

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

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| In re: |) | CONSENT |
| Neil C. Robertson, P.A.-C |) | AGREEMENT |
| CR11-029 |) | |
| CR12-017 |) | |

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to practice as a physician assistant in the State of Maine held by Neil C. Robertson, P.A.-C. The parties to the Consent Agreement are: Neil C. Robertson, P.A.-C (“Mr. Robertson”), the State of Maine Board of Licensure in Medicine (“the Board”), and the State of Maine Office of the Attorney General (“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. At all times relevant to the complaint, Mr. Robertson was a licensee of the Board. The Board first issued Mr. Robertson a physician assistant license on December 16, 1996.
2. On January 24, 2011, the Board received a complaint filed against Mr. Robertson’s physician assistant license by the daughter of a patient, who accompanied the patient to see Mr. Robertson because of the patient’s back pain, leg pain and leg weakness. The complaint alleged in part that during an office visit with Mr. Robertson: the patient fell to the floor; Mr. Robertson did not immediately assist the patient up off the floor; Mr. Robertson told the patient to get up without assistance; Mr. Robertson told the patient that her

difficulty in standing was “all in her head;” and Mr. Robertson prevented the patient’s daughter from assisting her up off the floor. The Board docketed that complaint as CR11-029, and sent it to Mr. Robertson for a response.

3. On May 4, 2011, Board staff contacted Mr. Robertson regarding his failure to file a written response to the complaint. During that conversation, Mr. Robertson indicated that he was “at the end of his tether” and had started seeing a counselor. In addition, Mr. Robertson indicated that he was pursuing jobs outside of the medical field and would probably have to leave the field of medicine.

4. On May 20, 2011, the Board received a written response, together with the patient’s medical records, from Mr. Robertson to complaint CR11-029. In his response, Mr. Robertson admitted that during the office visit the patient fell to the floor after Mr. Robertson completed his examination of the patient and when Mr. Robertson turned to answer a question posed by one of the patient’s adult daughters who attended the office visit. According to Mr. Robertson, he then politely but strongly urged and encouraged the patient to attempt to get up off the floor under her own power. Mr. Robertson explained that the reason he did this was because his differential diagnoses of the patient included potential malingering, and that the patient’s difficulty standing may have been mostly psychosomatic. In addition, Mr. Robertson explained that he did not immediately assist the patient off the floor because he wanted to observe the strength in her upper and lower extremities. Mr. Robertson

continued to urge the patient to get up off the floor, and then eventually assisted her up off the floor.

Mr. Robertson acknowledged a significant error in the medical record note that he created regarding this incident by grossly overstating the length of time¹ the patient had been on the floor.

5. On June 11, 2011, the Board performed an initial review of complaint CR11-029, and voted to invite Mr. Robertson to attend an informal conference to discuss the matter.

6. On February 8, 2012, the Board received another complaint filed against Mr. Robertson's physician's assistant license from A, a former patient of Mr. Robertson. Patient A alleged that during the time she was a patient of Mr. Robertson, she and Mr. Robertson engaged in a personal and sexual relationship for many years, which included Mr. Robertson providing her with money and smoking marijuana together. The Board docketed the complaint as CR12-017, and sent it, together with the Board Investigator's interview of patient A to Mr. Robertson for a written response.

7. On March 12, 2012, the Board held an informal conference with Mr. Robertson regarding complaint CR11-029, including his communications with Board staff regarding his mental health and counseling. Following the informal conference, and pending further action on the complaint, the Board requested that Mr. Robertson provide the Board with reports from his therapist regarding his resilience and current ability to safely practice medicine. On

¹ The medical note that Mr. Robertson created regarding this patient visit indicated that the patient was on the floor "for more than five minutes."

April 9, 2012, the Board received a letter from Mr. Robertson's therapist, who acknowledged providing psychotherapy to Mr. Robertson but declined to provide any information regarding Mr. Robertson's evaluation or treatment due to privacy and confidentiality concerns.

8. On or about May 10, 2012, the Board received a written response from Mr. Robertson to complaint CR12-017. In his response, Mr. Robertson admitted that he had engaged in a personal and sexual relationship with patient A, including providing patient A with money and smoking marijuana together. Mr. Robertson acknowledged that he did not have a justifiable reason for his conduct with patient A. According to Mr. Robertson, he has suffered for years from chronic depression, following a series of difficult personal life experiences, for which he received intensive psychotherapy and counseling. According to Mr. Robertson, he discontinued therapy and counseling for a number of years before eventually resuming it, a significant focus of which has been the blurring of boundaries in his life. Mr. Robertson admitted that his conduct towards patient A violated important cannons associated with his professional license, and expressed remorse and embarrassment.

9. The 2008-2009 Edition of the Code of Medical Ethics of the American Medical Association defines "sexual misconduct in the practice of medicine" as follows:

Sexual contact that occurs concurrent with the patient-physician relationship constitutes sexual misconduct. Sexual or romantic interactions between physician and patients detract from the goals of the physician-patient relationship,

may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.

If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.

10. Board Rule, Chapter 10 defines "sexual misconduct" to include:

"Sexual violation" is any conduct by a physician/physician assistant with a patient that is sexual or may reasonably be interpreted as sexual, even when initiated by or consented to by a patient, including but not limited to... sexual intercourse, genital to genital contact, oral to genital contact, oral to anal contact, kissing in a sexual manner...

11. On June 12, 2012, the Board reviewed complaint CR11-029, including the correspondence from Mr. Robertson's therapist, and complaint CR12-017. Following its review, the Board voted to request that Mr. Robertson voluntarily cease practice no later than June 15, 2012, and to seek the voluntary surrender of his physician assistant license pursuant to a consent agreement regarding both complaints.

