX D

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re: THOMAS J. KEATING, M.D. No. AD17-130

) CONSENT AGREEMENT

This document is a Consent Agreement, effective when signed by all parties, regarding reactivating the license to practice medicine in the State of Maine held by Thomas J. Keating, M.D. The parties to the Consent Agreement are: Thomas J. Keating, M.D. ("Dr. Keating"), 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. At all relevant times, Dr. Keating has held a license to practice medicine in the State of Maine beginning July 30, 1985 (license number MD11930). Dr. Keating specializes in hospice and palliative care medicine, internal medicine, and oncology.

2. On June 9, 2017, the Board received a mandated report that Dr. Keating may have a mental or physical condition that impairs his ability to provide safe patient care. An investigation was opened and docketed as AD17-130.

3. On June 12, 2017, Dr. Keating agreed to stop practicing medicine and change his medical license status to inactive until the matter is resolved with the Board. Dr. Keating submitted a written confirmation of those actions by letter dated June 13, 2017.
4. At its meeting on July 11, 2017, the Board voted to require Dr. Keating to obtain a psychiatric/neurocognitive evaluation.

5. On January 9, 2018, the Board reviewed AD17-130 and Dr. Keating’s request to return to the active practice of medicine, and voted to offer this Consent Agreement to Dr. Keating in order to change his license status to active so that he may engage in the practice of medicine. Absent Dr. Keating’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 23, 2018, the Board shall take whatever further action it deems appropriate.

COVENANTS

6. Dr. Keating agrees to accept the following in order to change his license status to active so that he may engage in the practice of medicine:

   A license PROBATION for a period of at least one (1) year subject to the following terms and conditions:

   a) Dr. Keating shall continue monitoring with the Medical Professionals Health Program (“MPHP”) and comply with all recommended treatment, testing, counseling, and monitoring. Dr. Keating shall provide the Board with a copy of his MPHP monitoring contract, and shall provide the Board with a copy of any amendments or modifications to that contract within five (5) business days.

   Dr. Keating shall continue treatment with a licensed psychologist on a weekly basis or as recommended by the licensed
psychologist. Dr. Keating shall cause the licensed psychologist to submit written reports to the Board on a quarterly basis confirming his continued treatment and confirming that no issues exist that may impact his ability to provide patient care.

Dr. Keating shall continue to see his family physician or family physician staff every 1-2 weeks, or as recommended by his treatment providers. Dr. Keating shall cause his family physician to submit written reports to the Board on a quarterly basis confirming his continued treatment and confirming that no issues exist that may impact his ability to provide patient care.

b) Prior to engaging in the practice of medicine, Dr. Keating must engage a physician practice monitor approved by the Board Chair or the Board Chair’s designee, who shall monitor his medical practice. In complying with this requirement, Dr. Keating shall submit to the Board for its approval the name of a licensed physician as a proposed physician practice monitor. The Board Chair or the Board Chair’s designee has the sole discretion to approve or reject the physician practice monitor. Dr. Keating 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 quarterly reports regarding Dr. Keating’s practice beginning ninety (90) days after the date on which Dr. Keating begins practicing medicine. The reports shall include a statement identifying his or her observations of Dr. Keating’s practice, the review of patient charts, and a discussion of any issues related to
medical decisionmaking, knowledge, judgment, clinical skills, or documentation. Dr. Keating must provide a copy of this Consent Agreement, together with any amendments hereto, to his physician practice monitor. After one year of physician practice monitoring in compliance with this subparagraph, Dr. Keating may submit a written request to modify 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 a specified period.

7. Dr. Keating acknowledges that while this Consent Agreement is in effect he must directly communicate with the Board or Board staff and has the obligation to 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.

8. Violation by Dr. Keating 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.

9. Any conduct of Dr. Keating described herein may be considered in future Board action(s) as evidence of a pattern of misconduct.

10. This Consent Agreement is not appealable and is effective until modified or rescinded in writing by the parties hereto.
11. The Board and the Department of the Attorney General may communicate and cooperate regarding Dr. Keating or any other matter relating to this Consent Agreement.

12. 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.

13. This Consent Agreement constitutes 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.

14. 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.

15. Dr. Keating 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.

16. 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, THOMAS J. KEATING, 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: 2 February 2018

THOMAS J. KEATING, M.D.

STATE OF Maine

Cumberland, S.S.

