

**STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE
137 STATE HOUSE STATION
161 CAPITOL STREET
AUGUSTA ME 04333-0137
MEETING OF MARCH 11, 2008
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XIX. ADJOURNMENT 4:24 P.M. 11

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE
137 STATE HOUSE STATION
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MEETING OF MARCH 11, 2008

BOARD MEMBERS PRESENT

Kimberly K. Gooch, M.D. (Chairman PRO TEM)
Gary R. Hatfield, M.D., Board Secretary
Cheryl D. Clukey
George K. Dreher, M.D.
Maroulla Gleaton, M.D.
Bettsanne Holmes
David Nyberg, Ph.D.
Daniel K. Onion, M.D.

BOARD STAFF PRESENT

Randal C. Manning, Executive Director
Jean M. Greenwood, Administrative Assistant
Timothy Terranova, Consumer Assistant
Maria A. MacDonald, Field Investigator
Dan Sprague, Assistant Executive Director

ATTORNEY GENERAL'S OFFICE

Dennis Smith, Assistant Attorney General
Detective Peter Lizanecz, Attorney General's Office

Sheridan R. Oldham, M.D., Chairman was excused

Cheryl Clukey arrived at 10:37 a.m. Ms. Clukey abstained from voting on motions discussed before she arrived.

The Board meets in public session with the exception of the times listed below which are held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (1 M.R.S.A. §405). The Board moved, seconded, and voted the following executive session times. All voting takes place in public session.

EXECUTIVE SESSIONS

PURPOSE

9:09 a.m. – 10:23 a.m.	Assessment & Direction, Progress Reports & New Complaints
10:39 a.m. – 10:58 a.m.	Informal Conference
11:06 a.m. – 11:47 a.m.	Informal Conference
12:00 p.m. – 12:23	Informal Conference
1:03 p.m. – 2:14 p.m.	Informal Conference
2:31 p.m. – 3:22 p.m.	New Complaints

PUBLIC SESSIONS

9:07 a.m. – 9:09 a.m.	Call to Order
10:38 a.m. – 10:39 a.m.	Back in session
10:58 a.m. – 11:01 a.m.	Motion
11:47 a.m. – 11:54 a.m.	Motion
12:23 p.m. – 12:24 p.m.	Motion
2:14 p.m. – 2:15 p.m.	Motion
2:28 p.m. – 2:31 p.m.	Public Session
3:22 p.m. – 4:06 p.m.	Public Session
4:12 p.m. – 5:35 p.m.	Public Session to Adjournment

RECESS *The Board voted to stand in recess during the following times.*

10:22 a.m. – 10:38 a.m.	Recess
11:01 a.m. – 11:06 a.m.	Recess
11:54 a.m. – 12:00 p.m.	Recess
12:23 p.m. – 1:03 p.m.	Noon Recess
2:15 p.m. – 2:28 p.m.	Recess
4:06 p.m. – 4:12 p.m.	Recess

I. **CALL TO ORDER**

In the absence of the Board Chairman the following motion was made:

MOTION was made by Dr. Gleaton to elect Dr. Kimberly Gooch as Chairman PRO TEM in the absence of Chairman Oldham. Dr. Dreher seconded the motion which passed 7-0.

Dr. Gooch called the meeting to order. Under Consent Agreement Approvals Joseph P. Fahey, M.D. and David B. Gammon, M.D. were amended to the agenda. The Adjudicatory Hearing is amended off the agenda.

EXECUTIVE SESSION

II. ASSESSMENT & DIRECTION

A. AD 08-028 (CR 08-083)

MOTION was made by Dr. Onion to issue a complaint in the matter of AD 08-028 (CR 08- 83). Dr. Gleaton seconded the motion which passed 7-0-1.

B. AD 08-072

MOTION was made by Dr. Dreher to investigate further AD 08-072. Ms. Holmes seconded the motion which passed 7-0-1.

III. PROGRESS REPORTS

A. CR 07-316

MOTION was made by Dr. Onion to investigate further CR 07-316 with a report back next meeting. The motion was seconded by Dr. Hatfield and passed 5-2-1.

