

STATE OF MAINE BOARD OF LICENSURE IN MEDICINE

In Re: Charles D.M. Clemetson, M.D. )  
 )  
Complaint Nos. 11-511 and 12-24 )

**DECISION AND ORDER**

**I. PROCEDURAL HISTORY**

Pursuant to the authority found in 32 M.R.S. § 3282-A and 10 M.R.S. § 8003(5), the State of Maine Board of Licensure in Medicine (“Board”) met in public session at its offices in Augusta, Maine, on June 11, 2013. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether grounds existed to impose discipline on licensee Charles D.M. Clemetson, M.D.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were David Andrews, M.D.; Cheryl Clukey; David Dumont, M.D.; Dana Dyer; Maroulla Gleaton, M.D.; David Jones, M.D.; David Nyberg, Ph.D.; and Chair Gary Hatfield, M.D. Louisa Barnhart, M.D., was recused from the matter based on her professional relationship with a witness. Dr. Clemetson was present and was accompanied by his sister, Claudia Booth. Dennis Smith, Esq., Assistant Attorney General, represented the State of Maine. Rebekah J. Smith, Esq., served as Presiding Officer. The hearing was held in accordance with the requirements of the Administrative Procedures Act, 5 M.R.S. § 9051 et seq.

State Exhibits #1 to #23 were admitted without objection. Licensee Exhibits #1 through #6 were admitted without objection except for Licensee Exhibit #3, upon which the State’s objection on the basis of relevance was overruled. The Board took notice of its statutes and rules and confirmed that no participating members had any conflict of interest or bias that would prevent them from rendering an impartial decision in this matter. Each party presented an opening statement. The State presented as witnesses William Matuzas, M.D., and the Licensee. Each party

made a closing statement. The Board then deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the allegations against Dr. Clemetson.

## **II. FINDINGS OF FACTS**

1. The Licensee was first licensed by the Board in 1994. (State Exh. #8.) In 2001, his practice underwent a targeted assessment pursuant to a Decision and Order of the Board dated June 12, 2001. (State Exh. #6; State Exh. #21.) One of the findings of the assessment was that the Licensee's medical notes were handwritten and frequently illegible. (State Exh. #21.) The resulting recommendation was that the Licensee should make sure that his documentation could be read and if possible he should dictate notes. (State Exh. #21.) The Licensee's practice was monitored until 2007. (State Exh. #3; Testimony of Licensee.)
2. By notice of hearing dated April 26, 2013, the Licensee was notified that a hearing on complaints CR 11-511 and CR 12-24 would be held on June 11, 2013. (State Exh. #1.) The allegations against the Licensee detailed in the notice of hearing were that he engaged in unprofessional conduct in violation of 32 M.R.S. § 3282-A(2)(F) by failing to create and maintain adequate medical records that met the standard of care for medical record keeping with regard to seven psychiatric patients under his care. (State Exh. #1.)
3. Dr. William Matuzas, a physician specializing in psychiatry, testified as an expert for the State. (Testimony of Matuzas.) Dr. Matuzas had worked at Maine General Medical Center since June 1999 providing assessment and treatment of in-patients and out-patients, consulting on medical and surgical services, serving as acting medical director, and serving on various committees. (Testimony of Matuzas.)

4. In January 2013, at the request of the Board, Dr. Matuzas reviewed seven of the Licensee's patient medical records from 2008 forward. (Testimony of Matuzas; State Exh. #10-#17.)  
Dr. Matuzas also reviewed the Licensee's typed summaries of those records, which the Licensee generated on March 29, 2012. (Testimony of Matuzas; State Exh. #19.)
5. On February 20, 2013, Dr. Matuzas issued a report summarizing his review. (State Exh. #2.) Dr. Matuzas found that the Licensee's clinical management of his patients was appropriate within the very broad standards of care within contemporary psychiatric practice. (State Exh. #2.) Dr. Matuzas also found, however, that the Licensee's documentation was generally illegible, fragmentary, and disorganized. (State Exh. #2.) Dr. Matuzas found that the patient records provided only minimal insight into the Licensee's diagnoses and medical decision-making, while any insight was burdened by substantial ambiguity. (State Exh. #2.) Dr. Matuzas observed that included in the Licensee's records were words, phrases, drawings of various kinds, which were often illegible and were not organized in any kind of coherent, narrative manner. (Testimony of Matuzas.) Dr. Matuzas noted that he would not have been able to discern the course of treatment and the clinical reasoning behind the treatment in the records without the Licensee's retrospective typed summaries. (State Exh. #2; Testimony of Matuzas.)
6. With regard to the record of patient E.G. at Exhibit #11, for example, Dr. Matuzas was not able to discern the Licensee's assessment, diagnosis, differential diagnosis, or reasoning behind prescription changes. (State Exh. #11; Testimony of Matuzas.) Dr. Matuzas found the Licensee's handwritten records within the record of patient E.G. to be illegible and fragmented. (Testimony of Matuzas.) With regard to the record of patient B.H. at Exhibit #12, Dr. Matuzas found the record to be incomplete without a notation of the Licensee's

impression, diagnosis, general clinical status, or plan of treatment. (State Exhibit #12; Testimony of Matuzas.) Dr. Matuzas observed that all seven of the Licensee's patient records that he reviewed contained similar problems. (Testimony of Matuzas.) Dr. Matuzas noted that fragmentary, incomplete records such as those at Exhibits #11 through #18 put patients at risk because colleagues trying to fill in for the Licensee would be at a loss to understand the assessment and reasoning that had gone into the care and would be unable to maintain continuity of care in an efficient manner. (Testimony of Matuzas.) Dr. Matuzas also observed that incomplete and illegible records put the Licensee at risk of not being able to show that he had provided adequate care. (Testimony of Matuzas.)

7. With regard to the record keeping in the seven medical records reviewed by Dr. Matuzas, he concluded that the records did not meet the standard of care for medical record keeping. (State Exh. #2.) At hearing, the Licensee agreed that his medical records, without the retrospective typed summaries, did not meet the standards of care for record keeping. (Testimony of Licensee.) Dr. Matuzas opined that even with the retrospective summaries typed by the Licensee, which were not part of the records but helped him understand the records, the records fell short of meeting standards of care. (Testimony of Matuzas.) Dr. Matuzas observed that the standard in medical record keeping was that the records be contemporary, legible, complete, and organized, and provide a means of evaluating the practitioner's evaluation of patients and their clinical reasoning and treatment planning. (State Exh. #2; Testimony of Matuzas.)
8. Dr. Matuzas agreed that the appropriate standard of care could be summarized consistent with the Primer on Medical Records developed by the American Psychiatric Association listing the major contents of a medical file and stating that the "primary underlying

philosophy of documentation is that good documentation supports quality patient care and is the primary means of demonstrating that [a psychiatrist] practiced responsible medicine during the course of treatment.” (State Exh. #20; Testimony of Matuzas.)

9. Dr. Matuzas concluded that the Licensee’s maintenance of his medical records amounted to questionable professional conduct. (State Exh. #2.) Dr. Matuzas concluded that the deficiencies in the Licensee’s record keeping were not uncommon among psychiatrists and that he was not sure if they amounted to professional misconduct, choosing to defer to the Board on the ultimate question of whether the Licensee committed unprofessional conduct. (State Exh. #2; Testimony of Matuzas.)
10. The Licensee last took a course in risk management during medical school. (Testimony of Licensee.) He has never taken a course in medical record keeping. (Testimony of Licensee.)
11. At hearing, the Licensee testified that he had begun to implement a plan to improve his record keeping including a voice-text software program and an internet based records management program. (Testimony of Licensee.)

### **III. GOVERNING STATUTES AND RULES**

1. For each violation of applicable laws, rules or conditions of licensure, the Board may issue warnings, censures or reprimand; suspend a license for up to 90 days for each violation of applicable laws, rules, and conditions of licensure; revoke a license; impose a civil penalty of up to \$1500 for each violation of applicable laws, rules and conditions of licensure; or impose conditions of probation upon a licensee. 10 M.R.S. § 8003(5)(A-1).
2. In particular, the Board may impose discipline upon a licensee if the Board finds that the licensee committed unprofessional conduct. 32 M.R.S. § 3282-A(2)(F). A licensee is

considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice for which the licensee is licensed. 32 M.R.S. § 3282-A(2)(F).

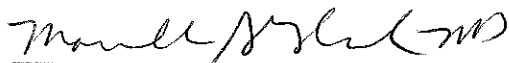
#### **IV. CONCLUSIONS OF LAW**

The Board, considering the above facts and those alluded to in the record but not referred to herein, determined that it had jurisdiction over Dr. Charles Clemetson and held as follows:

1. By a vote of 8-0, that Dr. Charles Clemetson had engaged in unprofessional conduct by violating a standard of professional behavior in violation of 32 M.R.S. § 3282-A(2)(F).
2. By a vote of 8-0, that Dr. Charles Clemetson shall undergo five years of probation during which time he will be monitored by a practice monitor approved by the Board who will review all aspects of the Licensee's practice including record keeping, time management, and appropriate psychiatric care. In addition, as a term of probation, Dr. Clemetson must complete a course in medical record keeping. Within one month of this Decision and Order, Dr. Clemetson must identify for the Board's approval the individual who will be the practice monitor and the record keeping course he will undertake. Within three months of this Decision and Order, Dr. Clemetson must have completed the record keeping course and the practice monitor must provide his or her first report.

