

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)
David R. Austin, M.D.) CONSENT AGREEMENT FOR
Complaint No. CR15-49) SURRENDER OF LICENSE

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 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. The Board first issued Dr. Austin a license to practice medicine in Maine on March 31, 1989 (License number MD12687). Dr. Austin specializes in Family Practice.
2. On April 14, 2015, the Board received information from the Maine Medical Professionals Health Program ("MPHP") reporting that Dr. Austin had declined to obtain a recommended evaluation, treatment and monitoring agreement with MPHP following his termination from recent employment due to an alcohol related event. The MPHP information indicated that Dr. Austin entered into a contract with Quicksilver Group International, LLC ("Quicksilver") to provide relief care to Ebola patients in Liberia. On March 24, 2015, MPHP received an email from Tracey CS van Heerden, Chief Operating Officer of Quicksilver, reporting that Dr. Austin's contract with that entity was terminated on February 11, 2015, due to his arriving at the treatment unit "inebriated and unable to perform his duties." Dr. Austin met

with MPHP staff on April 7, 2015, and maintained that he was not on duty at the time that the incident occurred, but went to the treatment unit only to pick up his computer. He admitted to MPHP staff that he was inebriated, having drunk to excess on his day off. The MPHP referred to a prior assessment of Dr. Austin that had been conducted following the Board's referral after Dr. Austin reported on his license renewal application that he had been charged with Operating Under the Influence ("OUI"). Dr. Austin was evaluated on July 17, 2014. The evaluator concluded that he did not have an underlying alcohol misuse disorder or any impairment that posed a risk to patient care. As a result of that evaluation, Dr. Austin was not required to enroll in MPHP, but was encouraged to enter voluntarily, which he did not do. In addition, the MPHP advised Dr. Austin that it would require enrollment in a monitoring agreement should there be any further concerns related to substance misuse or impairment. The MPHP further reported that based on the OUI and subsequent referral for an alcohol-related event at work, "MPHP now believes that Dr. Austin should be monitored and re-evaluated in the interest of public safety."

3. On April 14, 2015, the Board also received information from Ms. van Heerden who stated that Dr. Austin contracted on December 12, 2014 with Quicksilver in the position of Ebola Treatment Unit ("ETU") MD through April 16, 2015. She stated that on February 11, 2015, his contract was terminated with immediate effect following an incident which occurred on February 8, 2015, where he was under the influence of alcohol and as a result, he was unable to perform his duties in the ETU. Ms. van Heerden stated that Dr. Austin realized that he was unfit for duty and had arranged for a shift change. When confronted, Dr. Austin admitted that he had "imbibed excess levels of alcohol, but undertook to seek treatment/help once back in the USA." Finally, she stated that "Dr. Austin had agreed to abide by our zero alcohol and drug policy

which forms a part of our contract with all consultants,” and was terminated for breach of contract and inability to perform his duties to the satisfaction of Quicksilver’s client.

4. As referenced in the April 13, 2015 letter from MPHP, Dr. Austin disclosed on his May 16, 2014 application for renewal of his license that that he had pled guilty on March 18, 2014 to OUI, and that he entered into a deferred disposition agreement that postponed the final disposition on that charge. Dr. Austin also disclosed that on March 20, 2014, two days after entering his plea on the OUI, he was charged with Violation of a Condition of Release, which he denied committing, on May 13, 2014. This charge arose out of violation of a bail condition that prohibited Dr. Austin from using or possessing alcoholic beverages. At the time of his renewal application, both matters were still pending final disposition.

5. On April 14, 2015, the Board reviewed the foregoing information and voted to: a) order the immediate suspension of Dr. Austin’s Maine medical license pursuant to 5 M.R.S. § 10004(3) for a period of 30 days due to the immediate jeopardy that his continued practice of medicine posed to the public, and schedule the matter for an adjudicatory hearing on May 12, 2015; b) issue a complaint against Dr. Austin’s Maine medical license; and c) require that Dr. Austin undergo a substance abuse evaluation pursuant to 32 M.R.S. § 3286.

6. Further investigation revealed that Dr. Austin pled guilty and was convicted of Violating Condition of Release on August 12, 2014.

7. The parties entered into an Interim Consent Agreement on May 26, 2015, providing for the continued suspension of Dr. Austin’s license through June 9, 2015.

8. On May 28, 2015, Dr. Austin answered the Complaint admitting that he was discharged from employment from Quicksilver based upon his appearance at the clinic while under the influence of alcohol, and denying all remaining allegations.