B. CR 07-113 SERGIO R. RIFFEL, M.D.

MOTION was made by Dr. Gooch to preliminarily deny the renewal application of CR 07-113 Sergio R. Riffel, M.D. and order an Adjudicatory Hearing based on incompetence. Ms. Holmes seconded the motion which passed 7-0-1.

C. COMPLAINT STATUS REORT – BOARD REVIEWED

D. REVIEW DRAFT LETTERS OF GUIDANCE

The Board reviewed and approved the letters of guidance.

E. CONSUMER ASSISTANT FEEDBACK

The report was received.

IV. NEW COMPLAINTS

A. CR 07-372

MOTION was made by the Complaint Review Committee to dismiss CR 07-372. The motion was seconded by Dr. Dreher.

The complainant alleges her 85 year old mother was not given proper and adequate care when she was admitted to the hospital for treatment after a serious fall. The patient had suffered a fatal head injury and never regained consciousness. The patient's son was her medical power of attorney and he made the decision to place his mother on DNR/DNI status when it became clear she would not recover from her injuries. The complainant apparently, for a time at least, disagreed with her brother's decision and assumed

it would mean that her mother would receive no further medical care at all. This assumption was incorrect as documented in the medical record, which shows proper and adequate comfort care was provided. There is some confusion as to whether the complainant eventually signed the DNR/DNI order. Her brother, the patient's POA, held the authority to do that and he did exercise his authority.

The motion passed 6-0-1-1 with Dr. Onion recused.

B. CR 07-379

MOTION was made by the Complaint Review Committee to dismiss CR 07-379. The motion was seconded by Dr. Dreher.

The complaint is about whether or not a colonoscopy should have been performed. The physician gives a persuasive rationale for his judgment, including consideration of risks and benefits of performing this procedure on a patient in his nineties with a history of complex co-morbidities.

The motion passed 7-0-1.

C. CR 07-382

MOTION was made by the Complaint Review Committee to dismiss CR 07-382. The motion was seconded by Dr. Dreher.

The patient's partner complains of several instances of incompetence and unprofessional behavior. Voluminous records from a variety of sources and providers refute these complaints and support the physician's diagnoses, competence and professional behavior.

The motion passed 7-0-1.

D. CR 08-004

MOTION was made by the Complaint Review Committee to dismiss CR 08-004. Dr. Dreher seconded the motion.

The patient complained that his request for records was not honored. The physician claimed to know nothing about the request and the office manager confirmed that the physician would not have been informed. The manager also stated that the request has been forwarded to the appropriate institution for action. Additionally, the complainant has indicated he has his records and no longer wants to pursue the matter.

The motion passed 7-0-1.

E. CR 07-378

MOTION was made by Dr. Gooch to investigate further CR 07-378. Ms. Holmes seconded the motion which passed 6-1-1.

F. CR 07-383

MOTION was made by Dr. Hatfield to investigate further CR 07-383. Dr. Gleaton seconded the motion which passed 7-0-1.

G. CR 07-392

MOTION was made by Ms. Holmes to investigate further CR 07-392. Ms. Clukey seconded the motion which passed 8-0.

H. CR 07-393

MOTION was made by Dr. Hatfield to dismiss CR 07-393 with a letter of guidance. Dr. Nyberg seconded the motion and after some discussion the motion failed 4-4.

MOTION was made by Dr. Onion to dismiss CR 07-393. Dr. Gleaton seconded the motion and after some discussion the motion failed 4-4.

MOTION was made by Dr. Onion to table CR 07-393 as the Board was deadlocked. Dr. Gleaton seconded the motion which passed 8-0.

I. CR 07-400

MOTION was made by Dr. Dreher to investigate further CR 07-400. Dr. Nyberg seconded the motion which passed 8-0.

J. CR 07-371

MOTION was made by Dr. Onion to dismiss CR 07-371. Dr. Nyberg seconded the motion.

An acquaintance complained of unprofessional behavior on the part of a Physician Assistant. After review of the complaint, the PA's response, and findings made by the PA Advisory Committee, the Board concluded that there was insufficient evidence to support any actions.

The motion passed 8-0.

K. CR 07-402

MOTION was made by Dr. Onion to dismiss CR 07-402. Dr. Nyberg seconded the motion.

