

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

<u>In re:</u>)	FIFTH AMENDMENT TO CONSENT
Kevin M. Kendall, M.D.)	AGREEMENT FOR DISCIPLINE AND
Complaint Nos. CR12-162,)	PROBATIONARY LICENSURE
CR16-133, CR16-148)	

This document is the Fifth Amendment to Consent Agreement for Discipline and Probationary Licensure effective February 12, 2013, regarding disciplinary action and conditions imposed upon the license to practice medicine in the State of Maine held by Kevin M. Kendall, M.D (“Fifth Amendment”). The parties to this Fifth Amendment are: Kevin M. Kendall, M.D. (“Dr. Kendall”), the State of Maine Board of Licensure in Medicine (“the Board”), and the Department of the Attorney General (the “Attorney General”). This Fifth Amendment is entered into pursuant to 32 M.R.S. § 3282-A and 10 M.R.S. § 8003(5).

BACKGROUND

1. On February 12, 2013, the parties entered into a Consent Agreement for Discipline and Probationary Licensure upon the license to practice medicine in the State of Maine held by Kevin M. Kendall, M.D (“the Consent Agreement”).

2. On July 30, 2013, the parties entered into a First Amendment to the Consent Agreement (“First Amendment”) amending paragraphs 16(f)(iii) and paragraph 16(f)(iv) regarding permissible work hours and times.

3. On March 27, 2014, the parties entered into a Second

Amendment to the Consent Agreement (“Second Amendment”) again amending paragraphs 16(f)(iii) and paragraph 16(f)(iv) regarding permissible work hours and times.

4. On May 15, 2015, the parties entered into a Third Amendment to the Consent Agreement (“Third Amendment”) again amending paragraph 16(f)(iii) regarding permissible work hours and adding paragraph 16(f)(v) regarding practice at one facility.

5. On April 26, 2016, the parties entered into a Fourth Amendment to the Consent Agreement (“Third Amendment”) again amending paragraph 16(f)(iii) regarding permissible work hours.

6. On June 3, 2016, the Board received a complaint from a relative of a patient alleging that Dr. Kendall had engaged in unprofessional conduct by making a statement that “he believed it was the family that was ‘crazy’” in a June 2, 2016 telephone conversation with the complainant’s spouse who contended that her brother needed psychiatric treatment. The Board docketed the complaint as CR16-133, and sent it to Dr. Kendall for a response.

7. By letter dated September 28, 2016, Dr. Kendall denied making the alleged statement and stated that he “asked her some basic questions, including whether there was a history of mental illness in her family,” the purpose of which was to gain information.

8. Further investigation resulted in the Board obtaining a recording of the telephone conversation during which Dr. Kendall stated

"I think the family may be crazy, too." Further investigation also indicated that Dr. Kendall completed the medical record note and signed the patient chart at 3:26 a.m. on June 24, 2016.

9. On June 10, 2016, the Board received a complaint from a patient alleging that he waited several hours to be seen in the emergency department on June 2, 2016, and that eventually he was seen by Dr. Kendall who apologized for the wait and told him that a "resident physician left without telling them." The patient stated that Dr. Kendall refused to provide the name of the resident physician and that he subsequently learned from Patient Advocacy Services that "no resident was involved or had any connection" to his case and that this "was misinformation from the provider." The Board docketed the complaint as CR16-148, and sent it to Dr. Kendall for a response.

10. By letter dated September 27, 2016, Dr. Kendall responded to the complaint. In his response, Dr. Kendall stated that based upon the system he had established with the resident physician, she had assigned the patient to him but did not see the patient or tell Dr. Kendall that she was unable to see the patient before she left at 11 p.m. Dr. Kendall explained to the Board that June 2, 2016, had been a very busy evening in the emergency department.

11. Further investigation by the Board revealed that the patient was discharged after 12:00 am and that Dr. Kendall signed the patient chart at home at 3:28 a.m. on June 24, 2016.

12. Dr. Kendall has been on leave of absence since July 2016.

13. On February 14, 2017, the Board reviewed Complaints CR16-133, CR16-148, and Dr. Kendall's compliance with the Consent Agreement, as amended, and voted to set these matters for an adjudicatory hearing. In addition, the Board voted to offer Dr. Kendall this Fifth Amendment to Consent Agreement to resolve these matters without further proceedings. Absent Dr. Kendall's acceptance of this Fifth Amendment to 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 April 3, 2017, these matters will be scheduled for an adjudicatory hearing.

