

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)
MICHAEL S. BERRY, M.D.) CONSENT AGREEMENT
Complaint No. CR17-169)

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 Michael S. Berry, M.D. The parties to the Consent Agreement are: Michael S. Berry, M.D. (“Dr. Berry”), 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. Berry has held a license to practice medicine in the State of Maine since June 9, 2006 (license number MD17153), and specializes in diagnostic radiology. Dr. Berry entered into a prior October 14, 2008 consent agreement with the Board for substance misuse, unprofessional conduct, and other conduct, the terms of which were completed on October 13, 2013.

2. On August 28, 2017, the Board of Licensure in Medicine (“the Board”) initiated a complaint following Dr. Berry’s self-report of a clinical privilege suspension and relapse of a substance use disorder on his application to renew his license. The Board docketed that complaint as CR17-169, and sent the complaint to Dr. Berry for a response.

3. Dr. Berry responded to the complaint by letter dated September 29, 2017. In his response, Dr. Berry provided an update regarding what he has done to address his relapse, including entering into a 5 year monitoring contract with the Maine Professionals Health Program ("MPHP"). Dr. Berry stated that he was never impaired at work and did not put any patients at risk.

4. By letter dated November 3, 2017, Dr. Berry was requested to specifically respond to the request contained in the complaint and provide an explanation regarding the substances that were abused and how they were obtained.

5. By letter dated November 21, 2017, Dr. Berry's legal counsel respectfully declined to provide the information requested.

6. Pursuant to 32 M.R.S. § 3282-A(2)(B), the Board may impose discipline 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.

7. Pursuant to 32 M.R.S. § 3282-A(2)(F), the Board may impose discipline for unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established for the practice of medicine.

8. At its meeting on December 12, 2017, the Board reviewed Complaint CR 17-169, and voted to set this matter for an adjudicatory hearing. In addition, the Board voted to offer Dr. Berry this Consent Agreement to resolve this matter without further proceedings. Absent Dr. Berry'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 17, 2018, the matter will be scheduled for an adjudicatory hearing.

COVENANTS

9. Dr. Berry admits the facts stated above and that such conduct constitutes grounds for discipline pursuant to 32 M.R.S. §§ 3282-A(2)(B) (for misuse of alcohol, drugs or other substances that may result in the licensee performing services in a manner that endangers the health or safety of patients), and (2)(F) (for engaging in unprofessional conduct).

10. As discipline for the conduct described above, Dr. Berry agrees to accept the following discipline, which shall remain in effect for at least five (5) years subject to the following terms and conditions:

a) Dr. Berry must comply with all requirements of and maintain a monitoring agreement with the MPHP or an equivalent program approved by the Board ("Physician Health Program"), which terms shall include abstinence from all non-prescribed mind-altering substances and toxicological testing, the terms of which are fully incorporated herein as if fully set forth. Dr. Berry shall ensure that the Board has received a copy of his Physician Health Program monitoring agreement, and any amendments or revisions thereto.

Dr. Berry hereby authorizes the Physician Health Program to disclose and release to the Board all information obtained by Physician Health

Program relating to his participation with the Physician Health Program, which authorization shall remain in effect for any period during which he has a license to practice medicine in the State of Maine. Dr. Berry shall execute any and all releases necessary for the Board, Board staff, and the Board's assigned Assistant Attorney General to: a) communicate directly with the Physician Health Program regarding his compliance with that program; b) review and obtain copies of any and all documentation regarding his participation in the Physician Health Program; c) communicate directly with anyone who is involved with his care and treatment; and d) review and obtain copies of any and all documentation regarding his medical care and treatment for substance misuse issues.

Within forty-eight (48) hours of being informed that a toxicology test result has been reported as positive for alcohol or a non-prescribed substance, Dr. Berry shall report such test result to the Board.

So long as this Consent Agreement remains in effect, Dr. Berry agrees and understands that any positive toxicology result confirmed by a blood, hair or nail toxicology test, that is reported to the Board for alcohol or any drug not known to be prescribed to him, shall result in the automatic and immediate suspension of his license to practice medicine in Maine, which suspension shall continue so long as determined by the Board, in its sole discretion, and is not appealable.

b) Dr. Berry shall notify the Board within three (3) days of: a) any arrest, summons, information or indictment for any crime; b) any

summons or other charge for any civil violation that involves alcohol or drugs, including driving or operating under the influence; c) any conviction or court decision pertaining thereto; and d) any loss, suspension, revocation or limitation of employment or clinical privileges with any health care provider or entity.

c) While this Consent Agreement is in effect, Dr. Berry must communicate directly with the Board or Board staff, and must 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) The duration of any period during which the terms and conditions of the Consent Agreement apply shall be tolled for: a) any absence from the state that exceeds thirty (30) continuous days; b) any absence from the state that exceeds sixty (60) aggregate days in a single year; c) any period in which Dr. Berry does not hold an active license; and d) any period that Dr. Berry takes a leave of absence from the practice of medicine. Dr. Berry shall provide the Board with advance written notice of any absence from the state as described above or of any leave of absence from the practice of medicine within two (2) business days, unless circumstances exist that are beyond Dr. Berry's control which do not reasonably permit notice to be provided within two (2) business days in which case notice shall be provided as soon as circumstances allow and may be provided by a family member or representative of the Physician Health Program.

e) Dr. Berry shall provide a copy of this Consent Agreement to any health care provider or entity that engages him to provide medical services within ten (10) days of the effective date of this Consent Agreement or of being engaged to provide medical services.

f) After the expiration of five (5) years, Dr. Berry may request that the Board terminate the terms and conditions of this Consent Agreement. Upon receipt of such request, the Board shall review all information relevant to the request, and shall in its sole discretion, approve or deny the request which may include maintaining, modifying, or eliminating the terms and conditions of this Consent Agreement for a specified term.

g) Dr. Berry shall not prescribe any medications to himself or family members.

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

12. 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.

13. Any conduct of Dr. Berry described herein may be considered in future Board action(s) as evidence of a pattern of misconduct.

14. Violation by Dr. Berry 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.

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

16. 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.

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. Berry 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. Berry has been represented by Ronald W. Schneider, Jr., 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, MICHAEL S. BERRY, 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: 1/23/18 Michael S Berry
MICHAEL S. BERRY, M.D.

STATE OF Maine
_____, S.S.

Personally appeared before me the above-named Michael S. Berry, 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: 1/23/18 Michelle M. Parkham
NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: 9.24.22

DATED: 1/26/18 RCS
RONALD W. SCHNEIDER, JR., Esq.
Counsel for Michael S. Berry, M.D.

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED:

2/13/18




MAROULLA S. GLEATON, M.D., Chair

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED:

February 13, 2018



MICHAEL MILLER
Assistant Attorney General

Effective Date:

February 13, 2018