A patient complained that a Physician Assistant, who was the practice's administrator, colluded with staff to submit false work capacity reports. An investigation, including a review by the PA Advisory Committee, revealed that the PA had never seen the patient. The Board found no credible evidence of the alleged collusion or other misconduct, and so dismissed the complaint.

The motion passed 8-0.

L. CR 07-390

MOTION was made by Dr. Dreher to investigate further CR 07-390. Ms. Holmes seconded the motion which passed 8-0.

V. INFORMAL CONFERENCES

A. CR 07-146

MOTION was made by Dr. Onion to dismiss CR 07-146. Dr. Hatfield seconded the motion.

A local police department expressed concerns about this physician's narcotic prescribing practices. The Board obtained and reviewed a dozen records chosen from a Physician Monitoring Program (PMP) report of his schedule II and III prescriptions. The physician, in writing and at an informal conference with the Board 3/11/08, explained the steps he has taken to implement recommendations previously suggested by the Board. The physician additionally has stopped prescribing narcotics for chronic pain and has announced that in the local newspaper.

Based on the investigation, the Board voted unanimously to dismiss the complaint after deciding the physician's current practice was reasonable and valuable.

B. CR 06-064 JAMES H. STUART, M.D.

MOTION was made by Dr. Hatfield to dismiss complaint CR 06-064 in the matter of James H. Stuart, M.D., with a letter of guidance. Dr. Dreher seconded the motion.

In this complaint the husband of a surgical patient felt Dr. Stuart had abandoned his wife after surgery because he appeared unresponsive to her concerns about a drainage tube and upon discharge the doctor "left the nurses to perform" what he felt was the doctor's job.

The doctor responded that he entered the patient's room to find the patient removing her own NG tube. The doctor felt the patient had discharged him as her doctor and acted accordingly.

The matter was scheduled for an informal conference which was attended by Dr. Stuart, the complainant and the patient. At the end of the conference the Board voiced concern with the doctor's communication skills and tabled the complaint while the doctor attended appropriate educational courses regarding communicating with patients. The doctor was to report back in follow up at the November meeting (after taking the courses) but failed to appear citing a failure in communication. The doctor appeared today to report what he had gained from the educational experience.

The letter of guidance will address the Board's conclusion that communication with the patient was lacking. The Board continues to have some concerns about that and encouraged him to continue working at this aspect of patient care and to continue his education. The letter of guidance will remain in Dr. Stuart's file for ten years.

The motion passed 7-1.

C. CR 07-187

Motion was made by Dr. Gleaton to dismiss CR 07-187. Dr. Nyberg seconded the motion.

The patient complained about appropriateness and competency of her social security disability examination. After careful review as well as interviewing the physician in an informal conference, the board unanimously feels the physician did a competent, reasonable exam given the constraints of the system he has to operate under. The Board will follow-up with a letter of recommendation to the Social Security Disability Services Office about providing adequate facilities for examinations to ensure privacy for the patient and assistance for the physician who should have a chaperone present when examining female patients. Finding funds to support this may be unlikely; therefore, the office should inform patients by letter about the lack of chaperone and invite patients to bring a family member or friend to the exam.

The motion passed unanimously

D. CR 07-264

MOTION was made by Dr. Dreher to table CR 07-264 for six months while the physician obtains specific education. The physician shall then report to the Board. Dr. Hatfield seconded the motion which passed unanimously.

MOTION was made by Dr. Dreher that if the physician (in the matter of CR 07-264) finds a course which requires immediate approval the education committee of the Board is authorized to approve the course. Dr. Nyberg seconded the motion which passed 8-0.

PUBLIC SESSION

VI. MINUTES OF FEBRUARY 12, 2008

MOTION was made by Dr. Dreher and seconded by Dr. Nyberg to approve the minutes of February 12, 2008 as amended. The motion passed unanimously.

