

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT
Charles C. Smith, M.D.)	AGREEMENT
Complaint No. CR13-48)	

This document is a Consent Agreement, effective when signed by all parties, regarding discipline imposed upon the license to practice as a physician in the State of Maine held by Charles C. Smith, M.D. The parties to the Consent Agreement are: Charles C. Smith, M.D. ("Dr. Smith"), 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. The Board first issued Dr. Smith a license to practice as a physician in the State of Maine on October 19, 1990. At all times relevant to this complaint, Dr. Smith was licensed as a physician by the Board. Dr. Smith specializes in Otolaryngology.
2. On March 12, 2013, the Board reviewed information received from a storage facility in New Hampshire regarding patient medical records stored in a unit rented by Dr. Smith. According to the information, on January 29, 2013, the Board staff was contacted by the owner of the storage unit and advised that Dr. Smith had rented a storage unit in which he kept confidential patient medical records; however, Dr. Smith was delinquent in paying his storage fees, and the storage company was taking measures to re-possess the storage unit, including removing the lock. According to the information, the storage unit owners had attempted, without success, to contact Dr. Smith regarding this issue. As a result of receiving this information, and out of concern for maintaining the confidentiality of patient medical records, on January 30, 2013, Board staff contacted Dr. Smith's office, and notified his staff about this issue,

and requested that Dr. Smith contact the Board staff to resolve this issue before the end of the day. Shortly thereafter, Board staff received a call from Dr. Smith, who questioned the Board's interest and authority as the medical records were in another state. Board staff informed Dr. Smith that the Board had the authority to investigate the matter. Dr. Smith stated that the matter was "overblown", that he had been out of the country for a couple of months, that the storage company was using extortion to get their money, and that he would take care of the situation. A short time later, Board staff received a voice mail message from Dr. Smith that he had taken care of the situation, which the Board staff later confirmed with the storage company. Following its review of this information, the Board voted to initiate a complaint against Dr. Smith's physician license pursuant to 32 M.R.S. § 3282-A alleging unprofessional conduct based upon Dr. Smith's failure to maintain the security of confidential patient medical records. The Board docketed the complaint as CR13-48 and sent it to Dr. Smith for a written response.

3. On or about April 25, 2013, the Board received a response from Dr. Smith to complaint CR13-48. In his response, Dr. Smith indicated that in 2008 he closed his medical practice in New Hampshire and, in accordance with guidelines from the American Medical Association, notified his patients that they could either pick up their records or notify him where to transfer them. According to Dr. Smith, medical records that were not picked up or transferred were stored in a secure storage unit. According to Dr. Smith, he advised the owners of the storage unit that he was storing only confidential patient medical records in the unit. According to Dr. Smith, he made arrangements to pay the storage fee annually, paying in advance for the 12 months for the unit. According to Dr. Smith, in January 2013, he was out of the country for a great deal of time and did not have access to email. As a result, according to Dr. Smith, he was not aware that his storage fees were in arrears and that the storage company had removed the

lock from the unit. According to Dr. Smith, when he was made aware of this situation on January 30, 2013, he immediately contacted the storage company and had a new lock placed on the unit. According to Dr. Smith, he then made arrangements to avoid further miscommunications by instituting automatic monthly payments from his credit card.

4. On May 14, 2013, the Board reviewed Complaint CR13-48, including all information obtained to date, and voted to request further investigation, which included a request for a written response from Dr. Smith to additional questions concerning this matter.

5. On May 16, 2013, the Board's investigator sent Dr. Smith a letter with questions, including:

- You have a history of receiving late payment notices. Please explain why you allowed your storage unit payment to be late again.
- You received your storage unit invoice for payment before you left the country. Why didn't you pay for the storage unit before you left?
- The storage unit log shows many attempts to call your cell phone. [The owner] stated that many times there was either no answer, or you would just hang up. You stated that you had not used that phone number for five (5) years. Why wasn't the storage company given a current phone number, considering you were storing "confidential" medical records at their facility?

6. On or about May 30, 2013, the Board received a written response from Dr. Smith to its questions, including:

- I received the notice early. My payment was not due until January 1, 2013. I was busy in my practice. It was the holiday season and I was making plans to be away. I was not thinking about making the payment in advance.
- As I mentioned above, I was busy in my practice. It was the holiday season and I was making plans to be away. I was not thinking about making the payment in advance.
- I was using a cell that my current employer supplied to me. I did not give Ms. Pope my cell phone number because it has no answering machine on it. I had given Ms. Pope my office address. I knew she had my correct e-mail address.

I believe our communications up to this point had been satisfactory. Unfortunately given my busy practice and the holiday season, I did not think about the payment or letting her know I would be gone most of January. I had planned on taking care of the payment when I returned. I never dreamed for a minute the lock would be removed. In retrospect, I realize I should have paid before I left.

7. 42 U.S.C. § 1320(d) et seq., otherwise known as the Health Insurance Portability and Accountability Act (HIPAA), provides that medical records of a patient are privileged and confidential and that physicians have a duty to protect the confidentiality of such medical records.

8. The Code of Medical Ethics of the American Medical Association, Section 7.02 provides that: "The [medical] record is a confidential document involving the patient-physician relationship and should not be communicated to a third party without the patient's prior written consent, unless required by law or to protect the welfare of the individual or the community."

9. Maine law, 22 M.R.S. § 1711-C, and New Hampshire law, R.S.A. 332-I, require health care providers, including physicians, to maintain the confidentiality of patient medical records.

