

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)
DAVID R. AUSTIN, M.D.) CONSENT AGREEMENT FOR
) REINSTATEMENT OF LICENSE

This document is a Consent Agreement, effective when signed by all parties, regarding a pending application to reinstate a medical license in the State of Maine submitted by David R. Austin, M.D. The parties to the Consent Agreement are: David R. Austin, M.D. ("Dr. Austin"), 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. Austin obtained a license to practice medicine in Maine on March 31, 1989 (license number MD12687). Dr. Austin specialized in family practice. On April 14, 2015, the Board issued an Order of Immediate Suspension of Dr. Austin's license upon preliminary findings following a report that, after two months working at an Ebola treatment unit in Liberia, Dr. Austin arrived at the unit inebriated and unable to perform his duties. Dr. Austin was terminated from employment. On May 26, 2015, Dr. Austin entered into an Interim Consent Agreement with the Board that continued his license suspension. On June 9, 2015, Dr. Austin surrendered his Maine medical license pursuant to a Consent Agreement for Surrender of License for

misuse of alcohol that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients.

2. On August 20, 2018, Dr. Austin submitted an application to reinstate his Maine medical license. On his application, Dr. Austin disclosed his prior disciplinary action in Maine, but did not disclose disciplinary action taken by the New York State Department of Health Office of Professional Medical Conduct on September 13, 2016 based on his Maine disciplinary history. On his application, Dr. Austin disclosed the surrender of his Drug Enforcement Administration registration, but failed to disclose his exclusions from participation in Medicare and Medicaid programs. On his application, Dr. Austin disclosed his arrest for an alcohol related Driving Under the Influence criminal charge that occurred on March 20, 2018, in Mobile, Alabama, and referred to his prior consent agreement for identification of other past alcohol related criminal charges. On his application, Dr. Austin answered "no" to several questions related to current substance misuse.

3. Dr. Austin has not practiced medicine in the United States since 2015. Dr. Austin's practice of medicine since 2015 has been limited to eight temporary medical missions, primarily in Belize, providing voluntary medical care totaling approximately 53 days. In applying for a medical license in Belize, Dr. Austin informed the Medical Council of Belize that he had not renewed his Maine medical license, but did not disclose his disciplinary history or the termination from his assignment in Liberia.

4. On August 21, 2018, Dr. Austin enrolled in a five year monitoring agreement with the Maine Professionals Health Program ("MPHP").

5. In connection with his application to reinstate his license, Dr. Austin submitted a proposed Re-Entry to Practice Plan.

6. Pursuant to 32 M.R.S. § 3271(5), an applicant may not be licensed unless the Board finds that the applicant is qualified and no cause exists, as set forth in section 3282-A that may be considered grounds for disciplinary action.

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

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

9. Pursuant to 32 M.R.S. § 3282-A(2)(E), the Board may refuse to issue, or impose discipline if the licensee has engaged 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, or that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed.

10. Pursuant to 32 M.R.S. § 3282-A(2)(F), the Board may refuse to issue, or impose discipline for unprofessional conduct if the licensee has

engaged in conduct that violates a standard of professional behavior that has been established for the practice of medicine.

11. On February 12, 2019, the Board reviewed the foregoing information and voted to preliminarily deny Dr. Austin's application to reinstate his medical license. In lieu of the denial, the Board also voted to offer Dr. Austin this Consent Agreement. Should Dr. Austin decide to accept this Consent Agreement, he should sign it and date it in front of a notary and return it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before April 4, 2019.

COVENANTS

12. Dr. Austin admits the foregoing facts and that such conduct constitutes grounds for denial of licensure and imposition of other discipline pursuant to 32 M.R.S. §§ 3282-A(2)(A), (2)(B), 2(E), and 2(F).

13. As discipline for his conduct, Dr. Austin agrees to, and the Board imposes, the following:

- a) a REPRIMAND for misrepresentations made in obtaining a license;
- b) a CIVIL PENALTY in the amount of Two Hundred Dollars (\$200.00), payment of which shall be made by certified check or money order made payable to "Treasurer, State of Maine," and remitted to Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137, within thirty (30) days of the execution of this Consent Agreement;

c) a PROBATION for a period of not less than five (5) years, that includes the following terms and conditions:

1) For at least five (5) years from the effective date of this Consent Agreement, Dr. Austin shall maintain and comply with all requirements of a monitoring agreement with MPHP. Prior to engaging in the practice of medicine, Dr. Austin shall ensure that the Board has received a copy of his MPHP monitoring agreement incorporating the requirements of this Consent Agreement, and shall ensure that the Board receives any subsequent amendments or revisions thereto. The MPHP monitoring agreement shall include a provision that requires for at least five (5) years that Dr. Austin be subjected to random toxicological testing at least twice per month. Dr. Austin hereby authorizes MPHP to disclose and release to the Board all information obtained by MPHP relating to his participation with MPHP, which authorization shall remain in effect for any period during which he has a license to practice medicine in the State of Maine. Dr. Austin 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 MPHP regarding his compliance with that program; b) review and obtain copies of any and all documentation regarding his participation in the MPHP; 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. Austin shall report such test result to the Board.