VII. NEW BUSINESS (VOTING)

VIII. BOARD ORDERS, CONSENT AGREEMENTS FOR APPROVAL & MONITORING REPORTS

A. BOARD ORDERS FOR APPROVAL (NONE)

B. CONSENT AGREEMENTS FOR APPROVAL OR MONITORING REPORTS

1. CR 06-376 – ROBERT N. PHELPS, M.D.

MOTION was made by Dr. Gleaton to have Dr. Phelps consent in writing to release the results of the neuropsychological evaluation done by Dr. Philip Morse and additionally to ask Dr. Morse to provide a cognitive evaluation at this point in time. Dr. Nyberg seconded the motion.

Dr. Onion requested an amendment to the motion to ask Dr. Phelps to agree in writing to voluntarily cease practice until the Board can review the neuropsychological and cognitive evaluation from Dr. Morse at the Board's next meeting. If Dr. Phelps refuses to voluntarily state in writing he will cease practice that the Board invoke item #5 of his consent agreement which states in part "Any substantiated reports to the Board alleging sexual impropriety or misconduct by the Licensee shall result in the immediate, indefinite and automatic suspension of the Licensee's license...."

Ms. Holmes seconded the amendment and the amendment was agreed to by Dr. Gleaton and Dr. Nyberg. The motion to amend passed 7-0-0-1. Dr. Dreher was recused.

The amended motion passed 7-0-0-1. Dr. Dreher was recused.

2. CR 06-225 ELLEN E. MICHALOWSKI, M.D.

MOTION was made by Dr. Onion to ask Dr. Michalowski to release her Talbott evaluations to her treating physicians and to allow the consent agreement to remain unchanged. Dr. Nyberg seconded the motion which passed unanimously.

3. JAMES P. FAHEY, M.D. [SEE APPENDIX A ATTACHED]

MOTION was made by Dr. Onion to approve an amended Consent Agreement for Conditional Licensure in the matter of James P. Fahey, M.D. and also approve the Clinical Setting, Practice and Physician Monitor. Dr. Dreher seconded the motion which passed unanimously.

4. DAVID GAMMON, M.D.[SEE APPENDIX B ATTACHED]

MOTION was made by Dr. Dreher to approve the First Amendment to his Consent Agreement for Conditional Licensure (see attached). Dr. Hatfield seconded the motion which passed 7-0-0-1. Dr. Onion was recused.

IX. ADJUDICATORY HEARING(S) (none)

X. REMARKS OF THE CHAIRMAN (none scheduled)

XI. EXECUTIVE DIRECTOR'S REPORT

A. **FSMB PORTABILITY COMMITTEE EFFORT:** This committee has been working since January 2004 to find ways to streamline licensing so that one state can use data collected by another state to speed up license application processing. When the project was about to move into the implementation mode in December 2007, the FSMB Information Systems staff changed their position on supporting the transmission of board licensing data. The project team will meet on March 7 to discuss alternatives in order to keep some form of this project moving. Maine, Rhode Island, New Hampshire, and Idaho are working together on a test of a true "reciprocity" system. I will report the results of those discussions.

The discussions are now being directed toward a process of joint recognition of a core group of static qualifications documents among participating states.

New protocols for this change in concept will be developed.

B. Mr. Manning reported he has learned the legislature will once again sweep funds from the dedicated funds of the Board. The budget Office recommends the Boards have one half to three quarters of a year of expenses put aside in an unallotted account, which the Board currently has.

MOTION was made by Dr. Dreher to add to the Public Information Committee's agenda a possible newsletter article explaining to our licensees what is happening with the Board's dedicated revenue through these legislative budget sweeps. The motion was seconded by Dr. Onion but failed 3-5. It was understood that if the "sweep" necessitates any fee increases a full report of the cause will be given.

XII. REMARKS OF ASSISTANT ATTORNEY GENERAL (Tabled)

XIII. BOARD SECRETARY'S REPORT

A. LIST A – LICENSE APPLICATIONS FOR RATIFICATION

1. MEDICAL DOCTOR LIST A

MOTION was made by Dr. Nyberg to ratify the physicians on List A below for licensure. Dr. Dreher seconded the motion which passed 8-0.

The following license applications have been approved by Board Secretary Gary R Hatfield, MD without reservation:

<u>NAME</u>	<u>SPECIALTY</u>	<u>LOCATION</u>
Berg, Sigrid E	Medical Oncology	Bangor
Bub, Lawrence D	Diagnostic Radiology	Not Listed
Bunney, Benjamin	Psychiatry	Not Listed
Caldwell, Katherine R	Internal Medicine	Portland
Clark, Linda G	Emergency Medicine	Caribou
Dicks, Peter S	Internal Medicine	York County
Govindn, Lakshmimalini	OBGYN	Houlton
Irwin, Louis J	Anesthesiology	Bangor
Koch, Paul W	Emergency Medicine	Presque Isle
Landfair, Jeffrey J	Family Medicine	Unsure
O'Shaughnessy, Nicholas J	Emergency Medicine	Lincoln
Quinn, Elizabeth E	Internal Medicine	Med Coast Region
Rosand, Jonathan M	Neurology	York Hospital
Sprague, Stephen M	Family Practice	Searsport/Waldo City Gen Hosp
Stamper, Sarah E	Internal Medicine	Camden
Vitterito, II, Joseph A	Pediatrics	Portland
Woloszyn, Donald R	Pulmonary Disease	Brunswick

2. PHYSICIAN ASSISTANT LIST A (none)

B. LIST B APPLICATIONS FOR INDIVIDUAL CONSIDERATION

1. HUBERT J. CANTAVE, M.D. (temporary license application)

Dr. Cantave's temporary application is being presented for review. He is requesting a waiver of the 3 attempt limit for USMLE Step 3 and approval of his temporary application.

Dr. Cantave states "I have succeeded on my fourth attempt after a stressful period in my life (2 different internships in a row while learning that my country of origin, Haiti, was being torn apart)...I will urge you to take into consideration the fact that I passed with only one attempt in all the other exams....I also graduated at the top of my class in medical school."

MOTION was made by the Licensure Committee to grant a waiver of the 3 attempt limit for USMLE Step 3 to Dr. Cantave and approve of his temporary application. The motion passed 8-0.

2. DENNIS B. ELROD, M.D. (temporary license application)

Dr. Elrod's temporary application is being presented for review because of a yes answer to question #7 which reads "Have you EVER been charged, summonsed, indicted, arrested, or convicted of any criminal offense (including motor vehicle offenses but not including minor traffic or parking violations)?"

Dr. Elrod states that he was charged with driving while intoxicated (DWI) on December 17, 2005 in Anchorage, AK.

MOTION was made by the Licensure Committee to investigate further, and to give Dr. Hatfield authority to approve the application if he finds there would be no harm to the public by granting Dr. Elrod a license. The motion passed 8-0.

3. MICHAEL B. HUGGINS, M.D. (temporary license application)

The temporary application of Michael B. Huggins, M.D. is being presented for review because of a negative reference received from the coordinator of Medical Staff Services at Catawba Valley Medical Center in Hickory, North Carolina, concerning incomplete medical records.

MOTION was made by the Licensure Committee to grant a temporary license to Michael B. Huggins, M.D. The motion passed 8-0.

C. REINSTATEMENT LIST C.

1. RECOMMENDED BY BOARD SECRETARY FOR RATIFICATION

The following license reinstatement applications have been approved by staff and Board Secretary Gary R Hatfield, MD without reservation:

<u>NAME</u>	<u>SPECIALTY</u>
Lathi, Devayani C	Pathology
Scott, Marcia	Psychiatry
Wofsy, Alice	Emergency Medicine & Family Practice

MOTION was made by Dr. Hatfield and seconded by Dr. Dreher to ratify the reinstatements on List C. The motion passed 7-0. Dr. Onion was out of the room.

2. REINSTATEMENT APPLICATIONS FOR INDIVIDUAL CONSIDERATION (none)

D. LIST D WITHDRAWALS

The following physicians have withdrawn their licenses from registration:

<u>NAME</u>	<u>LICENSE NUMBER</u>
Bhatt, Dileep S.	009254
Mazur, Lawrence A.	014428
Siegel, Marc O.	015606
McMonigal, Kathleen A.	013083
Sonneborn, Henry L.	009871
Adams, Gretchen	015433
McLaughlin, Scott A.	016032
Malik, Salman N.	015707

MOTION was made by the Dr. Hatfield and seconded by Dr. Gleaton to ratify the withdrawals on List D. The motion passed unanimously.

