

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

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

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

STATEMENT OF FACTS

1. Dr. de los Heros has held a license to practice medicine in the State of Maine since July 17, 2006 (license number MD17206), and specializes in psychiatry.

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

Board docketed that complaint as CR15-75, and sent it to Dr. de los Heros for a response.

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

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

Dr. de los Heros also reported to the Board that Patient A showed clinical improvement in her various conditions, and did not show evidence of a relapse into substance abuse. He noted that Patient A "was closely and frequently

monitored.” He noted that Patient A was “clinically stable” and doing well when he last saw her on April 1, 2015.

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

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

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

b) the Consent Agreement for Conditional License entered with the Board on July 11, 2006, requiring supervision, monitoring and participation in the Maine Medical Association’s Committee on Physician Health;

c) Patient A's questionnaire responses and identification of alleged inconsistencies between the questionnaire responses and Dr. de los Heros's response to the Board;

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

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

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

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

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

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

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

Heros failed to monitor the patient closely enough; and c) whether Dr. de los Heros failed to become adequately acquainted with the patient, such that he failed to anticipate and prevent her suicide.

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

Dr. Pope reviewed the seven psychiatric medications that Dr. de los Heros prescribed to Patient A, and concluded that none of Patient A's doses exceeded the normal daily maximum, and that the medications have scientific evidence of efficacy for the psychiatric disorders that Dr. de los Heros diagnosed in Patient A. Dr. Pope indicated that gabapentin, alprazolam and quetiapine can all have some sedative effects, but did not see any evidence in the record that Patient A complained that she was excessively sedated. Dr. Pope stated that topiramate can sometimes cause forgetfulness or confusion

and the effect might be “hypothetically increased” if one were also taking alprazolam or clomipramine, but he did not see evidence in the medical records created by Dr. de los Heros regarding Patient A that she complained of confusion. Dr. Pope indicated that he was not aware of any serious danger from the combination of drugs prescribed. Dr. Pope also noted that Patient A’s toxicology report results were notable for the presence of morphine – a drug that had not been prescribed for the patient – indicating that she was taking illicit drugs, in violation of medical orders, in conjunction with the prescribed drugs at the time of her death, and that he could not be certain that Patient A’s death was caused purely by an overdose of the drugs prescribed by Dr. de los Heros.

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

6. Dr. de los Heros’s records for Patient A reflected that she disclosed that she was on methadone, and Dr. de los Heros increased some of the

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

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

8. At its meeting on October 13, 2015, the Board reviewed Complaint CR 15-75, and voted to conduct an informal conference. In addition, due to illegibility of his treatment notes, the Board requested that Dr. de los Heros transcribe his treatment notes for Patient A and provide them to the Board in advance of the informal conference.

9. At its meeting on November 10, 2015, the Board reviewed Complaint CR 15-75 and conducted an informal conference. Following the informal conference, the Board voted to set this matter for an adjudicatory hearing and to offer Dr. de los Heros this Consent Agreement to resolve this matter without further proceedings. Absent Dr. de los Heros's acceptance of this Consent Agreement by signing and dating it in front of a notary and mailing it to Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before February 24, 2016, the matter will be scheduled for an adjudicatory hearing.

#### COVENANTS

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

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

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

- a) Within thirty (30) days following the execution of this Consent Agreement, Dr. de los Heros must engage a Board approved physician practice monitor who shall monitor his medical practice. In complying with this requirement, Dr. de los Heros shall submit to the Board for its approval the name of a licensed psychiatrist as a



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

- b) Dr. de los Heros shall document in all patient medical records the patient's psychosocial history and reflect that he has incorporated the information into the patient's treatment plan, which should include referrals or consultation with other health care professionals as necessary. Dr. de los Heros's medical records shall be legible and

clearly state his rationale for prescribing medications, including any dosage change.

- c) The sixth monthly report from the physician practice monitor may include a recommendation whether monitoring should be discontinued. Following the receipt of the sixth monthly report from the physician practice monitor, the Board shall review all information received from the physician practice monitor and determine, in its sole discretion, any continuation or modification of monitoring requirements for Dr. de los Heros's practice.
- d) Dr. de los Heros shall transition to and maintain typewritten medical records within six weeks of the execution date of this Consent Agreement.

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

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

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

15. This Consent Agreement is a public record within the meaning of

1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

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

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

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

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

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

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

DATED: 02/24/16



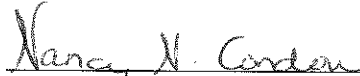
REINALDO O. DE LOS HEROS, M.D.

STATE OF Maine

Cumberland, S.S.

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

DATED: 2/24/16



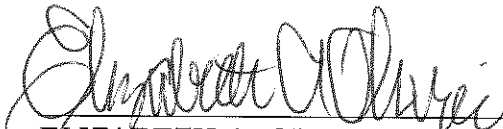
NOTARY PUBLIC/ATTORNEY **NANCY N. CONDON**

Notary Public, Maine

My Commission Expires December 3, 2017

MY COMMISSION ENDS: \_\_\_\_\_

DATED: 2/24/16



ELIZABETH A. OLIVIER, ESQ.

Attorney for Reinaldo O. de los Heros,  
M.D.


STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED: 2/29/16

  
MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED: February 26, 2016

  
MICHAEL MILLER  
Assistant Attorney General

Effective Date: