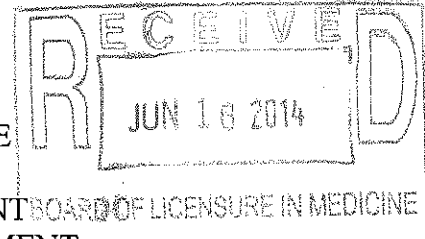


STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE



In re:)
Robert O. Modarelli, M.D.)
Complaint No. CR14-86)

CONSENT BOARD OF LICENSURE IN MEDICINE
AGREEMENT

This document is a Consent Agreement, effective when signed by all parties, regarding discipline imposed upon the license to practice as a physician in the State of Maine held by Robert O. Modarelli, M.D. The parties to the Consent Agreement are: Robert O. Modarelli, M.D. ("Dr. Modarelli"), 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. The Board first issued Dr. Modarelli a license to practice as a physician in the State of Maine on April 27, 2012. Dr. Modarelli specializes in Urology.
2. On May 13, 2014, the Board reviewed information received from the State of Washington, Department of Health, Medical Quality Assurance Commission ("Commission") regarding an action taken against Dr. Modarelli's medical license in that state. According to a "Stipulation to Informal Disposition" dated April 3, 2014, Dr. Modarelli stipulated to the following conduct:
 - a. On August 12, 2011, Dr. Modarelli performed surgery on Patient A, a 44 year old male, to remove Patient A's *right* testicle due to pathology causing chronic, extreme testicular pain. Patient A signed a consent form, consenting to removal of his right testicle (a right orchiectomy).
 - b. Though the surgical team did take a "timeout" before surgery, and Dr.

Modarelli marked the right groin himself, Dr. Modarelli mistakenly removed Patient A's *left* testicle. Dr. Modarelli immediately recognized his error. While Patient A remained under general anesthesia, Dr. Modarelli left the operating room and spoke with Patient A's mother. Dr. Modarelli acknowledged his mistake to Patient A's mother, who had been significantly involved in Patient A's care, and discussed the option of proceeding to remove Patient A's extremely painful right testicle as originally planned. Dr. Modarelli explained that removal of the right testicle, with the left testicle already removed, would eliminate the possibility of Patient A fathering a child, should Patient A change his previously expressed position on this issue. Patient A's mother agreed to have Dr. Modarelli remove the right testicle and Dr. Modarelli proceeded with the right orchiectomy.

c. After removing the wrong testicle, Dr. Modarelli did not give Patient A the opportunity to participate in the life-altering decision to remove his only remaining testicle. There was no determination that Patient A was unable to make his own medical decisions (he had provided consent for the intended procedure). While Patient A's mother had been significantly involved in his care, Patient A had not given his mother power of attorney to make medical decisions on his behalf.

d. Dr. Modarelli's removal of both of Patient A's testicles caused Patient A to be permanently sterile and needing testosterone replacement therapy for the remainder of his life, and potentially subjected him to other consequences resulting from having both testicles removed.

Dr. Modarelli stipulated that the foregoing conduct, if proven, would constitute a violation of RCW 18.130.180(4).¹

3. Following its review of this information on May 13, 2014, the Board voted to initiate a complaint against Dr. Modarelli's Maine medical license pursuant to 32 M.R.S. § 3282-A. The Board docketed the complaint at CR14-86. In addition, the Board voted to offer Dr. Modarelli this Consent Agreement to resolve complaint CR14-86 without further proceedings.

4. Absent Dr. Modarelli's acceptance of this Consent Agreement by signing and dating it in front of a notary and mailing it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before June 22, 2014, the complaint will be processed further.

COVENANTS

In lieu of further proceedings regarding complaint CR14-86, Dr. Modarelli and the Board agree to the following:

5. Dr. Modarelli neither admits nor denies the conduct identified in paragraphs 1-3 above. However, Dr. Modarelli concedes that should the matter proceed to an adjudicatory hearing, the Board would have sufficient evidence to conclude that the conduct violated 32 M.R.S. § 3282-A(2)(F)² and grounds for discipline of his Maine medical license.

¹ The specific language of this section of Washington state regulations provides as follows: Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed.

² The specific language of the statute provides as follows: Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice for which the licensee is licensed. For purposes of this paragraph, "disruptive behavior" means aberrant behavior that interferes with or is likely to interfere with the delivery of care.

