

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

IN RE:) CONSENT AGREEMENT
KEVIN G. MILLER, M.D.) FOR DISCIPLINE AND
Complaint No. CR10-581) RESTRICTED/CONDITIONAL
) LICENSURE

This document is a Consent Agreement For Discipline and Restricted/Conditional Licensure, effective when signed by all parties, regarding discipline imposed upon and the issuance of an active restricted/conditional license to practice medicine in the State of Maine to Kevin G. Miller, M.D. The parties to this Consent Agreement are: Kevin G. Miller, M.D. (“Dr. Miller”), the State of Maine Board of Licensure in Medicine (the “Board”) and the Maine Office of the Attorney General.

STATEMENT OF FACTS

1. The Board first issued Dr. Miller a medical license on September 12, 1988. Dr. Miller specializes in Family Practice.

2. On December 14, 2010, the Board reviewed information that Dr. Miller had prescribed large amounts of narcotic medication to patient RM. Following its review of this information, the Board voted to initiate a complaint against Dr. Miller’s Maine medical license for alleged unprofessional conduct regarding his prescribing of controlled substances. In addition, the Board issued a subpoena to Dr. Miller for the production of patient RM’s medical records as well as the records of eleven other patients to whom he had prescribed large amounts of narcotic medications. The Board docketed as CR10-581, and sent it to Dr. Miller for a response.

3. On February 28, 2011, Board received a written response from Dr. Miller to complaint CR10-581. In his response, Dr. Miller indicated that he exercised appropriate care when

prescribing controlled substances to patient RM and the eleven other patients, including reviewing the prescription monitoring program (PMP), conducting pill counts and ordering urine drug screens. Dr. Miller then explained the basis for his prescribing of controlled drugs to the patients identified in the complaint information.

4. On April 12, 2011, the Board reviewed Complaint CR10-581, including a summary of the medical records of patient RM and the eleven other patients. Following its review of this information, the Board voted to invite Dr. Miller to attend an informal conference to discuss Complaint CR10-581, particularly Dr. Miller's treatment of the patients for chronic pain, which included the following specific issues:

- a. An apparent lack of monitoring (i.e. pill counts; urine testing);
- b. An apparent lack of written pain contracts;
- c. An apparent lack of relevant examinations (assessments);
- d. An apparent absence of medical planning and decision-making (treatment plans);
- e. Apparent inadequate medical record keeping;
- f. Allowing patients to self-regulate their prescribed medications;
- g. Allowing early refills of prescription medications.

5. On March 13, 2012, the Board held an informal conference with Dr. Miller regarding Complaint CR10-581. During the informal conference the Board discussed with Dr. Miller his treatment of four patients: RM, JP, CH & PK. The Board expressed concern regarding the following aspects of Dr. Miller's treatment of the foregoing patients: a lack of pill counts; a lack of urine drug screens; early refills of narcotic medication; a lack of appropriate patient examination and functional assessment; allowing the patient(s) to self-regulate the dosage of medication; a lack of a medical plan of treatment, including specialty referrals; and medical record documentation. Following the informal conference, the Board tabled further action on the

matter until it had an opportunity to review current patient charts in order to determine if there had been any substantial changes in Dr. Miller's practice of prescribing narcotics to treat chronic pain. The Board subpoenaed five (5) patient records to review Dr. Miller's prescribing practices and medical record keeping.

6. On April 10, 2012, the Board reviewed Complaint CR10-581, including a review of the subpoenaed current patient records. Following its review, the Board voted to offer Dr. Miller this Consent Agreement in order to resolve Complaint CR10-581 without further proceedings.

7. This Consent Agreement has been negotiated by and between legal counsel for Dr. Miller and the Maine Office of the Attorney General in order to resolve complaint CR10-581 without a adjudicatory hearing. Absent Dr. Miller's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before July 24, 2012, the Board will resolve this matter by holding an adjudicatory hearing at a later date.

8. By signing this Consent Agreement, Dr. Miller waives any and all objections to, and hereby consents to allow the Board's legal counsel to present this proposed Consent Agreement to the Board for possible ratification. Dr. Miller also forever waives any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

COVENANTS

IN LIEU OF PROCEEDING TO AN ADJUDICATORY HEARING THE Board and Dr. Miller agree to the following disposition:

9. Dr. Miller neither admits nor denies the allegations contained in complaint CR10-581. However, Dr. Miller concedes that the Board has sufficient evidence from which it could

conclude that he violated the standard of care for prescribing controlled drugs to the patients for the treatment of nonmalignant chronic pain. Dr. Miller concedes that such conduct, if proven, could constitute grounds for discipline of his Maine medical license pursuant to 32 M.R.S.A. §3282-A(2)(F).