9. Pursuant to Board request, Christine Gray, Psy.D., conducted a substance abuse evaluation of Dr. Austin on April 24, 2015, and May 8, 2015. Based on that evaluation, Dr. Gray determined that Dr. Austin met the DSM-IV criteria for substance abuse and for alcohol use disorder, and that his "level of denial around his substance abuse ... could potentially interfere with his ability to function in his job as a physician."

10. This Consent Agreement has been negotiated by legal counsel for Dr. Austin and legal counsel for the Board. Absent acceptance of this Consent Agreement by Dr. Austin 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 June 8, 2015, this matter shall proceed to an adjudicatory hearing regarding complaint CR15-49 on June 9, 2015.

11. By signing this Consent Agreement, Dr. Austin consents to the presentation of this proposed Consent Agreement to the Board for possible ratification. Dr. Austin hereby waives any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

COVENANTS

12. Dr. Austin neither admits nor denies the foregoing facts. However, Dr. Austin agrees that if this matter were to proceed to a hearing the Board could find sufficient evidence to impose discipline on Dr. Austin's license to practice medicine pursuant to 32 M.R.S. 3282-A(2)(B) 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.

13. In order to resolve this matter without further proceedings, Dr. Austin agrees to the IMMEDIATE SURRENDER of his Maine medical license effective upon the execution of

this Consent Agreement. The Board hereby acknowledges that Dr. Austin's license is already in its possession having been surrendered as a result of the suspension of his license.

14. Nothing in this Consent Agreement shall prohibit Dr. Austin from, at reasonable intervals, petitioning the Board for reinstatement of his Maine medical license. Upon petitioning the Board for reinstatement, Dr. Austin shall bear the burden of demonstrating that: (a) his Maine medical license should be reinstated; and (b) that the resumption of his practice of medicine would not pose a risk to the public; and (c) that no reasonable grounds exist for the Board to deny his application for reinstatement. The Board, upon receipt of any such petition for reinstatement from Dr. Austin, may direct that he undergo whatever testing and evaluations that it deems appropriate. In addition, Dr. Austin shall execute any and all releases so that the Board, Board staff, and Department of Attorney General may obtain copies of his medical, psychological, substance abuse, and counseling records and evaluations. Following its receipt of a petition for reinstatement from Dr. Austin, and its review of any records, evaluations and investigative information, the Board shall retain the authority to: (a) deny the petition; (b) grant the petition; or (c) grant Dr. Austin a license subject to restrictions and/or conditions pursuant to a consent agreement under the authority of 32 M.R.S. § 3282-A(2) and 10 M.R.S. 8003(5).

15. 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 possible civil penalties, additional period(s) of suspension, and revocation of licensure.

16. Dr. Austin has been represented by legal counsel, Peter B. Bickerman, Esq. with respect to the terms of this Consent Agreement.


17. 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.

18. 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.

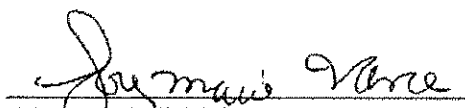
19. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

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, 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: 6/8/15 
DAVID R. AUSTIN, M.D.
STATE OF Maine
York, 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: 6/8/15 
NOTARY PUBLIC
MY COMMISSION ENDS: May 11th 2020

DATED: 6/8/2015

Peter Bickerman
PETER B. BICKERMAN, ESQ.
Attorney for Dr. Austin

DATED: 6/9/15

David D. Jones
~~MARCOLEA S. GLEATON, M.D., Chairman~~
MAINE BOARD OF LICENSURE IN MEDICINE
David D. Jones, M.D., Acting Chairman

DATED: June 9, 2015

Michael Miller
MICHAEL MILLER, Assistant Attorney General
DEPARTMENT OF THE ATTORNEY GENERAL

APPROVED
EFFECTIVE: June 9, 2015

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In Re:)
David R. Austin, M.D.) **INTERIM CONSENT AGREEMENT**
Complaint No. CR-15-49)
)

This document is an Interim Consent Agreement, effective when signed by all parties, regarding the procedural status of the disciplinary action against the license to practice medicine in the State of Maine held by David R. Austin, M.D. The parties to this Interim 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. The Board first issued Dr. Austin a license to practice medicine in Maine on March 31, 1989 (License number MD12687). Dr. Austin specializes in Family Practice.
2. On April 14, 2015, the Board issued an Order of Immediate Suspension of Dr. Austin’s Maine medical license for a period of thirty days, pursuant to 5 M.R.S. §10004(3). By letter dated April 16, 2015 the Board directed Dr. Austin to undergo a substance abuse evaluation pursuant to 32 M.R.S. §3286, which evaluation was to be performed by an independent evaluator chosen by the Board. Subsequently, by letter

dated April 22, 2015, the Board notified Dr. Austin that an adjudicatory hearing concerning his medical license would be held on May 12, 2015.