6. As discipline for the concession in paragraph 5 above, Dr. Modarelli agrees to accept, and the Board agrees to issue, the following discipline:

a. **Practice Limitation.** Dr. Modarelli agrees to limit his Maine medical and surgical practice solely to an office-based urology practice. Dr. Modarelli shall not practice medicine or surgery in a Maine hospital or clinic setting. In addition, Dr. Modarelli will limit his in-office surgeries only to those procedures that require local anesthesia. In complying with this restriction, Dr. Modarelli shall not perform any medical or surgical procedures on any Maine patient who is administered general anesthesia.

b. **Protocol.** Within sixty (60) days of the effective date of this Stipulation, Dr. Modarelli shall submit to the Board a written protocol designed to prevent wrong-site surgery, including the wrong testicle removal involved in this case. In order to satisfy this provision, the protocol must (a) incorporate and be consistent with the Joint Commission's Universal Protocol for Preventing Wrong Site Surgery (endorsed by the American Urological Association), and (b) be approved by the Board or its designee. Dr. Modarelli will immediately implement this protocol into his practice, including his practice at any locum tenens positions.

c. **Paper.** Within sixty (60) days of the effective date of this Stipulation, Dr. Modarelli shall submit to the Board a paper in which he provides a complete and accurate analysis of the factors leading to the wrong testicle removal, and describing the changes Dr. Modarelli has implemented into his practice to prevent this error from re-occurring. The paper must be approved by the Board or its designee. Dr. Modarelli will submit the protocol and paper to:

Investigator Kathryn Levesque

Maine Board of Licensure in Medicine
137 State House Station
Augusta, ME 04333-0137

d. **ProBE Course.** Within six (6) months of the effective date of this Stipulation, Dr. Modarelli shall complete the Professional/Problem Based Ethics Course (ProBE) at the Center for Personalized Education for Physicians (CPEP). To satisfy this provision, Dr. Modarelli must obtain an “unconditional pass” as an assessment following the course. Dr. Modarelli shall permit CPEP to communicate with the Board regarding his participation in this course, and shall provide the Board with a copy of the essay that Dr. Modarelli writes as part of the course.

e. **Notification to Board.** Dr. Modarelli shall notify the Board of any future incidence of wrong-site, wrong procedure, or wrong person surgery performed by Dr. Modarelli, within thirty (30) days of recognizing the error.

f. **Change of Address.** Dr. Modarelli must inform the Board in writing, of changes in his residential and/or business address within thirty (30) days of such change.

g. **Costs.** Dr. Modarelli shall be responsible for all costs associated with his compliance with the terms and conditions of this Consent Agreement

h. **Termination.** Dr. Modarelli may not petition to terminate this Consent Agreement before three years from its effective date. Upon a timely written petition to terminate, the Board will have the sole discretion to grant or deny Dr. Modarelli’s petition. Any decision made by the Board regarding this issue does not require an adjudicatory hearing and is not subject to judicial review.

7. Violation by Dr. Modarelli 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.

8. Pursuant to 10 M.R.S. § 8003(5) the Board and Dr. Modarelli agree that the Board has the authority to issue an order, following notice and hearing, imposing further discipline, including revocation or suspension of his license, in the event that he fails to comply with any of the terms or conditions of this Consent Agreement.

9. Dr. Modarelli waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Modarelli agrees that this Consent Agreement is a final order resolving complaint CR14-86. This Consent Agreement is not appealable and is effective until modified or rescinded in writing by agreement of all of the parties hereto.

10. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Modarelli 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. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

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

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

14. The Board and Dr. Modarelli agree that no further agency or legal action will be initiated against him by the Board based upon the facts described herein except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Board may however consider

the conduct described above as evidence of a pattern of misconduct in the event that similar true allegations are brought against Dr. Modarelli in the future. The Board may also consider the fact that discipline was imposed by this Consent Agreement in determining appropriate discipline in any further complaints against Dr. Modarelli's Maine physician license.

15. Dr. Modarelli 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.

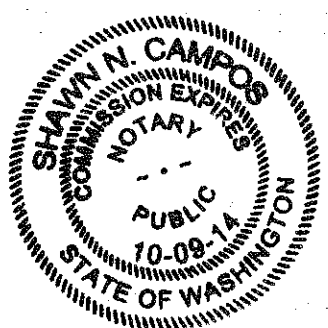
16. For the purposes of this Consent Agreement, "execution" shall mean the date on which the final signature is affixed to this Consent Agreement.

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

DATED: 5 June 2014 Robert Modarelli M.D.
ROBERT O. MODARELLI, M.D.
STATE OF WASHINGTON
PIERCE, S.S. (County)

Personally appeared before me the above-named, Robert O. Modarelli, 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: 6/5/2014
[Signature]
NOTARY PUBLIC/ATTORNEY
MY COMMISSION ENDS: 10/9/2014




STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 7/8/14


MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 7/8/14


DENNIS E. SMITH
Assistant Attorney General

Effective Date: 7/8/14