So Ordered.

Dated: July 11, 2013



Maroulla Gleaton, M.D.

Chair, State of Maine Board of Licensure in Medicine

#### **V. APPEAL RIGHTS**

Pursuant to the provisions of 10 M.R.S. § 8003(5) and 5 M.R.S. § 11002(3), any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30

days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by certified mail, return receipt requested, upon the State of Maine Board of Licensure in Medicine, all parties to the agency proceedings, and the Attorney General.



JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE  
137 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0137

SHERIDAN R. OLDHAM, M.D.  
CHAIRMAN

RANDAL C. MANNING  
EXECUTIVE DIRECTOR

November 14, 2007

Charles D.M. Clemetson, M.D.  
39 Foreside Rd.  
Cumberland Foreside, ME 04110

***RE: Request for Unrestricted License***

Dear Dr. Clemetson:

This letter is to inform you that at the November 13, 2007 Board meeting The Maine Board of Licensure in Medicine voted to release you from the terms of the Consent Agreement, effective November 13, 2007.

The Board will make reports to the National Practitioner Data Bank and to the Federation of State Medical Boards documenting your successful fulfillment and the resulting closure of the Consent Agreement. Please feel free to contact me @ 207-287-6931 if you have any questions.

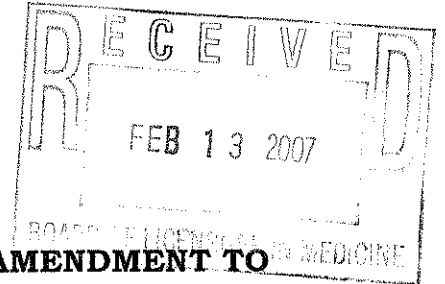
Sincerely,

Maria A. MacDonald  
Investigator

/mm  
Cc: Kenneth Lehman, Esq.  
Maureen Lathrop ✓  
CR 06-247



**STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE**



**IN RE:** ) **FIRST AMENDMENT TO**  
 ) **CONSENT AGREEMENT**  
**CHARLES D. M. CLEMETSON, M.D.** ) **FOR**  
 ) **CONDITIONAL LICENSURE**

This document is a First Amendment to a Consent Agreement effective November 10, 2004, regarding the issuance of a conditional active license to practice medicine in the State of Maine to Charles D. M. Clemetson, M.D. The parties to this first amendment of that Consent Agreement are: Dr. Charles D. M. Clemetson, M.D. ("Dr. Clemetson"), the State of Maine Board of Licensure in Medicine ("the Board"), and the Office of the Attorney General (the "Attorney General").

**BACKGROUND**

1. On November 10, 2004, the parties entered into a Consent Agreement For Conditional License.
2. On January 9, 2007, the Board reviewed Dr. Clemetson's compliance with the terms and conditions of the Consent Agreement dated November 10, 2004. That review included an evaluation of Dr. Clemetson's compliance with: (a) the requirement that he practice medicine under the supervision/monitoring of a psychiatrist approved by the Board and pursuant to a contractual relationship approved by the Board; and (b) the requirement that he participate in psychotherapy with a Board-approved-therapist. The Board also reviewed correspondence from Dr. Clementon's attorney dated January 8, 2007, which represented

that Dr. Clemetson was willing to enter into an agreement for the extension of the time requirements imposed by the original Consent Agreement.

3. Following its review, the Board voted to offer Dr. Clemetson this First Amendment to the Consent Agreement For Conditional License dated November 10, 2004. The Board also voted to approve Dr. Benjamin Crocker, M.D. as the supervising psychiatrist for Dr. Clemetson under the First Amendment to the Consent Agreement For Conditional Licensure. Finally, the Board voted not to approve Dr. Charles L. Johnson, M.D. as a supervising psychiatrist for Dr. Clemetson under the First Amendment to the Consent Agreement For Conditional Licensure. Absent Dr. Clemetson's acceptance of this First Amendment by signing and dating it in front of a notary public and returning it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before February 5, 2007, the Board shall set this matter for hearing.

4. Dr. Clemetson has cooperated with the Board and the Office of the Attorney General.

**AMENDMENT**

5. Dr. Clemetson, the Board, and the Office of Attorney General hereby agree to amend the Consent Agreement For Conditional License dated November 10, 2004 as follows:

a. Paragraph 1 under "Agreement" is amended to read as

follows:

Dr. Clemetson will restrict his practice of medicine to working in a contractual relationship or employment situation in which he is not the only psychiatrist or physician. Because he has been out of practice since May 2002, Dr. Clemetson's re-entry into practice will be monitored by his employer or by another psychiatrist or physician who is approved by the Board to monitor his practice. Dr. Clemetson's contractual relationship or employment relationship with the monitoring psychiatrist or physician must also be approved by the Board prior to Dr. Clemetson's return to the active practice of medicine. Dr. Clemetson agrees that the Board will not consider any application from Dr. Clemetson to modify or terminate any provisions of this paragraph prior to November 10, 2007.

b. Paragraph 10 under "Agreement" is amended to read

as follows:

In the event that Dr. Clemetson successfully practices medicine under the terms and conditions of this Consent Agreement (*i.e.* does not violate any of its provisions or engage in any other conduct that constitutes grounds for discipline) until November 10, 2007, he may request an unconditional license. Dr. Clemetson agrees that the Board will not consider any application from Dr. Clemetson to modify or terminate any provisions of this Consent Agreement prior to November 10, 2007.

6. Dr. Clemetson acknowledges by his signature hereto that he has read this First Amendment to the Consent Agreement For Conditional License, that he has had an opportunity to consult with an attorney before executing this First Amendment, that he executed this First Amendment of his own free will and that he agrees to abide by all terms and conditions set forth herein.

I, CHARLES D. M. CLEMETSON, M.D., HAVE READ AND UNDERSTAND THE FOREGOING FIRST AMENDMENT TO CONSENT AGREEMENT 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 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 FIRST AMENDMENT, TOGETHER WITH THE CONSENT AGREEMENT, 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: 2/12/07



CHARLES D. M. CLEMETSON, M.D.

STATE OF MAINE

Cumberland, SS.

Before me this 12<sup>th</sup> day of February, 2007, personally appeared Charles D. M. Clemetson, M.D., who after first being duly sworn, signed the foregoing First Amendment to Consent Agreement in my presence or affirmed that the signature above is his own.



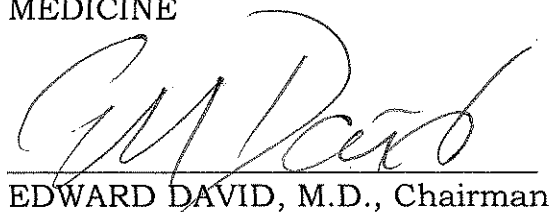
~~Notary Public~~ Attorney at Law

My commission expires: ME BAR # 3283

STATE OF MAINE  
BOARD OF LICENSURE IN  
MEDICINE

DATED:

2/13/07



EDWARD DAVID, M.D., Chairman

STATE OF MAINE OFFICE  
OF THE ATTORNEY GENERAL

DATED: 2/13/07



\_\_\_\_\_  
DENNIS E. SMITH  
Assistant Attorney General

Effective Date:

.....

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

IN RE: ) CONSENT AGREEMENT  
CHARLES D. M. CLEMETSON, M.D. ) FOR  
 ) CONDITIONAL LICENSE

This document is a Consent Agreement and Order, effective when signed by all parties, regarding the issuance of a conditional active license to practice medicine in the State of Maine to Charles D. M. Clemetson, M.D. The parties to the Consent Agreement are: Charles D. M. Clemetson, M.D. (the "Licensee"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Department of Attorney General.

FACTUAL BACKGROUND

1. Charles D. M. Clemetson, M.D. has been licensed to practice medicine in the state of Maine since 1994 and has specialized in the practice of psychiatry.
2. In 2001, Dr. Clemetson was censured by the Board for unprofessional conduct and placed on probation for one year.
3. In 2002, Dr. Clemetson signed a Consent Agreement which changed his licensure status from active to inactive. The Consent Agreement resolved an ongoing adjudicatory hearing into allegations of failure to comply with his 2001 Consent Agreement and a question of possible substance abuse raised by a Board-ordered

evaluation which is disputed by the Licensee. This issue was unresolved by subsequent evaluations.

4. Copies of the 2001 and 2002 Consent Agreements are attached and incorporated into this Agreement.

5. On February 10, 2004, the Licensee appeared before the Board on his application for reinstatement of his license to active status. The Board, Dr. Clemetson and the Department of Attorney General have agreed by this Consent Agreement to reinstatement of Dr. Clemetson's conditional license.