Personally appeared before me the above-named Thomas J. Keating, 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: 2/7/2018

NOTARY PUBLIC/ATTORNEY

EDWARD D. THIBAULT JR.
Notary Public
Maine
My Commission Expires Feb. 11, 2023

MY COMMISSION ENDS: 2/11/2023
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 2/13/18

MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: February 13, 2018

MICHAEL MILLER
Assistant Attorney General

Effective Date: February 13, 2018
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re: ELMER H. LOMMLER, M.D. Complaint No. CR15-77

FIRST AMENDMENT TO
CONSENT AGREEMENT

This document is a First Amendment to Consent Agreement effective November 8, 2016, regarding disciplinary action imposed upon the license to practice medicine in the State of Maine held by Elmer H. Lommler, M.D ("First Amendment"). The parties to this First Amendment are: Elmer H. Lommler, M.D. ("Dr. Lommler"), 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 November 8, 2016, the parties entered into a Consent Agreement ("the Consent Agreement").

2. In accordance with the Consent Agreement, on September 12, 2017, the Board conducted a chart review and voted to offer Dr. Lommler this First Amendment which will terminate Dr. Lommler’s probation while incorporating some terms of probation as permanent conditions upon his license to practice medicine in Maine. Absent acceptance of this First Amendment by Dr. Lommler by signing it and dating it in front of a notary and returning it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-
0137 on or before February 9, 2018, all terms and conditions of the Consent Agreement effective November 8, 2016 shall remain in full force and effect, and the Board may take such further action it deems necessary.

AMENDMENT

3. Dr. Lommler, the Board, and the Department of the Attorney General hereby agree to amend the Consent Agreement dated November 8, 2016 by:

   Deleting paragraph 9 and substituting the following:

   As discipline for the foregoing conduct, Dr. Lommler agrees to accept:
   The following conditions which shall be in effect at any time Dr. Lommler holds an active license to practice medicine in Maine:
   a) Dr. Lommler shall only prescribe one (1) benzodiazepine per patient;
   b) Dr. Lommler shall only prescribe controlled substances in multiples of seven (7) days of supply; and
   c) Dr. Lommler shall clearly document in the medical record all treatment plans and rationale for prescribing any controlled substance. He shall also document the use of universal precautions associated with any controlled substance that has been prescribed.

4. Dr. Lommler acknowledges by his signature hereto that all other terms and conditions of the Consent Agreement effective November
8, 2016, as amended, remain in full force and effect.

5. Dr. Lommler 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, ELMER H. LOMMLER, M.D., HAVE READ AND UNDERSTAND THE FOREGOING FIRST AMENDMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS FIRST AMENDMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS FIRST AMENDMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS FIRST AMENDMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

Dated: 2/5/2018

ELMER H. LOMMLER, M.D.

STATE OF MAINE, SS.

Before me this Tuesday of February, 2018, personally appeared Elmer H. Lommler, 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.

Notary Public/Attorney at Law
My commission expires:

JESSICA L. KEZER
Notary Public State of Maine
My Commission Expires September 17, 2019
STATE OF MAINE BOARD OF LICENSURE IN MEDICINE

DATED: 2/13/18

MAROULLA S. GLEATON, M.D.,
Chairman

STATE OF MAINE DEPARTMENT OF THE ATTORNEY GENERAL

DATED: 2/13/2018

MICHAEL MILLER
Assistant Attorney General

Effective Date: 2/13/2018
The following information is included:

A summary of all new licenses granted in January 2018 by license type (64);
A list of all individuals granted a new license in January 2018 by license type;
A summary of all pending applications by license type (217);
A list of online vs. paper renewals in January 2018 by license type (89.2%);
The number of licenses expired January 31, 2018 (39);
The number of licenses lapsed on February 1, 2018 (0); Due to the change in renewal time from 60 to 90 days after expiration, there were no automatically lapsed licenses this month.
The list of licenses withdrawn in January 2018 (5).

In addition, the overall licensing statistics include:

The number of active MD licenses (not including EC) February 1, 2018 (5789);
The number of active MD licenses with a Maine address (not including EC) on February 1, 2018 (3486);
The number of active PA/PAN licenses on February 1, 2018 (833);
The number of active PA/PAN licenses with a Maine address on February 1, 2018 (771); and
The number of licenses pending renewal on February 1, 2018 (39).

We look forward to your feedback.
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