3. The independent evaluator chosen by the Board, Dr. Christine Gray, began her evaluation of Dr. Austin on April 24, 2015. The parties anticipate that Dr. Gray's written evaluation report regarding Dr. Austin will not be available until just prior to the scheduled hearing on May 12, 2015. As a result, the parties will not have sufficient time prior to hearing to prepare and/or address statements and/or opinions contained in Dr. Gray's written evaluation report.

4. Because of the foregoing circumstances, the parties have agreed to continue the adjudicatory hearing previously scheduled for May 12, 2015 to June 9, 2015. On May 1, 2015, pursuant to the agreement of the parties, the Hearing Officer issued a scheduling order continuing the adjudicatory hearing in this matter to June 9, 2015.

5. Although Dr. Austin disputes that there are grounds for licensure discipline against him, he agrees that the suspension of his medical license will remain in effect until June 9, 2015, on which date the Board will take further action concerning Complaint No. CR-15-49. Dr. Austin understands and agrees that until such time he will not practice medicine or render any professional healthcare services under the authority of his Maine medical license.

6. Violation of any of the terms or conditions of this Interim 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 possible civil penalties, additional period(s) of suspension, and revocation of

licensure.

7. Dr. Austin has been represented by legal counsel, Peter B. Bickerman, Esq. with respect to the terms of this Interim Consent Agreement.

8. This Interim 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.

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

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

I, DAVID R. AUSTIN, M.D., HAVE READ AND UNDERSTAND THE FOREGOING INTERIM CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, THAT I WAIVE CERTAIN RIGHTS. I SIGN THIS INTERIM CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I

UNDERSTAND THAT THIS INTERIM CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

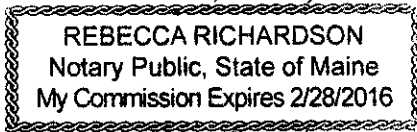
DATED: 5/13/15

David Austin
DAVID R. AUSTIN, M.D.

STATE OF MAINE
YORK, 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: 5/13/15



Rebecca Richardson
NOTARY PUBLIC
MY COMMISSION ENDS: 2/28/2016

DATED: 5/17/2015

Peter Bickerman
PETER B. BICKERMAN, ESQ.
Attorney for Dr. Austin

DATED: 5/26/15

Maroulla S. Gleaton
MAROULLA S. GLEATON, M.D., Chairman
MAINE BOARD OF LICENSURE IN
MEDICINE

DATED: May 19, 2015

Michael Miller
MICHAEL MILLER, Assistant Attorney
General DEPARTMENT OF THE ATTORNEY
GENERAL

APPROVED
EFFECTIVE:

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

IN RE:)
)
DAVID R. AUSTIN, M.D.) ORDER OF IMMEDIATE SUSPENSION
)
AD No. 15-48)

On April 14, 2015, the Maine Board of Licensure in Medicine (“the Board”) met and reviewed materials submitted in connection with information received regarding David R. Austin, license number MD 12687 (“Dr. Austin”). On the basis of its review of these materials, the Board concludes that the continued ability of Dr. Austin to practice as a physician in the State of Maine constitutes an immediate jeopardy to the health and safety of the public who might receive his medical services, and that it is necessary to immediately suspend his license pending a hearing in order to adequately respond to this risk.

This suspension is issued pursuant to 5 M.R.S. § 10004(3). Dr. Austin’s Maine medical license will be suspended effective immediately upon issuance of this Order for a thirty (30) day period ending on May 14, 2015, at 11:59 p.m., pending further Board action at an adjudicatory hearing, which will be scheduled shortly. A formal notice of hearing will be transmitted, which will outline the issues and procedures for that hearing.