#### AGREEMENT

Subject to the following terms and conditions, the Board voted to issue Dr. Clemetson a conditional license and Dr. Clemetson agreed to abide by these terms:

1. Dr. Clemetson will restrict his practice to working in a contractual relationship or employment situation in which he is not the only psychiatrist or physician. Because he has been out of practice since May 2002, Dr. Clemetson's re-entry into practice will be monitored by his employer or the other psychiatrist or physician in the practice. He will be subject to peer supervision within his practice. The Licensee's contractual relationship or employment arrangement must be approved by the Board before Dr. Clemetson begins working. Dr. Clemetson may not apply for termination or modification of this paragraph until one (1) year after he resumes practicing medicine.

2. If the Licensee's employer, contractual or peer supervisor raises a

concern about Dr. Clemetson's cognitive functioning, they will notify the Board. The Board may then order a neuropsychiatric evaluation of Dr. Clemetson pursuant to 32 M.R.S.A. § 3286.

3. Dr. Clemetson will participate in psychotherapy with a Board-approved therapist. He will meet with the therapist a minimum of every two (2) weeks for two (2) years. If, in the therapist's judgment, the frequency of therapy sessions should be changed before the end of the two (2) year period, the therapist shall notify the Board and request approval for any recommended changes.

4. The Licensee will abstain from consuming alcohol and mood or mind altering substances or medications, illicit or not (collectively referred to as "illicit substances") for term of this agreement. Dr. Clemetson may only take medications that are prescribed by a physician who is knowledgeable about the Licensee's disciplinary history with the Board. Further, Dr. Clemetson may not prescribe any medication for himself or family members.

5. For one (1) year from the effective date of this Agreement, Dr. Clemetson will undergo weekly random urine monitoring. For one year after the first year of monitoring, Dr. Clemetson will provide random monthly urine specimens. All testing costs will be paid for by the Licensee. The monitoring will occur as follows:

- (a) The Licensee will submit the name of a physician for Board approval who will be present and observe the Licensee's production of a urine specimen;



- (b) The Licensee will provide a urine specimen within four (4) hours of the time requested by the Board-approved monitoring physician, and shall provide a sufficient quantity of urine to provide for a second test of the sample, should that prove necessary.
- (c) The specimen will be handled in a legal chain of custody and be analyzed at a Board approved forensic laboratory.
- (d) If a more reliable method for urine monitoring becomes available and approved by the Board, the Licensee may submit a written request for a change in his monitoring method.

6. If a urine specimen produced pursuant to paragraph 5 tests positive for the presence of an illicit substance, the positive test must be reported to the Board within 24 hours by both Dr. Clemetson and his monitoring physician. The report may be in writing or by telephone. If the Board decides that Dr. Clemetson poses a risk of harm to patients, then the Board may take any actions permitted by statute, as well as an immediate, automatic suspension of his license, if the Board deems that appropriate. The Board will hold a hearing within thirty (30) days of the notice of suspension.

7. Dr. Clemetson will appear before the Board for approval of his employment or other work plan, monitoring under paragraph 5 and therapy before his conditional license will become effective. If the Licensee leaves the state, he is required maintain his monitoring schedule under paragraph 5 and will comply with all terms of

this Agreement while he is out of state. If Dr. Clemetson moves out of state, he must report this move to the Board.

8. The Licensee agrees and understands that during the term of this agreement, the Board will have complete access to his present and future personal medical and counseling records regarding matters related to this Agreement and to all otherwise confidential data related to treatment or monitoring under this Agreement.

9. The Licensee agrees that during the term of this Agreement, he will provide a copy of this Consent Agreement to any employers, partners or peers with whom he intends to practice medicine. He will also provide a copy of this Agreement to any person involved in the monitoring, treatment or counseling of him pursuant to the terms of this Agreement.

10. After successfully completing one (1) year of practice under this Consent Agreement, Dr. Clemetson may apply for an unconditional license.

11. The parties agree that this Consent Agreement resolves all matters involving the Licensee that are pending before the Board.

12. The Consent Agreement may be modified by an agreement in writing signed by the parties.

13. The Licensee waives any further hearings before the Board or appeal to the Courts regarding all terms and conditions of this Consent Agreement.

14. Dr. Clemetson has been represented in this proceeding by Kenneth W.

Lehman, Esq., his attorney, who has participated in the negotiation of this Consent Agreement on his behalf.


I, CHARLES D. M. CLEMETSON, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I SIGN IT 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: 10/15/04

  
\_\_\_\_\_  
CHARLES D. M. CLEMETSON, M.D.

STATE OF MAINE BOARD OF  
LICENSURE IN MEDICINE

Dated: 11-10-04

By:   
\_\_\_\_\_  
Edward David, M.D., Chairman

STATE OF MAINE DEPARTMENT  
OF ATTORNEY GENERAL

Dated: 11/10/04

By: Ruth E. McNiff  
Ruth E. McNiff  
Assistant Attorney General

APPROVED and EFFECTIVE:

11/10/04

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STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

COPY

IN RE: Charles D.M.Clemetson, M.D. )  
  )     **CONSENT AGREEMENT**  
  )     **FOR INACTIVE LICENSE**  
  )

This document is a Consent Agreement and Order, effective when signed by all parties, regarding discipline and the modification of a license to practice medicine in the State of Maine held by Charles D.M. Clemetson, M.D. The parties to the Consent Agreement are: Charles D.M. Clemetson, M.D. (the "Licensee"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Department of Attorney General.

**FACTUAL BACKGROUND**

1. Charles D.M. Clemetson, M.D., has been licensed to practice medicine in the State of Maine since 1994 and has specialized in the practice of psychiatry.

2. In June, 2001, the Board issued a Decision and Order censuring the Licensee for unprofessional conduct and placing him on probation for one year. During the probationary period, the Licensee was required to hire an expert in office management and implement recommendations made by the evaluator.

3. In 2002, the Board received reports from Dr. Clemetson's office staff which raised questions regarding Dr. Clemetson's management of his office and the possibility of a substance abuse problem. The Board ordered an evaluation which was performed by Jonathan Siegel, Ph.D. in April, 2002. Dr. Siegel concluded that Dr. Clemetson should not practice independently until the substance abuse issue was addressed and resolved. On the basis of this report, the Board ordered the suspension of Dr. Clemetson's license to practice medicine and scheduled an Adjudicatory Hearing. This Consent Agreement resolves all issues related to the Adjudicatory Hearing noticed on May 16, 2002 and begun on July 9, 2002.

**FINDINGS OF FACT**

The Board and the Licensee agree to the following findings of facts based on the evidence which was and would be offered and admitted into evidence at the Adjudicatory Hearing.

1. Dr. Clemetson failed to comply with the terms of the Board decision and Order dated June 12, 2001. He did not implement the recommendations of the office management plan approved by the Board. This violation of the Board's order constitutes unprofessional conduct as defined by 32 M.R.S.A. §3282-A(2)(F).

2. Dr. Clemetson's behavior is evidence of an undiagnosed psychological or psychiatric problem and /or an untreated substance abuse problem as defined by DSM IV 305.00 that is subject to discipline pursuant to 32 M.R.S.A. §§3282-A(2)(B) and/or(C).

### AGREEMENT

In lieu of continuing with the Adjudatory Hearing which began on July 9, 2002, the Licensee and the Board agree that:

1. The summary suspension ordered by the Board on May 11, 2002 is terminated and the status of Dr. Clemetson's license will be changed from **ACTIVE** to **INACTIVE** on the effective date of this Agreement. He will no longer practice medicine or write prescriptions.
2. Dr. Clemetson will notify <sup>The BOARD</sup> if he decides to move out of state. If he applies for a medical license in any other jurisdiction, he will notify the Board and provide the other jurisdiction with copies of his Consent Agreements.
3. If Dr. Clemetson decides to apply for reinstatement to an active license, he will first undergo a thorough inpatient substance abuse evaluation at a facility approved by the Board and follow whatever recommendations and treatment suggested by the facility. In the event that the evaluation results in a diagnosis of a substance abuse problem, he must document six months of monitored sobriety through participation in the Physicians' Health Program. Regardless of the diagnosis with respect to substance abuse, he must demonstrate participation in counseling and therapy to address any other behavioral or psychological problems. By signing this Agreement, Dr. Clemetson affirms his intention to seek treatment for these issues.
4. In the event that Dr. Clemetson applies for an Active License, Dr. Clemetson agrees to provide the Board with releases for all substance abuse evaluation and treatment as well as all psychological and medical, medical records.
5. Dr. Clemetson has the burden of demonstrating and proving that the conditions that give rise to this order have been professionally diagnosed and treated and that he is not a risk to patients. He will appear before the Board to determine whether his license will be reinstated pursuant to the terms and conditions imposed by the Board.

REU  
JHRP  
C.D.M.C.

