

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:) CONSENT AGREEMENT
HERB O. BOTE, M.D.)
Complaint No. CR16-163)

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 Herb O. Bote, M.D. The parties to the Consent Agreement are: Herb O. Bote, M.D. ("Dr. Bote"), 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. Bote has held a license to practice medicine in the State of Maine since October 2, 1998 (license number MD14858), specializing in orthopedic surgery.
2. On August 2, 2016, the Board initiated a complaint alleging that disciplinary action had taken place in the State of Alaska for conduct that if committed in Maine would constitute grounds for discipline in Maine, including unprofessional conduct, and/or sexual misconduct following receipt of information that the Alaska State Medical Board ("the Alaska Board") had entered into a Consent Agreement and Order with Dr. Bote on May 5, 2016 ("The Alaska Consent Agreement"). In the Alaska Consent Agreement, Dr. Bote admitted that he had engaged in unprofessional conduct and sexual

misconduct by engaging in unwelcome and inappropriate physical contact with female patients and personal conversations with female patients that had no relation to the care being provided during the period January through September 2015. The Board docketed the complaint as CR16-163, and sent it to Dr. Bote for a response.

3. By letter dated October 7, 2016, Dr. Bote responded to the complaint. In his response, Dr. Bote did not contest the facts admitted in the Alaska Consent Agreement.

4. Pursuant to 3282-A(2)(F), the Board may impose discipline for unprofessional conduct for a violation of a standard of professional behavior that has been established in the practice of medicine.

5. Pursuant to 32 M.R.S. § 3282-A(2)(H), the Board may impose discipline for violating Board statute or rule, including Board Rules, Chapter 10, Sexual Misconduct.

6. Pursuant to 3282-A(2)(M), the Board may impose discipline for suspension or restriction of a license to practice or other disciplinary action by another state if the conduct resulting in disciplinary action would, if committed in this State, constitutes grounds for discipline under the laws or rules of this State.

7. At its meeting on November 8, 2016, the Board reviewed Complaint CR 16-163, and voted to set this matter for an adjudicatory hearing. In addition, the Board voted to offer Dr. Bote this Consent Agreement to resolve this matter without further proceedings. Absent Dr. Bote'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 December 28, 2016, the matter will be scheduled for an adjudicatory hearing.

COVENANTS

8. Dr. Bote admits the facts stated above and that such conduct constitutes grounds for discipline pursuant to 32 M.R.S. §§ 3282-A(2)(F) (for engaging in unprofessional conduct), (2)(H) (for violating Board rules), and (2)(M) (for disciplinary action by another state for conduct that if committed in Maine would constitute grounds for discipline).

9. As discipline for the conduct described above, Dr. Bote agrees to accept, and the Board imposes:

a. A LICENSE PROBATION to coincide with the probation imposed by the Alaska Board in the Alaska Consent Agreement for a period of three (3) years beginning May 5, 2016, so long as Dr. Bote fully complies with all the terms and conditions of the license probation imposed by the Alaska Board;

b. During the period of probation imposed by this Consent Agreement, Dr. Bote shall comply with all the terms and conditions of the Alaska Consent Agreement and shall have a third party CHAPERONE present while consulting, examining or treating female patients; and

c. Dr. Bote agrees that PRIOR TO PRACTICING MEDICINE IN THE STATE OF MAINE OR TREATING ANY PATIENTS LOCATED IN MAINE he

shall obtain a psychiatric evaluation by a Board approved provider, which written evaluation must be submitted to the Board for its review. Following receipt and review of the psychiatric evaluation, the Board shall, in its sole discretion, determine whether any conditions or limitations shall be imposed upon the practice of medicine in Maine by Dr. Bote. The requirement contained in this subparagraph does not terminate with the probation imposed in subparagraph a.

10. Violation by Dr. Bote 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.

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

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

13. 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.

14. 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.

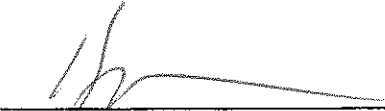
15. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto. If any clause of this Consent Agreement is deemed illegal or invalid, then that clause shall be deemed severed from this Consent Agreement.

16. Dr. Bote 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.

17. 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, HERB O. BOTE, 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: 12-20-2016


HERB O. BOTE, M.D.

STATE OF ALASKA

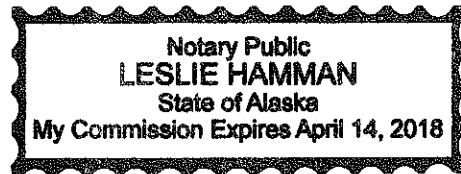
SOLDOTNA, KENAI BOROUGH, S.S.

Personally appeared before me the above-named Herb O. Bote, 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: 12-20-16


NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS April 14, 2018




STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 1/10/17


MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: January 10, 2017


MICHAEL MILLER
Assistant Attorney General

Effective Date: January 10, 2017