12. On June 15, 2012, the Board received correspondence from James F. Martemucci, Esq., attorney for Mr. Robertson, indicating that Mr. Robertson voluntarily ceased practice on June 15, 2012.

13. This Consent Agreement has been negotiated by and between James F. Martemucci, Esq., legal counsel for Mr. Robertson, and legal counsel for the Board in order to resolve these matters without further proceedings.

Absent Mr. Robertson'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 schedule these matters for an adjudicatory hearing.

14. By signing this Consent Agreement, Mr. Robertson 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. Mr. Robertson 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.

15. Mr. Robertson has been cooperative with the Board and the Office of Attorney General.

COVENANTS

In lieu of further investigations and proceedings in this matter, Mr. Robertson agrees to the following:

16. Mr. Robertson acknowledges that:
- a. With regard to complaint CR11-029 the Board has sufficient evidence from which it could reasonably conclude that his conduct, including his interactions and correspondence with the Board staff, raise serious concerns regarding his present mental/emotional ability and fitness to safely practice medicine, and could constitute grounds for discipline of his Maine physician assistant license pursuant to 32 M.R.S. § 3282-A(2)(E).;

b. With regard to complaint CR12-017 the Board has sufficient evidence from which it could reasonably conclude that he engaged in unprofessional conduct by: (1) engaging in a romantic and sexual relationship with patient A, who was a patient; (2) using marijuana with patient A; and (3) providing patient A with money. Mr. Robertson admits that the Board has sufficient evidence from which it could conclude that the conduct with patient A constitutes sexual misconduct pursuant to Board Rule, Chapter 10, and unprofessional conduct and grounds for discipline of his Maine physician assistant license pursuant to 32 M.R.S. § 3282-A(2)(F).

17. As discipline for the conduct described in paragraphs 1-16 above, Mr. Robertson agrees to:

a. Accept a REPRIMAND. Mr. Robertson is hereby reprimanded by the Board for engaging in unethical and unprofessional conduct with regard to his inappropriate relationship with patient A. As Mr. Robertson acknowledged, his conduct represented a boundary crossing for which there was no justification or excuse. Sexual behavior between a medical provider and a patient is never therapeutic, and undermines the public trust in the medical profession.

b. The IMMEDIATE and VOLUNTARY SURRENDER of his Maine physician assistant license effective upon the execution² of this Consent Agreement. In complying with this provision, Mr. Robertson shall immediately return his Maine physician assistant license to the Board.

² For the purposes of this Consent Agreement, "execution" means the date on which the final signature is affixed hereto.

c. Reimburse the Board Seven Hundred Thirty-One Dollars and Six Cents (\$731.06) as actual costs of the investigation of this matter. Mr. Robertson shall ensure that he makes full payment of reimbursement to the Board within six (6) months following the execution of this Consent Agreement. Payment shall be made by certified check or money order made payable to "Maine Board of Licensure in Medicine," and be remitted to Maria MacDonald, Investigator, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137.

18. Nothing in this Consent Agreement shall prohibit Mr. Robertson from, at reasonable intervals, petitioning the Board for reinstatement of his Maine physician assistant license. Upon petitioning the Board for reinstatement, Mr. Robertson shall bear the burden of demonstrating that: (a) his Maine physician assistant license should be reinstated; and (b) that the resumption of his practice of medicine would not pose a risk to the public; and (c) that no grounds exist for the Board to deny his application for reinstatement. The Board, upon receipt of any such petition for reinstatement from Mr. Robertson, may direct that he undergo whatever mental and physical testing and evaluations that it deems appropriate. In addition, Mr. Robertson shall execute any and all releases so that the Board, Board staff, and Office of Attorney General may obtain copies of all of his medical, psychological, and counseling records and evaluations. Following its receipt of a petition for reinstatement from Mr. Robertson, and its review of any records, evaluations and investigative information, the Board shall retain the sole discretion to: (a)

grant or deny the petition; or (b) grant Mr. Robertson a license subject to restrictions and/or conditions pursuant to a consent agreement under the authority of 32 M.R.S. § 3282-A(2) and 10 M.R.S. 8003(5).

19. This Consent Agreement does not require Mr. Robertson to seek or obtain reinstatement of his Maine physician assistant license. Mr. Robertson may choose to seek and obtain licensure in another state or jurisdiction.

20. Mr. Robertson waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Mr. Robertson agrees that this Consent Agreement and Order is a final order resolving pending Complaint Nos. CR11-029 and CR12-017. 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.

21. The Board and the Office of the Attorney General may communicate and cooperate regarding Mr. Robertson or any other matter relating to this Consent Agreement.


22. 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. This Consent Agreement constitutes disciplinary 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).

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

24. Mr. Robertson 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, NEIL C. ROBERTSON, P.A.-C, 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: 07/26/12


NEIL C. ROBERTSON, P.A.-C

STATE OF MAINE

CUMBERLAND, S.S.

Personally appeared before me the above-named Neil C. Robertson, P.A.-C, and swore to the truth of the foregoing based upon her own personal knowledge, or upon information and belief, and so far as upon information and belief, she believes it to be true.

DATED: 7/26/12


NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: 9/14/18

DATED: 7/24/12

James F. Martemucci
JAMES F. MARTEMUCCI, ESQ.
Attorney for Mr. Robertson

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 9/11/12

Gary R. Hatfield
GARY R. HATFIELD, MD, Chairman

STATE OF MAINE OFFICE
OF THE ATTORNEY GENERAL

DATED: 9/11/12

Dennis E. Smith
DENNIS E. SMITH
Assistant Attorney General

Effective Date: 9/11/12