6. The Licensee has been represented by an attorney who has participated in the Adjudicatory Hearing and negotiated this Consent Agreement on his behalf.
  
7. In regard to all terms and conditions of this Consent Agreement, the Licensee waives any further hearings or appeal to the Courts regarding this Agreement. The Licensee agrees that this Consent Agreement and Order is a final order resolving the Suspension of License and Adjudicatory Hearing Notice dated May 16, 2002.

I, CHARLES D.M. CLEMETSON, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT 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.

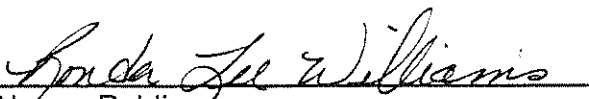
Dated: 9/9/02

  
CHARLES D.M. CLEMETSON, M.D.

STATE OF MAINE  
Cumberland, ss.

Dated: 9/9/02

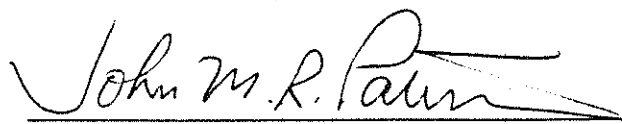
Personally appeared before me the above named Charles D.M. Clemetson, M.D. and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

  
Notary Public

RONDA LEE WILLIAMS  
Notary Public, Maine

My Commission Expires: My Commission Expires April 26, 2009

Dated: 9/10/02

  
Counsel to Dr. Charles D.M. Clemetson

STATE OF MAINE BOARD OF  
LICENSURE IN MEDICINE

Dated: 9-10-02

  
Edward David, M.D., Chairman

STATE OF MAINE DEPARTMENT  
OF ATTORNEY GENERAL

Dated: 9-10-02

  
Ruth E. McNiff  
Assistant Attorney General

EFFECTIVE DATE: 9-10-02



COPY

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Licensure Disciplinary Action )  
 )  
 Charles D. M. Clemetson M.D. ) DECISION AND ORDER

PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S.A. Sec. 3263, *et seq.*, 5 M.R.S.A. Sec. 9051, *et seq.* and 10 M.R.S.A. Sec. 8001, *et seq.*, the Board met in public session at the Board's offices located in Augusta, Maine on June 12, 2001 for the purpose of determining whether Dr. Clemetson engaged in unprofessional and incompetent conduct in the practice of medicine by making inappropriate comments to his patient on March 15, 2000. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Edward David, M.D., J.D., Chairman, Bettsanne Holmes (public representative), Kimberly K. Gooch, M.D., Sandra E. Tuttle (public representative), Sheridan R. Oldham, M.D., Harry W. Bennert, Jr., M.D., Harold L. Jones (public member) and Ulrich B. Jacobsohn, M.D. Ruth McNiff, Ass't. Attorney General, presented the State's case. Dr. Clemetson appeared *pro se*. James E. Smith, Esq. served as Presiding Officer.

State's Exhibits 1-5 and Respondent's Exhibit 1 were admitted into the Record. Following opening statements, the taking of testimony, submission of exhibits, and the waiver of closing arguments by both parties, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

FINDINGS OF FACT

Charles Clemetson, M.D., has been a licensed psychiatrist since 1994. On February 24, 2000, he evaluated a 14 year old who had been diagnosed with obsessive compulsive disorder, attention deficit hyperactivity disorder and Tourette's syndrome. Although the patient's appointment was scheduled for 8:00 a.m., Dr. Clemetson did not become available until 8:45 a.m. On March 15, 2000, the patient appeared on time for the patient's 9:15 a.m. appointment with the Respondent. On this occasion, Dr. Clemetson kept the patient and the patient's mother waiting 55 minutes. The patient mentioned to the Respondent's receptionist that the doctor should not keep patients waiting and the receptionist responded that the patient should take the matter up with Dr. Clemetson.

Shortly thereafter, at the beginning of the patient's session with the licensee, the patient told Dr. Clemetson that the patient "was unhappy for waiting a while and that [the patient] didn't like waiting." This remark earned the adolescent a brief lecture about patience, respect for adults and superiors from Dr. Clemetson. Additionally, Dr.

Clemetson told his patient that "he could make a prescription to make the patient drop dead and no one would know any different." The patient and the patient's mother both testified that they did not interpret these comments to be made in a joking or less than serious manner. In fact, the patient stated that the comments scared the patient because the patient was taking prescription medications at the time.

The Board also heard the testimony of Judy A. Burk, M.D. Dr. Burk is a physician who has practiced psychiatry since 1983. Based on her experience and training, as well as her review of the documents and matters stated in the Record and the testimony at hearing, Dr. Burk rendered her opinion that Dr. Clemetson's comments had violated at least one section of the applicable standard of care. That standard is found in Chapter 10.01 of the American Medical Association's (AMA) Code of Medical Ethics. (Exhibit 5) The relevant section reads as follows:

---

3. "The patient has the right to courtesy, respect, dignity, responsiveness, and timely attention to his or her needs."

In support of her opinion, Dr. Burk stated that she was unaware of any training in medicine or psychiatry that teaches or approves of telling a child patient that the health professional has the power to kill him/her. She added that Dr. Clemetson's comments were inappropriate under any circumstances or in any context.

Dr. Clemetson testified that as a psychiatrist he is responsible for his communication. He added that his practice has "run late" for several years. Dr. Clemetson regretted the comments he made and apologized to the patient and the patient's parents at the hearing. Moreover, he stated that he was receiving professional therapy in order to assist him in communicating more effectively with his patients.

### STATUTES

32 M.R.S.A. Sec. 3282-A(2)(E)(1). "Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has: (1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient to the general public."

32 M.R.S.A. Sec. 3282-(A)(2)(F). "Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violated a standard of professional behavior that has been established in the practice for which the licensee is licensed."

### CONCLUSIONS OF LAW

The Board, by a vote of 8-0, concluded that Dr. Clemetson violated the provisions of Chapter 10 of the American Medical Association Code of Ethics and 32 M.R.S.A. Secs. 3282-A(2)(E)(1) and (F) by making the above noted inappropriate

comments to his patient and the patient's mother and not attending to his patients in a timely manner.

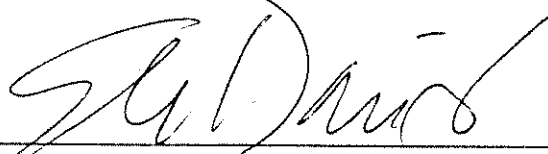
The Board, by a vote of 8-0, imposed the following sanctions:

1. A letter of censure.

2. Probation for a minimum of one year during which time Dr. Clemetson shall hire an expert in the management of an efficient psychiatric practice especially to correct the issue of his failure to attend to patients on a timely basis. The management expert shall submit to the Board within 120 days of this Decision a written plan to correct the above deficiency and Dr. Clemetson shall ensure that implementation of the plan does not result in the abandonment of patients. The Board, if it deems necessary, shall schedule a hearing within one year of the date of this Decision to determine whether the terms of probation have been met. If not, the Board retains the right and power to assess further discipline on the Respondent.

**SO ORDERED.**

Dated: June 12, 2001

  
\_\_\_\_\_  
Edward David, M.D., J.D., Chairman  
Maine Board of Licensure in Medicine

### APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3 and 10 M.R.S.A. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Maine District Court within 30 days of receipt of this Order.

The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.



STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE  
137 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0137

EDWARD DAVID, M.D.J.D.  
CHAIRMAN

ANGUS S. KING, JR.  
GOVERNOR

RANDAL C. MANNING  
EXECUTIVE DIRECTOR

May 16, 2002

Charles D. Clemetson, M.D.  
121 Main Street  
Yarmouth, ME 04096  
CERTIFIED MAIL # 7002 0460 0002 7946 0616  
RETURN RECEIPT REQUESTED

And

Charles D. Clemetson, M.D.  
113 Fickett Road  
Pownal, ME 04069  
CERTIFIED MAIL # 7002 0460 0002 7946 0623  
RETURN RECEIPT REQUESTED

And

Charles D. Clemetson, M.D.  
31 Upland Lane  
Yarmouth, ME 04096  
CERTIFIED MAIL # 7002 0460 0002 7946 0630  
RETURN RECEIPT REQUESTED

**RE: Automatic Suspension of License and  
Adjudicatory Hearing Scheduling**

Dear Dr. Clemetson:

This letter will serve as official notice that your license to practice medicine and/or surgery in the State of Maine is automatically suspended, effective May 14, 2002, in accordance with 5 M.R.S.A., §10004. The suspension is based on the results of a Board-ordered evaluation from which the Board has determined that you are an imminent danger to the health and safety of your patients. The Board bases its authority on:

32 M.R.S.A., §3282-A, (2), (B) - Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients.

32 M.R.S.A., §3282-A, (2), (C) - A professional diagnosis of a mental or physical condition that has resulted or may result in the licensee performing services in a manner that endangers the

Charles D. Clemetson, M.D.