10. As discipline for the conduct admitted above, Dr. Miller agrees to:

a. Accept a REPRIMAND. As a medical professional, Dr. Miller was responsible for being aware of and complying with accepted standards of care for the diagnosis and treatment of chronic pain and narcotics.

b. Accept the following license condition/restriction, which shall remain in effect unless or until this Consent Agreement is rescinded or amended by all of the parties hereto: Dr. Miller shall immediately cease prescribing any controlled medications, including all opiates and benzodiazepines, for the treatment of chronic pain except for:

- (I) Patients in skilled nursing facilities or long-term care facilities;
- (ii) Patients in hospice care; or
- (iii) patients with metastatic cancer.

In complying with this restriction, Dr. Miller shall ensure that any and all prescriptions that he issues for the three excepted categories of patients identified above are annotated with the words “skilled nursing facility/long-term care” or “hospice care” or “metastatic cancer” as applicable to each patient.

11. Dr. Miller may prescribe controlled substances for no more than ten (10) consecutive days to treat acute pain conditions. In addition, to the extent that Dr. Miller prescribes any controlled drugs to patients for acute pain, Dr. Miller agrees that he shall comply with Board Rule, Chapter 21, “Use of Controlled Substances for Treatment of Pain.”

12. In order to ensure his compliance with the restriction on his ability to prescribe controlled drugs for the treatment of chronic pain, Dr. Miller agrees to cooperate with the Board and to permit the Board or its agent(s) to inspect his medical practice, including allowing the Board or its agents full access to and copying of the patient medical records of his medical practice with proper subpoena.

13. Dr. Miller waives his right to a hearing before the Board or any court regarding all findings, terms, restrictions and conditions of this Consent Agreement. Dr. Miller agrees that this Consent Agreement is a final order resolving complaints CR10-581. This Consent Agreement is not appealable and is effective until or unless modified or rescinded in writing by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General.

14. The Board and the Maine Office of the Attorney General may communicate regarding Dr. Miller or any other matter relating to this Consent Agreement.

15. This Consent Agreement is a public record within the meaning of 1 M.R.S.A. §402 and will be available for inspection and copying by the public pursuant to 1 M.R.S.A. §408. This Consent Agreement constitutes disciplinary and adverse licensing action that is reportable to the Federation of State Medical Boards (FSMB), the National Practitioner Data Bank (NPDB), and the Healthcare Integrity and Protection Data Bank (HIPDB).

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

17. The Board and Dr. Miller agree that no further agency or legal action will be initiated against him by the Board based upon complaint CR10-581, except or unless he fails to comply with the terms and conditions of this Consent Agreement.

18. Dr. Miller acknowledges that, pursuant to Title 10 M.R.S.A. §8003(5)(B), his failure to comply with any of the terms or conditions of this Consent Agreement shall constitute grounds for additional disciplinary action against his Maine medical license, including but not limited to an order, after hearing, suspending, revoking his medical license or imposing additional fines and costs.

19. Dr. Miller acknowledges and agrees that, pursuant to Title 10 M.R.S.A. §8003(5), the Board has the authority to suspend or revoke his medical license in the event that he fails to comply with any terms or conditions of this Consent Agreement.

20. Dr. Miller has been represented by Sandra L. Rothera, Esq., who has participated in the negotiation of this Consent Agreement.

21. Dr. Miller 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.

I, KEVIN G. MILLER, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING IT, 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: 7/18/12

Kevin G. Miller
KEVIN G. MILLER, M.D.

STATE OF MAINE
PENOBSCOT, ss

Personally appeared the above-named, Kevin G. Miller, 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: 7/18/12

Sandra L. Rothera
NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: _____

Dated: 7/18/12

Sandra L. Rothera
SANDRA L. ROTHERA, ESQ.
Attorney for Kevin G. Miller, M.D.

STATE OF MAINE BOARD OF
LICENSURE IN MEDICINE

Dated: 9/11/12

Gary R. Hatfield
GARY R. HATFIELD, M.D. , Chairman

STATE OF MAINE DEPARTMENT
OF ATTORNEY GENERAL

Dated: 9/12/12

Dennis E. Smith
DENNIS E. SMITH
Assistant Attorney General

Effective Date: 9/12/12