

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:) CONSENT AGREEMENT
LOWELL I. GERBER, M.D.)
Complaint No. CR16-22)

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 Lowell I. Gerber, M.D. The parties to the Consent Agreement are: Lowell I. Gerber, M.D. (“Dr. Gerber”), 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. Gerber has held a license to practice medicine in the State of Maine since April 12, 2007 (license number MD17412), and specializes in internal medicine and cardiovascular diseases.
2. On February 17, 2016, the Board initiated a complaint alleging that: a) Dr. Gerber failed to disclose a complaint pending with the Board on a March 10, 2015 Reappointment Application for Mercy Hospital; and 2) Dr. Gerber failed to disclose his July 10, 2015 resignation of courtesy membership on the staff at Mercy Hospital on his application for renewal of license dated August 31, 2015. The Board docketed the complaint as CR16-22, and sent it to Dr. Gerber for a response.
3. By letter dated May 6, 2016, Dr. Gerber responded to the complaint. In his response, he explained that prior to submitting his Mercy

Hospital Reappointment Application he contacted his attorney to obtain advice about completing the application. He reported to the Board that he attached a copy of the Mercy Hospital Reappointment Application in an email to his attorney and asked how he should answer a specific question relating to malpractice claims or suits (question 9) because he had received a request for medical records from a known plaintiff's malpractice attorney for the complainant in a then-pending Board matter (CR 15-12). After receiving his attorney's advice about how to answer this question, Dr. Gerber then asked his attorney whether he needed to "mention the complaint sent to the medical board" and in response to that question his attorney said "no."

In his emails with his attorney requesting guidance on responding to the Mercy Hospital Reappointment Application, Dr. Gerber stated: "I would like to be honest, but concise." Dr. Gerber reported that he had never had a medical board complaint and was unsure whether he needed to disclose it because no action had yet been taken. Dr. Gerber told the Board that he recognizes that his communication with his attorney "could have been clearer."

Dr. Gerber also stated that when filling out the application for renewal of his license in August 2015, he checked "yes" in response to question 14.9 and disclosed that he had been asked to resign staff privileges at Mercy Hospital because of the Board's recent disciplinary action in responding to an application question, but "mistakenly" checked "no" in response to question 14.10 when asked about having voluntarily relinquished staff privileges in order to avoid peer review or investigation. He explained that he thought that

Mercy Hospital had requested that he resign his courtesy membership on the staff because of the underlying disciplinary issues addressed by the Board in CR 15-12 and not because he had failed to disclose the pending Board complaint pertaining to those issues on his Reappointment Application. In his response, Dr. Gerber acknowledged that both issues were discussed when he met with the hospital credentials committee in July 2015. He told the Board that he attempted to be honest and truthful and did not intend to deceive or misrepresent anything on either application.

Dr. Gerber told the Board that at the time he was filling out his application for renewal of his license, he was experiencing severe stress in his life, along with some health issues.

4. At its meeting on June 14, 2016, the Board reviewed Complaint CR16-22, and voted to set this matter for an adjudicatory hearing. In addition, the Board voted to offer Dr. Gerber this Consent Agreement to resolve this matter without further proceedings. Absent Dr. Gerber'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 September 30, 2016, the matter will be scheduled for an adjudicatory hearing.

COVENANTS

5. While Dr. Gerber maintains that he attempted to appropriately complete the March 2015 Reappointment Application for Mercy Hospital and his August 2015 Application for Renewal of License, and that he did not intend

to deceive, he admits that there was incorrect information provided and that such conduct constitutes grounds for discipline pursuant to 32 M.R.S. §§ 3282-A(2)(A), and (2)(F) (for engaging in the practice of misrepresentation in obtaining a license or in connection with service rendered within the scope of the license issued, and for engaging in unprofessional conduct).

6. As discipline for the conduct described above, Dr. Gerber agrees to accept the following discipline:

a. A REPRIMAND for failing to provide accurate and complete information on applications; and

b. A CIVIL PENALTY in the amount of One Thousand Dollars (\$1,000.00), 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.

7. Violation by Dr. Gerber 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. This Consent Agreement is not appealable and is effective until modified or rescinded in writing by the parties hereto.

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

10. 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.

11. 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.

12. 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.

13. Dr. Gerber 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.

14. Dr. Gerber has been represented by Elizabeth A. Campbell, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

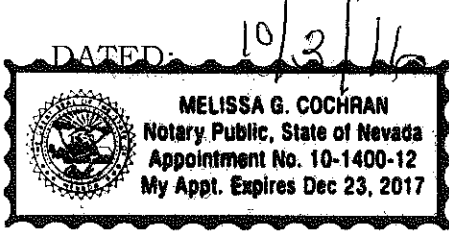
15. For the purposes of this Consent Agreement, the term "execution" means the date on which the final signature is affixed to this Consent Agreement.

I, LOWELL I. GERBER, 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: October 3, 2016 *Lowell Gerber*
LOWELL I. GERBER, M.D.

STATE OF Maine
350 40 2033, S.S.

Personally appeared before me the above-named Lowell I. Gerber, 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.



Melissa G. Cochran
NOTARY PUBLIC/ATTORNEY
MELISSA G. COCHRAN
MY COMMISSION ENDS: 12/23/17
1805 N. CARSON ST
CARSON CITY NV 89701 12/16

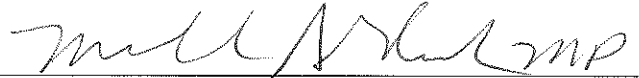
DATED: *just* 10/3/16
IX 10/6/16

Elizabeth Campbell
ELIZABETH A. CAMPBELL, ESQ.
Attorney for Lowell I. Gerber, M.D.

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED:

10/11/16



MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED:

October 11, 2016



MICHAEL MILLER
Assistant Attorney General

Effective Date:

October 11, 2016