D. LIST E LICENSES LAPSED BY OPERATION OF LAW

The following physician licenses lapsed by operation of law effective March 7, 2008. FYI

<u>NAME</u>	<u>LICENSE NO.</u>
Bermas, Honnie R.	016639
Bernhard, Peter H.	016126
Burns, Sharon H.	015103
Criss, Marcia A.	015227
Dennish, Andrew S.	016820
Deschene, Lori R.	014770
Donohue, Joseph T.	017190
Duffy, Wallace	004265
Gabriel, Antoine M.	015818
Gurler, Aziz	005503
Hephinger, Donna J.	017403
Kathard, Haresh M.	016036
Lumpkin, Elizabeth N.	017347
McLaughlin, Sean M.	014948
Mejnartowicz, Slawomir	014948
Meyerhoefer, Frederick	013744
Novis, David A.	010074
Osborne, Isaac J.	015203
Packard, Thomas	012988
Peris, Christopher R.	007800
Putting, Jacqueline L.	008395
Rini, James M.	017321
Rothstein, David H.	015514
Shea, Barbara F.	017495
Varghai, Nayyer H.	015865
White, Julia A.	016478

E. LIST F LICENSES REQUESTING TO CONVERT FROM INACTIVE TO ACTIVE STATUS (none)

F. LIST G RENEWAL APPLICATIONS FOR REVIEW

1. BURT J. YANKIVER, M.D.

Dr. Yankiver's renewal application is being presented to the Board because of a report of a \$1,000,000 malpractice settlement on his behalf.

MOTION was made by the Licensure Committee to investigate further which passed unanimously.

2. SERGIO RIFFEL, M.D. (SEE CR 07-113 FOR DETAILS OF ACTION TAKEN)

G. LIST H BOARD SECRETARY'S RECOMMENDATIONS
DELEGATED PRACTITIONER SCHEDULE II FOR RATIFICATION

The following requests for Schedule II prescribing authority have been approved by Board Secretary Gary R. Hatfield, M.D.

<u>NAME</u>	<u>PSP</u>	<u>LOCATION</u>
Kevin King, APRN	Harold Rosenblatt, MD	Portland
John Blowen, APRN	Harold Rosenblatt, MD	Portland
Albert Blackadar, NP	John D. Gage, MD	Belfast

MOTION was made by Dr. Hatfield to ratify the physician assistants on List G above. Dr. Gleaton seconded the motion which passed unanimously.

XIV. STANDING COMMITTEE REPORTS

A. PERSONNEL & ADMINISTRATION COMMITTEE

B. LEGISLATIVE & REGULATORY COMMITTEE

C. LICENSURE COMMITTEE

D. PHYSICIAN ASSISTANT ADVISORY COMMITTEE

1. METHADONE PRESCRIBING

Dr. Onion brought to the Board the concerns voiced at the PA Advisory Committee which resulted in its recommendation to the Board of Licensure in Medicine to reconsider the Board's decision not to include methadone in Physician Assistant's permitted narcotic prescribing lists. The matter was discussed but no action was taken.

2. SCHEDULE II APPLICATION REVISED

This matter was not discussed.

3. SCHEDULE II LOG

This matter was not discussed.

4. PA SUPERVISION LIMIT DISCUSSION

This matter was not discussed.

E. PUBLIC INFORMATION COMMITTEE

F. LICENSURE COMMITTEE

G. CME COMMITTEE

H. ETHICS COMMITTEE

Dr. Nyberg will do a preliminary investigation into informed consent to see if a full committee review is required. The specific task is to define the concept of informed consent and what is sufficient for purposes of medical decision making or procedures. Also to determine and promulgate guidelines of informed consent as regards cases before the Board.

I. SPECIAL PROJECTS COMMITTEE

XV. BOARD CORRESPONDENCE

XVI. FYI

XVII. FSMB MATERIAL

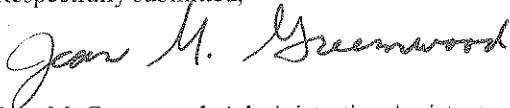
XVIII. OTHER BUSINESS

A. Mr. Gordon Smith from Maine Medical Association spoke to the Board.

XIX. ADJOURNMENT 5:43 p.m.

MOTION was made by Cheryl Clukey and seconded by Dr. Dreher to adjourn. The motion passed unanimously.