10. On July 9, 2013, the Board reviewed complaint CR13-48, including Dr. Smith's response to the Board's additional questions and voted to offer Dr. Smith this Consent Agreement in order to resolve complaint CR13-48 without further proceedings.

11. This Consent Agreement has been negotiated by legal counsel for Dr. Smith and legal counsel for the Board in order to resolve complaint CR13-48 without further proceedings, including an adjudicatory hearing. Absent Dr. Smith's acceptance of this Consent Agreement by signing and dating it in front of a notary and mailing it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine

04333-0137 on or before October 15, 2013, the matter will be presented to the Board for further action.

12. By signing this Consent Agreement, Dr. Smith waives any and all objections to, and hereby consents to allow the legal counsel to the Board to present this Consent Agreement to the Board for possible ratification.

COVENANTS

In lieu of proceeding to an adjudicatory hearing in this matter, Dr. Smith and the Board agree to the following:

13. Dr. Smith admits that with regard to complaint CR13-48 the Board has sufficient evidence from which it could reasonably conclude that:
- a. He stored confidential patient medical records in a storage unit in New Hampshire;
 - b. He was aware that in order to continue to store the confidential patient medical records in the storage unit that he needed to make timely and sufficient payment of fees;
 - c. He was aware that he was required to pay fees to the storage company on or before January 1, 2013, in order to continue to securely store the confidential patient medical records;
 - d. He failed to pay the storage fees on or before January 1, 2013;
 - e. He failed to communicate with the storage company that he was leaving the United States and would pay the storage fees when he returned;
 - f. He failed to provide the storage company with an up-to-date telephone number so that it might contact him;

g. The storage company removed the lock on the storage unit and contacted the New Hampshire Board of Medicine and the Maine Board of Licensure in Medicine about what to do with the confidential patient medical records;

h. Dr. Smith had a legal and ethical obligation to safeguard the confidentiality of patient medical records;

i. Dr. Smith failed to meet his ethical and legal obligations to safeguard the confidentiality of the patient medical records in this case.

Dr. Smith admits that such conduct constitutes unprofessional conduct and grounds for discipline pursuant to 32 M.R.S. § 3286(2)(F).

14. As discipline for the conduct described in paragraphs 1-13 above pertaining to complaint CR13-48, Dr. Smith agrees to accept, and the Board agrees to issue, the following discipline:

a. A REPRIMAND. In this case, by failing to communicate with and make timely payment to the storage company, Dr. Smith breached his duty to his patients to maintain the confidentiality of their patient medical records. The storage company was unable to contact Dr. Smith by telephone because he had not provided it with a current telephone number, and he failed to inform it that he would be out of the country and would pay the storage fees upon his return. This resulted in the storage company removing the lock on the storage unit, thereby compromising the security and confidentiality of the patient medical records. Although Dr. Smith attributed his failure to pay the storage fees to his busy practice and the holiday season, neither of these reasons supersedes his duty to take all reasonable measures necessary to safeguard patient medical records.

b. A MONETARY FINE of One Thousand Dollars and Zero Cents (\$1,000.00). Dr. Smith shall ensure that he pays the monetary penalty within thirty (30) days following the execution of this Consent Agreement. Payment shall be made by certified check or money order made payable to "Treasurer, State of Maine," and be remitted to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137.

15. Violation by Dr. Smith 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.

16. Pursuant to 10 M.R.S. § 8003(5) the Board and Dr. Smith agree that the Board has the authority to issue an order, following notice and hearing, imposing further discipline, including revocation or suspension of his license, in the event that he fails to comply with any of the terms or conditions of this Consent Agreement.

17. Dr. Smith waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Smith agrees that this Consent Agreement and Order is a final order resolving complaint CR13-48. This Consent Agreement is not appealable and is effective until modified or rescinded by agreement of all of the parties hereto.

18. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Smith or any other matter relating to this Consent Agreement.

19. 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.

20. This Consent Agreement constitutes discipline and is an adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB) and the Federation of State Medical Boards (FSMB).

21. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

22. The Board and Dr. Smith agree that no further agency or legal action will be initiated against him by the Board based upon the facts described herein except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Board may however consider the conduct described above as evidence of a pattern of misconduct in the event that similar true allegations are brought against Dr. Smith in the future. The Board may also consider the fact that discipline was imposed by this Consent Agreement in determining appropriate discipline in any further complaints against Dr. Smith's Maine physician license.

23. Dr. Smith has been represented by Sandra L. Rothera, Esq., who has participated in the negotiation of this Consent Agreement on his behalf.

24. Dr. Smith 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.

25. For the purposes of this Consent Agreement, "execution" shall mean the date on which the final signature is affixed to this Consent Agreement.

I, CHARLES C. SMITH, 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: 10/10/13 Charles C. Smith

CHARLES C. SMITH, M.D.

STATE OF Maine

Pendscot, S.S. (County)

Personally appeared before me the above-named Charles C. Smith, 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: 10/10/13 Sandra L. Rothera

NOTARY PUBLIC/ATTORNEY
MY COMMISSION ENDS: _____

DATED: 10/10/13 Sandra L. Rothera

SANDRA L. ROTHERA, ESQ.
ATTORNEY FOR DR. SMITH

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 11/12/13 Maroulla S. Gleaton

MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 11/12/13 Dennis E. Smith

DENNIS E. SMITH
Assistant Attorney General

Effective Date: 11/12/13