May 16, 2002

Page 2

health or safety of patients.

32 M.R.S.A., §3282-A, (2), (F) - Unprofessional conduct.

32 M.R.S.A., §3282-A, (2), (E) - Incompetence.

An Adjudicatory Hearing on this matter will convene on Tuesday, June 11, 2002 at 1:30 P.M., or as soon thereafter as possible. The hearing will be held in the conference room at the office of the Board of Licensure in Medicine, lower level, located at 2 Bangor Street, Augusta, Maine.

The following issue will be considered by the Board at the Adjudicatory Hearing:

- A. Whether your continued practice of medicine in Maine jeopardizes the health or physical safety of your patients.
- B. Whether you have complied with the terms of the Board's Decision and Order, dated June 12, 2001.

If the Board finds that the above allegations are true, the Board shall then determine whether to take any action against your license. The Board may take such action as the statute empowers it to take, including, but not limited to, reprimand, fine, probation, suspension, revocation, nonrenewal, or any combination thereof, as deemed appropriate by the Board.

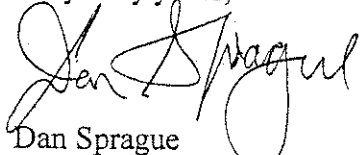
The Adjudicatory hearing shall be held pursuant to the Maine Administrative Procedures Act, 5 M.R.S.A., §9051, *et seq.* You have the right to be represented by counsel of your choosing, and you should appear at the hearing accompanied by an attorney. You have the right to testify under oath, call witnesses, cross-examine witnesses, and enter documents into evidence.

The Adjudicatory Hearing will be held in Public Session of the Board.

Should you fail to appear for the Adjudicatory Hearing, the Board may hold the Hearing in your absence, or the Board may enter a default judgement. Finally, any request that you might have to serve subpoenas should be made as soon as possible, but in no event later than May 27, 2002.

If you have any questions, please contact the Board's attorney, Assistant Attorney General Ruth McNiff at (207) 626-8800.

Very truly yours,



Dan Sprague

Assistant Executive Director

**STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE**

**IN RE: Charles D.M.Clemetson, M.D. )  
  )     **CONSENT AGREEMENT**  
  )     **FOR INACTIVE LICENSE**  
  )**

This document is a Consent Agreement and Order, effective when signed by all parties, regarding discipline and the modification of a license to practice medicine in the State of Maine held by Charles D.M. Clemetson, M.D. The parties to the Consent Agreement are: Charles D.M. Clemetson, M.D. (the "Licensee"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Department of Attorney General.

**FACTUAL BACKGROUND**

1. Charles D.M. Clemetson, M.D., has been licensed to practice medicine in the State of Maine since 1994 and has specialized in the practice of psychiatry.

2. In June, 2001, the Board issued a Decision and Order censuring the Licensee for unprofessional conduct and placing him on probation for one year. During the probationary period, the Licensee was required to hire an expert in office management and implement recommendations made by the evaluator.

3. In 2002, the Board received reports from Dr. Clemetson's office staff which raised questions regarding Dr. Clemetson's management of his office and the possibility of a substance abuse problem. The Board ordered an evaluation which was performed by Jonathan Siegel, Ph.D. in April, 2002. Dr. Siegel concluded that Dr. Clemetson should not practice independently until the substance abuse issue was addressed and resolved. On the basis of this report, the Board ordered the suspension of Dr.Clemetson's license to practice medicine and scheduled an Adjudicatory Hearing. This Consent Agreement resolves all issues related to the Adjudicatory Hearing noticed on May 16, 2002 and begun on July 9, 2002.

**FINDINGS OF FACT**

The Board and the Licensee agree to the following findings of facts based on the evidence which was and would be offered and admitted into evidence at the Adjudicatory Hearing.

1. Dr. Clemetson failed to comply with the terms of the Board decision and Order dated June 12, 2001. He did not implement the recommendations of the office management plan approved by the Board. This violation of the Board's order constitutes unprofessional conduct as defined by 32 M.R.S.A. §3282-A(2)(F).

2. Dr. Clemetson's behavior is evidence of an undiagnosed psychological or psychiatric problem and /or an untreated substance abuse problem as defined by DSM IV 305.00 that is subject to discipline pursuant to 32 M.R.S.A. §§3282-A(2)(B) and/or(C).

### AGREEMENT

In lieu of continuing with the Adjudicatory Hearing which began on July 9, 2002, the Licensee and the Board agree that:

1. The summary suspension ordered by the Board on May 11, 2002 is terminated and the status of Dr. Clemetson's license will be changed from **ACTIVE to INACTIVE** on the effective date of this Agreement. He will no longer practice medicine or write prescriptions.
2. Dr. Clemetson will notify <sup>the BOARD</sup> if he decides to move out of state. If he applies for a medical license in any other jurisdiction, he will notify the Board and provide the other jurisdiction with copies of his Consent Agreements. *RAM  
JHRP  
C.M.C.*
3. If Dr. Clemetson decides to apply for reinstatement to an active license, he will first undergo a thorough inpatient substance abuse evaluation at a facility approved by the Board and follow whatever recommendations and treatment suggested by the facility. In the event that the evaluation results in a diagnosis of a substance abuse problem, he must document six months of monitored sobriety through participation in the Physicians' Health Program. Regardless of the diagnosis with respect to substance abuse, he must demonstrate participation in counseling and therapy to address any other behavioral or psychological problems. By signing this Agreement, Dr. Clemetson affirms his intention to seek treatment for these issues.
4. In the event that Dr. Clemetson applies for an Active License, Dr. Clemetson agrees to provide the Board with releases for all substance abuse evaluation and treatment as well as all psychological and medical, medical records.
5. Dr. Clemetson has the burden of demonstrating and proving that the conditions that give rise to this order have been professionally diagnosed and treated and that he is not a risk to patients. He will appear before the Board to determine whether his license will be reinstated pursuant to the terms and conditions imposed by the Board.

6. The Licensee has been represented by an attorney who has participated in the Adjudicatory Hearing and negotiated this Consent Agreement on his behalf.
  
7. In regard to all terms and conditions of this Consent Agreement, the Licensee waives any further hearings or appeal to the Courts regarding this Agreement. The Licensee agrees that this Consent Agreement and Order is a final order resolving the Suspension of License and Adjudicatory Hearing Notice dated May 16, 2002.

I, CHARLES D.M. CLEMETSON, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT 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.

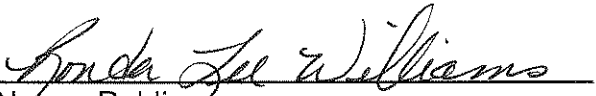
Dated: 9/9/02

  
 CHARLES D.M. CLEMETSON, M.D.

STATE OF MAINE  
Cumberland, ss.

Dated: 9/9/02

Personally appeared before me the above named Charles D.M. Clemetson, 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.

  
 Notary Public

RONDA LEE WILLIAMS  
 Notary Public, Maine

My Commission Expires: My Commission Expires April 26, 2009

Dated: 9/10/02

  
 Counsel to Dr. Charles D.M. Clemetson



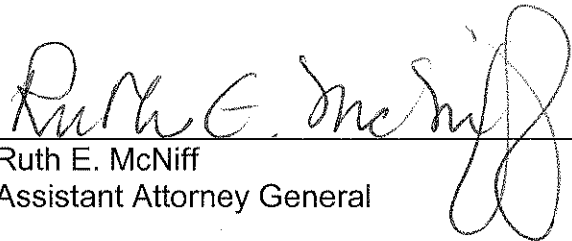
STATE OF MAINE BOARD OF  
LICENSURE IN MEDICINE

Dated: 9-10-02

  
\_\_\_\_\_  
Edward David, M.D., Chairman

STATE OF MAINE DEPARTMENT  
OF ATTORNEY GENERAL

Dated: 9-10-02

  
\_\_\_\_\_  
Ruth E. McNiff  
Assistant Attorney General

EFFECTIVE DATE: 9-10-02

**MAINE STATE BOARD OF LICENSURE IN MEDICINE**

IN RE: Licensure Disciplinary Action )  
 ) **DECISION AND ORDER**  
 Charles D. M. Clemetson M.D. )

**PROCEDURAL HISTORY**

Pursuant to the authority found in 32 M.R.S.A. Sec. 3263, *et seq.*, 5 M.R.S.A. Sec. 9051, *et seq.* and 10 M.R.S.A. Sec. 8001, *et seq.*, the Board met in public session at the Board's offices located in Augusta, Maine on June 12, 2001 for the purpose of determining whether Dr. Clemetson engaged in unprofessional and incompetent conduct in the practice of medicine by making inappropriate comments to his patient on March 15, 2000. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Edward David, M.D., J.D., Chairman, Bettsanne Holmes (public representative), Kimberly K. Gooch, M.D., Sandra E. Tuttle (public representative), Sheridan R. Oldham, M.D., Harry W. Bennert, Jr., M.D., Harold L. Jones (public member) and Ulrich B. Jacobsohn, M.D. Ruth McNiff, Ass't. Attorney General, presented the State's case. Dr. Clemetson appeared *pro se*. James E. Smith, Esq. served as Presiding Officer.