Respectfully submitted,



Jean M. Greenwood, Administrative Assistant
Board Coordinator

STATE OF MAINE
 BOARD OF LICENSURE IN MEDICINE

In re:) CONSENT AGREEMENT
 Joseph P. Fahey, M.D.) FOR
 Application for Medical Licensure) CONDITIONAL LICENSURE
)

This document is a Consent Agreement for Conditional Licensure, effective when signed by all parties, regarding conditions imposed upon the license to practice medicine in the State of Maine issued to Joseph P. Fahey, M.D. The parties to the Consent Agreement for Conditional Licensure are: Joseph P. Fahey, M.D. ("Dr. Fahey"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department 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. On November 26, 2007, Joseph P. Fahey, M.D. applied for an active license to practice medicine in the State of Maine. Dr. Fahey's primary medical specialty is Pediatrics.

2. Prior to applying for medical licensure in the State of Maine, Dr. Fahey practiced medicine in the State of Massachusetts. On November 4, 2005, Dr. Fahey entered into a Voluntary Agreement Not to Practice (VANP) with the Massachusetts Board of Registration in Medicine based upon his admitted prior use of marijuana and cocaine.

3. On December 1, 2005, Dr. Fahey entered into a chemical dependency monitoring contract with the Massachusetts Physician Health Services (PHS).

4. On July 25, 2007, Dr. Fahey entered into a Consent Order with the Massachusetts Board of Registration in Medicine based upon his use of marijuana and cocaine. A copy of that Consent Order is attached to and incorporated into this Consent Agreement for Conditional Licensure as "Exhibit A."

5. On February 12, 2008, the Board reviewed Dr. Fahey's application for medical licensure in the State of Maine, and voted to issue him a license pursuant to this Consent Agreement for Conditional Licensure.

6. By signing this Consent Agreement, Dr. Fahey waives, in his personal capacity and through legal counsel, 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. Fahey waives, in his personal capacity and through legal counsel, forever 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 for Conditional Licensure.

COVENANTS

7. Dr. Fahey admits that, based upon his history of substance abuse, the Board has sufficient evidence from which it could reasonably conclude that he engaged in habitual substance abuse that was "forseeably likely to result in his performing services in a manner that endangers the health or safety of patients." Dr. Fahey admits that such conduct constitutes habitual substance abuse and unprofessional conduct and grounds to deny his application for a Maine medical license pursuant to 32 M.R.S. § 3271 and 32 M.R.S. § 3282-A(2)(B) & (F).

CONDITIONS OF LICENSURE

8. In light of the admissions in paragraph 7 above, as well as Dr. Fahey's efforts and commitment to refrain from the use of illegal substances, the Board agrees to issue and Dr. Fahey agrees to accept a Maine medical license with modifications¹ and conditions. Based on Dr. Fahey's acceptance of responsibility for his actions, and his continuing treatment of his substance abuse problems, the Board and Dr. Fahey agree to the following conditions, which shall remain in place indefinitely, imposed upon his Maine medical license:

a. ABSTINENCE. Dr. Fahey agrees that, following the execution² of this Consent Agreement for Conditional Licensure, he shall completely abstain from the use of any and all Prohibited Substances. "Prohibited Substances" as used throughout this Consent Agreement for Conditional Licensure shall mean: benzodiazepines; sedatives; hypnotics or similar drugs; opiates; alcohol; cocaine; fentanyl; mood, consciousness or mind-altering substances, whether illicit or not; and all drugs which are dispensed to or prescribed for him by anyone other than a single primary care physician approved by the Board who is knowledgeable of Dr. Fahey's medical history, including his use of marijuana and cocaine, unless the circumstances constitute a genuine medical or surgical emergency.³

¹ Title 32 M.R.S.A. § 3282-A(2) gives the Board the authority to "modify" Dr. Fahey's Maine medical license by imposing conditions upon it. The "modifications" to Dr. Fahey's Maine medical license are the conditions imposed upon it pursuant to this Consent Agreement.