AMENDMENT

14. Dr. Kendall, the Board, and the Department of the Attorney General hereby agree to amend the Consent Agreement dated February 12, 2013, as amended by the First Amendment dated July 30, 2013, as amended by Second Amendment dated March 27, 2014, as amended by the Third Amendment dated May 15, 2015, as amended by the Fourth Amendment dated April 26, 2016, and to resolve Complaints CR16-133 and CR16-148 as follows:

a) By amending the second sentence of paragraph 16 to read as follows:

Until this Consent Agreement is modified or rescinded in writing by all the parties hereto, Dr. Kendall's license to practice

medicine in the State of Maine shall be probationary for a period of least three (3) years beyond February 12, 2018, and subject to the following conditions/restrictions:

b) By inserting a new paragraph 16(h) as follows:

Prior to his reentry to clinical practice, Dr. Kendall shall obtain and provide to the Board: 1) a psychiatric evaluation by a Board approved provider; 2) a neurocognitive evaluation by a Board approved provider; 3) a written statement from Dr. Kendall's treating physician(s) informing the Board of his fitness to practice medicine; and 4) a letter of good standing from the MPHP. Following receipt of the required information, the Board shall review the information and determine, in its sole discretion, whether to amend, modify, or add any workplace restrictions or conditions. Dr. Kendall shall have an opportunity to submit any additional information in writing that he would like the Board to consider prior to the Board making its determination.

c) By inserting a new paragraph 16(i) as follows:

Dr. Kendall acknowledges that while this Consent Agreement together with any amendments is in effect he must directly communicate with the Board or Board staff and has the obligation to respond to any request for information or documentation within the timeframe specified or requested. Failure to comply with or respond to any request will be considered a violation of this Consent Agreement.

d) By inserting a new paragraph 16(j) as follows:

The duration of any probationary period shall be tolled for: a) any absence from the state that is in excess of thirty (30) continuous days; b) any absence from the state that is in excess of sixty (60) aggregate days in a single year; c) any period in which Dr. Kendall does not hold an active license. Dr. Kendall shall inform the Board in writing in advance of any such absence from the state.

15. Dr. Kendall acknowledges by his signature hereto that all

other terms and conditions of the Consent Agreement effective February 12, 2013, as amended, remain in full force and effect.

16. Dr. Kendall acknowledges by his signature hereto that he has read this Fifth Amendment, that he has had an opportunity to consult with an attorney before executing this Fifth Amendment, that he executed this Fifth Amendment of his own free will and that he agrees to abide by all terms and conditions set forth herein.

I, KEVIN M. KENDALL, M.D., HAVE READ AND UNDERSTAND THE FOREGOING FIFTH AMENDMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING I WAIVE CERTAIN RIGHTS INCLUDING THE RIGHT TO FURTHER HEARINGS REGARDING THIS FIFTH AMENDMENT. I ALSO WAIVE THE RIGHT TO APPEAL TO THE COURT REGARDING THIS AMENDMENT. KNOWING THIS, I SIGN IT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS FIFTH AMENDMENT, TOGETHER WITH THE CONSENT AGREEMENT, AS PREVIOUSLY AMENDED, CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN, OR OTHERWISE. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.

Dated: 10/4/17

Kevin M. Kendall
KEVIN M. KENDALL, M.D.

STATE OF MAINE
Comberland, SS.

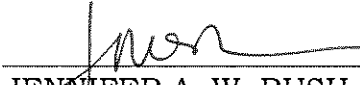
Before me this 4th day of October, 2017, personally appeared Kevin M. Kendall, M.D., who after first being duly sworn, signed the foregoing Fifth Amendment to Consent Agreement in my presence or affirmed that the signature above is his own.

Susan N. Pollard
Notary Public/~~Attorney at Law~~

Susan N. Pollard
Notary Public, Maine
Commission Expires May 17, 2019

My commission expires:

DATED: Oct 5, 2016



JENNIFER A. W. RUSH, ESQ.
Attorney for Kevin M. Kendall, M.D.

STATE OF MAINE BOARD
OF LICENSURE IN MEDICINE

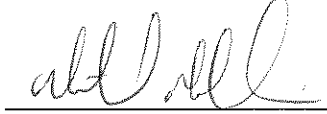
DATED: 11/20/17



MAROULLA S. GLEATON, M.D.,
Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: November 17, 2017



MICHAEL MILLER
Assistant Attorney General

Effective Date: 11/20/17