PRELIMINARY FINDINGS

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

1. On May 16, 2014, the Board received an application from Dr. Austin to renew his Maine medical license. On that application, Dr. Austin disclosed that he had pled guilty on March 18, 2014 to Operating Under the Influence of Alcohol pursuant to a deferred disposition. In addition, Dr. Austin disclosed that on March 20, 2014, he was charged with Violation of Conditions of Release, which matter was still pending.
2. Based upon Dr. Austin’s disclosure of this information, the Board staff referred Dr. Austin to the Medical Professionals Health Program (“MPHP”) for evaluation and possible assistance.
3. On April 13, 2015, the Board received information from the MPHP, which indicated that:
 - a. The MPHP assessed Dr. Austin on June 8, 2014, following a referral from the Board for an OUI reported on his license renewal application. The MPHP referred Dr. Austin for a substance abuse evaluation, which concluded that Dr. Austin did not have an underlying alcohol use disorder or any impairment that posed a risk to patient care. Based upon that evaluation, the MPHP did not require Dr. Austin to enroll in a monitoring agreement at that time. However, the MPHP advised Dr. Austin that MPHP would require his enrollment should there be any further concerns related to substance misuse or impairment.
 - b. On or about February 11, 2015, Dr. Austin was terminated with immediate effect based upon an incident that occurred on February 8, 2015 while working in Liberia for

Quicksilver Group International (“Quicksilver”) providing relief care to Ebola patients. Quicksilver terminated Dr. Austin’s employment due to his arriving at the treatment unit inebriated and unable to perform his duties.

- c. On April 7, 2015, a representative of the MPHP met with Dr. Austin regarding Dr. Austin’s termination as reported by Tracey van Heerden of Quicksilver. Dr. Austin maintained that he was not on duty at the time of the incident, but admitted that he was inebriated and drank to excess on his day off.
 - d. Based upon the OUI and subsequent information from Quicksilver regarding Dr. Austin’s intoxication, the MPHP believed that Dr. Austin should be monitored and re-evaluated in the interest of public safety. The MPHP recommended that Dr. Austin participate in a substance use monitoring agreement with the MPHP and undergo another independent substance abuse evaluation. The MPHP discussed these recommendations with Dr. Austin, who declined further participation or evaluation despite being informed that his decision would be reported to the Board.
4. On April 14, 2015, the Board received an email from Tracey CS van Heerden, Chief Operating Officer for Quicksilver regarding Dr. Austin. According to that email, Dr. Austin was a contract employee for Quicksilver providing care in an Ebola Treatment Unit (“ETU”) as a contracted physician employee. On February 8, 2015, Dr. Austin was under the influence of alcohol and unable to perform his physician duties at an ETU. Realizing that he was unfit for duty, Dr. Austin arranged for a shift change. When confronted about his state of inebriation, Dr. Austin admitted that he had imbibed excess levels of alcohol, but undertook to seek treatment/help once back in the USA. In addition, Dr. Austin had previously agreed to abide by a “zero alcohol and drug policy” which formed a part of his contract with Quicksilver Group International.

For the purposes of this Order of Suspension and subject to holding the aforementioned full adjudicatory hearing on this matter to determine if any violations have actually occurred, the Board finds that the actions of Dr. Austin constitute immediate jeopardy of similar behavior occurring in the future and that delaying imposition of a suspension until holding a hearing would not adequately respond to this known risk. It is of great concern that Dr. Austin was at work under the influence of alcohol and unable to perform his physician duties.

The above conduct constitutes violations of the following provisions applicable to Dr. Austin’s license to practice as a physician in the State of Maine:

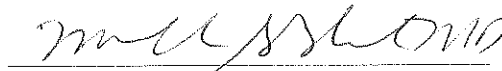
- A. 32 M.R.S. § 3282-A(2)(B) for habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health and safety of patients.
- B. 32 M.R.S. § 3282-A(2)(E)(1) by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public.
- C. 32 M.R.S. § 3282-A(2)(H) by engaging in unprofessional conduct by violating a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice of medicine.

ORDER OF IMMEDIATE SUSPENSION

The Board ORDERS as follows:

1. Dr. Austin's license is suspended effective immediately upon issuance of this Order on April 14, 2015, for a thirty (30) day period ending on May 14, 2015, at 11:59 p.m., pending further Board action at an adjudicatory hearing, which shall be scheduled shortly.
2. Dr. Austin may not practice medicine in the State of Maine during this suspension.
3. Dr. Austin must return his license and wallet card at once to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, ME 04333-0137.

Dated: April 14, 2015



Maroulla S. Gleaton, MD, Chairperson