So long as this Consent Agreement remains in effect, Dr. Austin agrees and understands that any confirmed positive toxicology result 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. Austin shall notify the Board within three (3) days of any arrest, summons, information or indictment for any crime, and any summons or other charge for any civil violation that involves alcohol or drugs, including driving or operating under the influence, and any conviction or court finding related thereto;

3) Prior to engaging in the practice of medicine, Dr. Austin must engage a Board-approved Physician Practice Monitor who shall monitor his medical practice. In complying with this requirement, Dr. Austin shall submit to the Board for its approval the name of a licensed physician as a proposed Physician Practice Monitor. The Board, Board Chair, or the Board's designee has the sole discretion to approve or reject the Physician Practice Monitor. For a period of not less than one (1) year, the Physician Practice Monitor shall review at least five (5) patient charts per week with Dr. Austin by meeting face-to-face and reviewing the care of patients. Dr. Austin

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 written reports no later than the fifteenth (15th) day of each month. The reports shall include a statement identifying his or her observations of Dr. Austin's practice, the review of patient charts, Dr. Austin's workload, functioning, knowledge, skills and professionalism, and a discussion of any issues related to medical knowledge, judgment, clinical skills, documentation, or professionalism that may impact the ability of Dr. Austin to safely and competently practice medicine. If at any time the Physician Practice Monitor believes that Dr. Austin may not be safely and competently practicing medicine, he or she shall immediately report his/her concerns to the Board. Dr. Austin must provide a copy of this Consent Agreement, together with any amendments hereto, to his Physician Practice Monitor.

After receipt by the Board of six (6) Physician Practice Monitor reports, the Physician Practice Monitor may request that the reports be submitted every two (2) months. Upon receipt of such request, the Board, Board Chair, or the Board's designee shall review all information, and in its/his/her sole discretion grant or deny the request. After a period of one (1) year, Dr. Austin and the Physician Practice Monitor shall meet face-to-face no less than once per month for a period of at least six (6) months, and the Physician Practice Monitor shall submit his/her reports to the Board every three (3) months. Upon conclusion of the six (6) month period, the Physician Practice Monitor shall in his/her report to the Board include a recommendation whether monitoring of Dr.

Austin's practice of medicine should continue. Upon receipt of such report containing the Physician Practice Monitor's recommendation, the Board shall terminate the requirements if this subparagraph unless the Board determines, for good cause shown, that the Physician Practice Monitor requirement shall continue.

14. Dr. Austin 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 shall be considered unprofessional conduct and a violation of this Consent Agreement.

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

16. Upon execution of this Consent Agreement, the Board shall issue Dr. Austin's license contingent upon his meeting all other licensure requirements.

17. Violation of any of the terms or conditions of this Consent Agreement by Dr. Austin shall constitute unprofessional conduct and grounds for additional discipline of his Maine medical license by the Board, including but not limited to imposition of civil penalties, or modification, suspension, and revocation of licensure.

18. This Consent Agreement is not appealable, constitutes disciplinary action, is reportable to the National Practitioner Data Bank, the Federation of

State Medical Boards, and other licensing jurisdictions, and is effective until modified or rescinded in writing by all of the parties hereto.

19. The Board and the Department of Attorney General may communicate and cooperate regarding any matter related to this Consent Agreement.

20. 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.

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

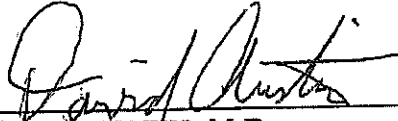
22. Dr. Austin acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

23. Dr. Austin has been represented by Kenneth W. Lehman, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

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

I, DAVID R. AUSTIN, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, THAT I WAIVE CERTAIN RIGHTS. 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: March 6, 2019

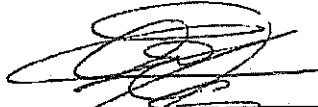



DAVID R. AUSTIN, M.D.

STATE OF Maine
Kennebec, S.S. (County)

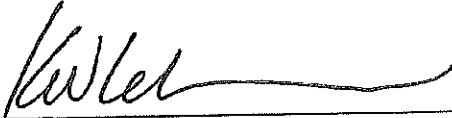
Personally appeared before me the above-named David R. Austin, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: March 6, 2019



NOTARY PUBLIC
MY COMMISSION ENDS:  Ernest V. Young
Justice of the Peace

DATED: 3.7.2019



KENNETH W. LEHMAN, Esq.
Counsel for David R. Austin, M.D.


STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 3/12/19


MAROULLA S. GLEATON, M.D., Chair

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: March 12 2019


MICHAEL MILLER
Assistant Attorney General

Effective Date: March 12, 2019