State's Exhibits 1-5 and Respondent's Exhibit 1 were admitted into the Record. Following opening statements, the taking of testimony, submission of exhibits, and the waiver of closing arguments by both parties, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

**FINDINGS OF FACT**

Charles Clemetson, M.D., has been a licensed psychiatrist since 1994. On February 24, 2000, he evaluated a 14 year old who had been diagnosed with obsessive compulsive disorder, attention deficit hyperactivity disorder and Tourette's syndrome. Although the patient's appointment was scheduled for 8:00 a.m., Dr. Clemetson did not become available until 8:45 a.m. On March 15, 2000, the patient appeared on time for the patient's 9:15 a.m. appointment with the Respondent. On this occasion, Dr. Clemetson kept the patient and the patient's mother waiting 55 minutes. The patient mentioned to the Respondent's receptionist that the doctor should not keep patients waiting and the receptionist responded that the patient should take the matter up with Dr. Clemetson.

Shortly thereafter, at the beginning of the patient's session with the licensee, the patient told Dr. Clemetson that the patient "was unhappy for waiting a while and that [the patient] didn't like waiting." This remark earned the adolescent a brief lecture about patience, respect for adults and superiors from Dr. Clemetson. Additionally, Dr.

Clemetson told his patient that "he could make a prescription to make the patient drop dead and no one would know any different." The patient and the patient's mother both testified that they did not interpret these comments to be made in a joking or less than serious manner. In fact, the patient stated that the comments scared the patient because the patient was taking prescription medications at the time.

The Board also heard the testimony of Judy A. Burk, M.D. Dr. Burk is a physician who has practiced psychiatry since 1983. Based on her experience and training, as well as her review of the documents and matters stated in the Record and the testimony at hearing, Dr. Burk rendered her opinion that Dr. Clemetson's comments had violated at least one section of the applicable standard of care. That standard is found in Chapter 10.01 of the American Medical Association's (AMA) Code of Medical Ethics. (Exhibit 5) The relevant section reads as follows:

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Dr. Clemetson testified that as a psychiatrist he is responsible for his communication. He added that his practice has "run late" for several years. Dr. Clemetson regretted the comments he made and apologized to the patient and the patient's parents at the hearing. Moreover, he stated that he was receiving professional therapy in order to assist him in communicating more effectively with his patients.

### **STATUTES**

32 M.R.S.A. Sec. 3282-A(2)(E)(1). "Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:  
(1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient to the general public."

32 M.R.S.A. Sec. 3282-(A)(2)(F). "Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violated a standard of professional behavior that has been established in the practice for which the licensee is licensed."

### **CONCLUSIONS OF LAW**

The Board, by a vote of 8-0, concluded that Dr. Clemetson violated the provisions of Chapter 10 of the American Medical Association Code of Ethics and 32 M.R.S.A. Secs. 3282-A(2)(E)(1) and (F) by making the above noted inappropriate

comments to his patient and the patient's mother and not attending to his patients in a timely manner.

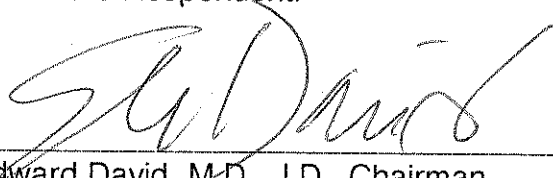
The Board, by a vote of 8-0, imposed the following sanctions:

1. A letter of censure.

2. Probation for a minimum of one year during which time Dr. Clemetson shall hire an expert in the management of an efficient psychiatric practice especially to correct the issue of his failure to attend to patients on a timely basis. The management expert shall submit to the Board within 120 days of this Decision a written plan to correct the above deficiency and Dr. Clemetson shall ensure that implementation of the plan does not result in the abandonment of patients. The Board, if it deems necessary, shall schedule a hearing within one year of the date of this Decision to determine whether the terms of probation have been met. If not, the Board retains the right and power to assess further discipline on the Respondent.

**SO ORDERED.**

Dated: June 12, 2001



Edward David, M.D., J.D., Chairman  
Maine Board of Licensure in Medicine

### **APPEAL RIGHTS**

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3 and 10 M.R.S.A. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Maine District Court within 30 days of receipt of this Order.

The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.

## MONITORING AGREEMENT

AGREEMENT dated this 5<sup>th</sup> day of MAY, 2005 by and between Charles D.M. Clemetson, MD, a physician residing in Yarmouth, Maine ("Dr. Clemetson"), and Charles Lewis Johnson, MD, a physician with an office in Yarmouth, Maine ("Dr. Johnson").

### PREAMBLE:

A. Dr. Clemetson is in the process of returning to the practice of medicine after an absence of three years.

B. Dr. Clemetson is subject to the terms of a Consent Agreement for Conditional Licensure effective November 10, 2004 (the "Consent Agreement") issued by the State of Maine Board Of Licensure in Medicine (the "Board").

C. The Consent Agreement requires that Clemetson's re-entry into practice be monitored by another physician, and be subject to peer supervision.

D. Dr. Johnson has reviewed the Consent Agreement and has agreed to monitor and supervise Dr. Clemetson's re-entry into practice.

E. ~~The Parties to this Monitoring Agreement are Dr. Clemetson and Dr. Johnson.~~

NOW THEREFORE, in consideration of One Dollar and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Scope. Dr. Johnson will monitor and provide peer supervision to Dr. Clemetson as follows:

(a) There will be regular face-to-face meetings, both in Dr. Johnson's office and in Dr. Clemetson's office for active office and practice monitoring. There will also be periodic, unscheduled visits by Dr. Johnson to Dr. Clemetson's office for observation of office "atmosphere" and for such other purpose(s) as Dr. Johnson deems appropriate.

(b) Dr. Clemetson shall provide Dr. Johnson access to a complete de-identified list of all of Dr. Clemetson's current and prospective patients, which for all current patients shall include the patient's age, presenting problems, and diagnoses and treatment plan, including medication, and for prospective patients shall include such of this information as Dr. Clemetson may know at the time.

(c) Dr. Johnson shall review with Dr. Clemetson all new patients accepted into Dr. Clemetson's practice since the date of their last meeting and shall assist Dr. Clemetson in developing strategies for practice management as Dr. Clemetson resumes practice and increases the number of patients he is treating or evaluating over the term of this Agreement. Practice management shall include patient mix, managing an increasing number of patients, patient scheduling, timeliness of sessions, management of phone calls, management of all other patient contacts including after-hours care, and billing and collection of fees;

(d) At Dr. Johnson's discretion, Dr. Johnson may instruct Dr. Clemetson to audiotape specific patient sessions or other specific patient contacts, if Dr. Johnson believes a tape will assist in their work. Audiotaping of sessions or other contacts cannot and will not occur unless the patient agrees in advance to permit audiotaping for this purpose. If directed to audiotape, Dr. Clemetson shall attempt in good faith to get patient consent. Dr. Johnson may review all or part of such audiotapes as part of monitoring.

(e) At their meetings, Dr. Johnson shall review and discuss with Dr. Clemetson his care and treatment of any patients on the list referenced in paragraph (b), above. Dr. Clemetson shall make available to Dr. Johnson a deidentified copy of treatment records, as requested by Dr. Johnson. Patient issues to be discussed shall be raised by Dr. Johnson regarding any of Dr. Clemetson's patients and may also be raised by Dr. Clemetson. Case review shall include exploration of patient care issues, general and specific clinical judgment and competency by case review and by general discussion between Dr. Johnson and Dr. Clemetson.

2. No PHI. The parties will make reasonable efforts to discuss cases without disclosing Protected Health Information, as such term is defined in the regulations of the Health Insurance Portability and Accountability Act of 1996 relating to the privacy of individually identifiable health information ("PHI").

3. Frequency of Meetings. The parties shall meet in person at the following frequencies: for the initial three months of the Term (as defined in Section 4), at least once per week and more often as determined by either physician; for the next three months of the Term, at least once every two weeks and more often as determined by either physician; and for the remainder of the Term, at least monthly and more often as determined by either physician. At these meetings, the parties shall discuss the matters set forth in Section 1, and any other matters related to their relationship. If Dr. Clemetson has issues or concerns he would like to discuss with Dr. Johnson between regularly scheduled meetings, he will contact Dr. Johnson by email or telephone, and Dr. Johnson will make reasonable efforts to meet or speak by telephone with Dr. Clemetson within two days of the request, or sooner if Dr. Johnson deems it necessary.

4. Term and Termination. The term of this Agreement (the "Term") shall commence upon approval of this Agreement by the Board and shall end when the Board

lifts the monitoring requirement set forth on pages 2 – 3 of the Consent Agreement, unless terminated sooner as provided herein. This Agreement may be terminated by Dr. Johnson prior to the end of the Term upon ninety (90) days prior written notice. This Agreement may be terminated by Dr. Clemetson at any time, but Dr. Clemetson understands that it is his responsibility to remain in compliance with the Consent Agreement. Such termination does not, however, relieve Dr. Clemetson of the obligation to pay for all services provided by Dr. Johnson to the date of the termination and for those services rendered in connection with the termination and transition to any other supervising physician or employer. Upon termination, the funds escrowed pursuant to Section 5 shall be used to pay any amounts due to Dr. Johnson, and any remaining escrowed amounts shall be returned to Dr. Clemetson.

5. Payment Dr. Johnson shall bill Dr. Clemetson \$250.00 (two hundred fifty dollars) per hour for services provided pursuant to this Agreement and for his time spent negotiating this Agreement and submitting it to the Board. It is understood by the parties that Dr. Johnson's services under the Agreement shall include without limitation review of reports, preparation of reports and correspondence. In addition, Dr. Clemetson shall reimburse Dr. Johnson for his reasonable out-of-pocket costs and legal fees in connection with the negotiation of this Agreement upon receipt of invoices evidencing such costs. Dr. Johnson shall provide a detailed invoice for his services rendered and for his costs and legal fees incurred up to the Board meeting at which this Agreement will be presented for approval, and Dr. Clemetson shall pay that invoice and those costs and fees prior to the Board meeting. Once the Agreement is approved by the Board, Dr. Clemetson shall pay Dr. Johnson on a pre-paid basis, the amount of \$1,000.00 per month for the first three months, \$500 for the next three months, and \$250 per month for the remainder of the Term, due on or before the first day of each month, in advance (the "pre-paid fee"). Once this Agreement is approved by the Board, Dr. Johnson shall submit monthly invoices detailing the number of hours and services provided, and any reasonably related costs or legal fees, and the pre-paid fee shall be applied first to these charges. If there is a credit balance, this shall be credited against the next month's pre-paid fee. If the charges for services and costs and expenses for any month exceed the pre-paid fee, Dr. Clemetson shall instruct the Escrow Agent to pay such to Dr. Johnson such additional balances within ten days of receipt of the invoice.

6. Escrow. Upon approval of the Board of this Agreement, Dr. Clemetson shall escrow \$2,500.00 (the "Escrowed Funds") with Bernstein, Shur, Sawyer & Nelson, P.A. (the "Escrow Agent"). The Escrow Agent shall release to Dr. Johnson from the Escrowed Funds an amount equal to any payments due under section 5 of this Agreement, and Dr. Clemetson shall within ten (10) days replenish the escrowed funds to \$2,500.00. In the event that the Escrow Agent for any reason has not made payment to Dr. Johnson within ten (10) days of Dr. Clemetson's receipt of an invoice, Dr. Johnson shall be authorized immediately to make written demand that the Escrow Agent release the amount of the invoice to Dr. Johnson. The Escrow Agent shall not be liable for any mistake of fact or error of judgment or any acts or omissions of any kind unless caused by its willful misconduct or negligence. The parties hereto each release the Escrow Agent from liability for any act done or omitted to be done by the Escrow Agent in good faith in the

performance of its obligations and duties hereunder. The Escrow Agent shall be entitled to rely on any instrument or signature believed by it to be genuine and may assume that any person purporting to give any writing, notice, or instruction in connection with this Agreement is duly authorized to do so by the party on whose behalf such writing, notice or instruction is given. The undersigned hereby jointly and severally indemnify the Escrow Agent for and hold it harmless against any loss, liability or expense incurred without negligence or bad faith on the part of the Escrow Agent arising out of or in connection with the acceptance of or the performance of its duties under this Agreement, as well as the costs and expenses, including reasonable attorneys' fees and disbursements, of defending against any claim or liability arising under this Agreement.

7. Reports.

a. Dr. Johnson shall make quarterly reports to the Board regarding Dr. Clemetson's participation under this Monitoring Agreement. It is understood that this may be a simple form document regarding Dr. Clemetson's participation and compliance with this Monitoring Agreement.

b. Dr. Johnson shall make only the following other reports to the Board with respect to Dr. Clemetson: (i) any report required under the Consent Agreement, and (ii) any report required by law (i.e., pursuant to the Maine Health Security Act, 24 M.R.S.A. § 2501 et seq.). The following procedure shall be used, if Dr. Johnson believes a report may be needed:

(1) If Dr. Johnson determines that there may be grounds for making a report to the Board, he will first review and discuss the matter with Dr. Clemetson by phone or in person, unless Dr. Johnson concludes the situation poses an emergent or urgent patient care issue.

(2) The decision whether to file a report to the Board is in the sole discretion of Dr. Johnson, and any report will be processed as a report received by the Board pursuant to 24 M.R.S.A. § 2505.

8. Confidential Arrangement. At all times the parties are, and will hold themselves out to the public, other practitioners, and their patients as, separate and unaffiliated practitioners. Neither party shall encourage or permit third parties to assume that their practices are combined, joined or affiliated in any manner. During the term they shall not share patients, nor refer patients to one another. The relationship described in this Agreement shall remain confidential and neither party shall disclose the existence or terms of it, except to the Board and their attorneys.

9. Dr. Clemetson to Indemnify and Hold Dr. Johnson Harmless. Dr. Clemetson is solely responsible for his patient care, and Dr. Clemetson agrees to indemnify and hold Dr. Johnson harmless for any and all care, treatment decisions, clinical outcomes, and interactions regarding his patients that are not covered by Dr.



Johnson's insurance. Dr. Johnson does not assume any responsibility for any issues with Dr. Clemetson's patient care.

10. Insurance Coverage and Premiums and Other Costs. This Agreement is conditional on Dr. Johnson being able to obtain reasonable malpractice and general liability insurance coverage for all risks reasonably related to this Agreement. If Dr. Johnson's premium for malpractice or general liability insurance is raised directly as a result of this Agreement, Dr. Clemetson shall reimburse Dr. Johnson for the portion of the increase directly related to this Agreement. Should Dr. Johnson's role under this Agreement require any appearance at the Board or any response to any complaint to or inquiry by the Board arising out of this Agreement with Dr. Clemetson, Dr. Clemetson agrees to pay Dr. Johnson for his services reasonably related thereto, and for any reasonably related out-of-pocket expenses including legal fees incurred by Dr. Johnson in this regard.

11. Independent Contractor Status. The parties shall at all times remain independent contractors and not employees of one another. Each shall exercise independent judgment with regard to the manner in which the functions required under this Agreement are performed and neither shall exercise control over the other. Dr. Johnson shall remain solely responsible for payment of all state and federal income and employment taxes and social security and unemployment contributions related to payments he receives hereunder and Dr. Clemetson shall have no responsibility therefore.

12. Mediation. If a dispute arises under this Agreement which the parties are unable to resolve through direct negotiations, the parties agree to engage jointly the services of a professional mediator and to participate in good faith in such mediation. If the dispute is not resolved as a result of such mediation within thirty (30) days after such mediation is commenced or such longer period to which the parties may agree, each party shall be free to pursue any legal or equitable action as it considers appropriate.

13. Access to Information Concerning Ongoing Psychotherapy. Dr. Clemetson shall provide any necessary releases to authorize Dr. Johnson to obtain records from or to discuss in person or by phone with the Board-approved therapist under the terms of the Consent Agreement, the status or progress of Dr. Clemetson in psychotherapy as ordered by the Board in section 3 of the Consent Agreement.

14. Dr. Johnson as Board's Agent. It is understood between the parties that the Maine Board of Licensure in Medicine considers Dr. Johnson's services under this Monitoring Agreement to be performed as an Agent of the Board, pursuant to the Maine Health Security Act, 24 M.R.S.A. § 2501 et seq., and more specifically pursuant to 24 M.R.S.A. § 2511.

15. Miscellaneous.

15.1 This Agreement contains all of the material terms and agreements of the parties relative to the subject matter hereof and may not be changed, modified, amended, waived, discharged or terminated orally or in any manner other than by a written instrument executed by both parties.


15.2 All notices required or contemplated by this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the last known address of the party to whom notice is to be given by first class mail, postage prepaid, registered or certified, return receipt requested.

15.3 This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.

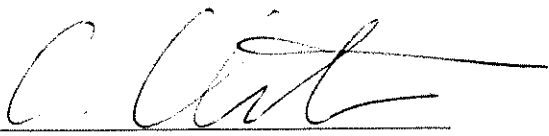
15.4 As used in this Agreement, the singular number shall include the plural, the plural the singular, and the use of one gender shall be deemed applicable to all genders. This Agreement shall be governed by and construed in accordance with the laws of Maine. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

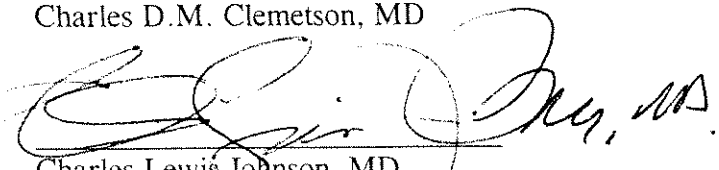
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

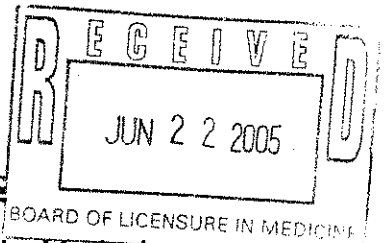
WITNESS:

  
Name: NICOLE M. RANCOURT,  
Nicole M. Rancourt

  
Name: Charles Lewis Johnson

  
Charles D.M. Clemetson, MD

  
Charles Lewis Johnson, MD



**AGREEMENT AND PLAN FOR URINE MONITORING**

This document, effective May 10, 2005, is an Agreement and Plan for Urine Monitoring entered into between Charles D.M. Clemetson, MD and William C. Ervin, MD (the "Supervision Physician") to satisfy the requirements for random urine monitoring set forth in paragraph 5 of Dr. Clemetson's November 10, 2004 Consent Agreement for Conditional License (the "Consent Agreement") with the Maine Board of Licensure in Medicine ("the Board"). The Consent Agreement is attached as Exhibit A to this Agreement.

The parties to this Agreement understand that under paragraph 4 of Dr. Clemetson's Consent Agreement with the Board, Dr. Clemetson is obligated to "abstain from consuming alcohol and mood or mind altering substances or medications, illicit or not (collectively referred to as "Illicit [Prohibited] Substances") for term of [his Consent Agreement with the Board]. Dr. Clemetson may only take medications that are prescribed by a physician who is knowledgeable about the Licensee's [Dr. Clemetson's] disciplinary history with the Board."

The parties understand that pursuant to paragraph 7 of Dr. Clemetson's Consent Agreement, this Agreement and Plan for Urine Monitoring must be approved by Board in order to effective. Until approved by the Board, the parties agree that Dr. Ervin shall on a weekly basis, randomly notify Dr. Clemetson of the need to provide visually observed urines, upon no more than four (4) hours notice, and that the urine samples will be handled by legal chain of custody and be tested and reported as otherwise set forth in this Agreement.

1. Designation of Supervising Physician; Appointment of Designee. Dr. Ervin is designated as the Supervising Physician under this Agreement and Plan for Urine Monitoring. In the event Dr. Ervin is unavailable to perform his duties under this Agreement, Dr. Ervin shall appoint one or more Designees. It is the responsibility of Dr. Clemetson to ensure that Dr. Ervin or one of Dr. Ervin's approved designees is available to have Dr. Clemetson appear and provide urine samples as required by this Agreement and to carry out any other responsibilities under this Agreement. In the event neither Dr. Ervin nor any designee is available (or anticipated to be available) at the given time to be responsible for urine monitoring, Dr. Clemetson shall contact the Board Executive Director or Assistant Executive Director by telephone as soon as possible (followed up within 24 hours by writing). Dr. Clemetson shall by telephone work to resolve with the Board Executive Director or Assistant Executive Director a plan for urine monitoring to be used for the duration of time that Dr. Ervin and all designees are unavailable. Under no circumstances shall Dr. Clemetson fail to provide a urine sample to the Supervising Physician or a Designee.

2. Frequency of Random Urines. For one (1) year, Dr. Clemetson will undergo weekly random urine monitoring. Then, for one year after the first year of monitoring, Dr. Clemetson will provide random monthly urine specimens. All testing costs will be paid for by Dr. Clemetson. Consistent with the required frequency of urine monitoring under Dr. Clemetson's Consent Agreement with the Board, the Supervising Physician shall randomly contact Dr. Clemetson in person or by telephone to appear at the Supervising Physician's office or such other place in the Portland area as the Supervising Physician may designate for the purpose of Dr. Clemetson's providing a urine specimen.

3. Timing of Samples. Dr. Clemetson must appear and provide the requested urine sample within four hours after receiving the Supervising Physician's call to provide a sample.

4. Sampling Methodology.

(a) Visual Samples. Dr. Clemetson shall provide each urine sample in the physical presence and under the direct observation of the Supervising Physician or his Designee who shall visually observe Dr. Clemetson providing the sample. Otherwise, the sample shall be deemed unacceptable and Dr. Clemetson shall immediately provide another sample. Any such occurrence shall be reported to the Board by Dr. Clemetson and by the Supervising Physician, both by telephone and in writing within 24 hours or as soon thereafter as possible. In addition, the unacceptable sample shall be retained and tested, with the intention that the tests of the unacceptable and the acceptable samples both be sent upon completion to the Board.

(b) Second Sample. At the same time as a urine sample is taken, Dr. Clemetson must provide a Second Sample (or shall have provided sufficient quantity to constitute a valid Second Sample) which shall also be taken in the physical presence and under the visual observation of the person collecting the sample. Responsibility for providing a Second Sample shall be Dr. Clemetson's. The Second Sample shall be maintained by other appropriate means to enable it to be tested, stored in a controlled setting, kept under a legal chain of custody, inaccessible to Dr. Clemetson, and shall be stored for subsequent testing in the event the first urine sample (the First Sample) tests positive for a Prohibited Substance.

(1) Testing the Second Sample. If the First Sample tests positive for any Prohibited Substance, then the Assistant Executive Director of the Board and Dr. Clemetson shall discuss the most effective and accurate methodology, and the best laboratory, for testing the Second Sample. The goal is for the Assistant Executive Director of the Board and Dr. Clemetson to reach agreement regarding the means for testing the Second Sample. If agreement is not reached, the Assistant Executive Director of the Board will decide how and where the Second Sample shall be tested.

5. Legal Chain of Custody Required. All urine samples shall be handled by the Supervising Physician or his Designee, and in the testing process, through legal chain of custody methods.

6. Standards for Tests. All samples will be analyzed by a certified laboratory that regularly handles these types of tests, and tests shall be conducted by such reliable methods as exist. Each sample will be tested for the presence of any Prohibited Substance.

7. Reporting Test Results; Confidentiality; Retention of Reports. All urine screening reports will be returned to the Supervising Physician, who will transmit them to the Maine Board of Licensure of Medicine, as follows:

(a) Immediate Report of Positive Test Results. Any test result evidencing any level of a Prohibited Substance, shall be reported to the Board by the Supervising Physician by telephone and in writing within 24 hours or as soon thereafter as possible. It is understood that, pursuant to paragraph 4 of the Consent Agreement, any medication that is prescribed for Dr.

Clemetson "by a physician who is knowledgeable" about Dr. Clemetson's disciplinary history with the Board is not a Prohibited Substance.

(b) Reporting Negative Test Results. Written reports of all tests shall be sent to the Board quarterly by the Supervising Physician, including information regarding the dates and times samples were provided and tested, and the test results. Dr. Clemetson shall ensure that all reports are made to the Board in a timely fashion.

(c) Confidentiality Waived. With regard to the Board and its agents and any process as may subsequently be pursued by the Board, Dr. Clemetson hereby waives any claim of confidentiality and privilege regarding urine samples and tests thereof taken pursuant to this Agreement.

(d) Retention of Reports. All original laboratory data and test reports shall be retained by the Supervising Physician until the termination of Dr. Clemetson's Consent Agreement with the Board.

8. Maintenance of Obligations When Away From Maine. If Dr. Clemetson leaves the State or the Portland region, he is required to maintain his schedule for urine monitoring under the Consent Agreement with the Board and to otherwise comply with the terms of the Consent Agreement. For instance, if Dr. Clemetson is going on a business trip or a vacation out of State or away from the Portland region, Dr. Clemetson and the Supervising Physician shall ensure that arrangements are made consistent with ensuring the continuation and satisfaction of the requirements for urine monitoring.

9. Term of Agreement. Dr. Clemetson and Dr. Ervin agree that the term of this Agreement shall be for two years following the date of Board of Licensure of Medicine approval of this Agreement.

(a) In any event, Dr. Clemetson may terminate this Agreement with or without cause, upon providing Dr. Ervin with no less than 30 days oral or written notice of termination.

(b) In any event, Dr. Ervin may terminate this Agreement with or without cause, upon providing Dr. Clemetson with no less than 90 days written notice of termination.

(c) In the event this Agreement is terminated pursuant to either paragraph 9(a) or 9(b) earlier than the Term of Agreement set forth in paragraph 9, Dr. Ervin or Dr. Clemetson shall notify the Board in writing about such Termination and regarding arrangements that have been made for the designation of a new Supervising Physician, which shall be presented to the Board for approval, along with any new or revised terms for urine monitoring.

(d) If Dr. Clemetson's obligation for urine monitoring under the Consent Agreement is still in effect, the Termination of this Agreement shall not be effective until a new Supervising Physician, and any new or revised terms for urine monitoring have been approved by the Board.



William C. Ervin, MD

Charles D.M. Clemetson, MD