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

³ Notwithstanding this provision, the Board may approve Dr. Fahey's treating psychiatrist to continue to prescribe all psychotropic medications for Dr. Fahey's psychiatric care and treatment so long as Dr. Fahey

i. Prescription Medication. If any controlled drug is dispensed or prescribed for Dr. Fahey for a personal medical condition, Dr. Fahey or the Supervising Physician shall notify the Board by telephone and in writing within 48 hours or as soon thereafter as possible. This notice shall be followed by a written summary of all pertinent circumstances. The Board shall be apprised of all continuing pertinent circumstances regarding continued use of the controlled drug, and a written report thereof shall be submitted to the Board.

ii. Future Use of Prohibited Substances Shall Result in Loss of Licensure. Dr. Fahey agrees and understands that any reliable evidence of use at any time in the future, whether in Maine or elsewhere, of any Prohibited Substance, including but not limited to benzodiazepines, sedatives, hypnotics, opiates, cocaine or alcohol, shall constitute a violation of this Consent Agreement, which **SHALL RESULT IN THE IMMEDIATE, INDEFINITE AUTOMATIC SUSPENSION OF LICENSURE, AND PROOF OF USE MAY RESULT IN PERMANENT REVOCATION OF LICENSURE.**

b. POSSESSION OF CONTROLLED DRUGS. Dr. Fahey agrees that, following the execution of this Consent Agreement for Conditional Licensure, he shall completely abstain from the possession of Prohibited Substances, including but not limited to benzodiazepines, sedatives, hypnotics or similar drugs, opiates, cocaine, marijuana and alcohol. In complying with this provision, Dr. Fahey agrees that his home or office medical practice shall not order or accept samples or stocks of any Prohibited Substances. Dr. Fahey agrees to permit the Board or its agent(s) complete access to his home or office medical practice to ensure his compliance with this provision.

c. SINGLE PHYSICIAN. Dr. Fahey agrees and understands that, with the sole exception of medications permitted by the Board to be prescribed to him by his Board-approved treating psychiatrist, he shall only obtain his prescription medication(s) from a single primary care physician approved by the Board. Dr. Fahey agrees and understands that he will not make any unilateral changes to the medication regimen prescribed for him by his Board approved primary care physician. In complying with this provision, Dr. Fahey agrees that he will not self-diagnose or self-treat himself for any medical issues. In addition, Dr. Fahey agrees that any and all prescriptions for medications that are prescribed to him by his Board-approved primary care physician and psychiatrist shall be filled by him in the State of Maine.

ensures that his single primary care physician is informed of any such prescriptions and coordinates his care and treatment with his treating psychiatrist.

d. SUBSTANCE MONITORING. Dr. Fahey understands and agrees that he may, for the remainder of his career as a Maine licensed physician, undergo some level of substance monitoring to test whether he has used a Prohibited Substance. The monitoring shall be through urinalysis testing and/or blood testing, and any other reliable method which may later be developed and approved by the Board. Dr. Fahey irrevocably agrees that the Board and the Maine Department of Attorney General will have full access to all test data and reports. Dr. Fahey shall execute any and all releases necessary for the Board and/or the Attorney General to have full access to all data and reports pertaining to his substance monitoring.

i. Supervising Physician. Dr. Fahey shall propose a Supervising Physician (the "Supervising Physician"), who shall be approved by the Board who shall have Dr. Fahey provide urine samples for testing for the presence of Prohibited Substances. Under no circumstances shall Dr. Fahey fail to appear and/or provide a urine sample for testing as required by this Consent Agreement for Conditional Licensure.

ii. Process. All urine and/or blood samples shall be handled through legal chain of custody methods. All samples provided shall be analyzed by a certified laboratory, which regularly handles drug monitoring tests. All samples shall be tested for the presence of Prohibited Substances, specifically including but not limited to marijuana and cocaine.

iii. Frequency of Urine Testing. It is Dr. Fahey's obligation to ensure that all the samples are given and tests occur as specified in this Consent Agreement for Conditional Licensure. Testing shall be randomly scheduled. Notwithstanding any other provision of this Consent Agreement for Conditional Licensure, the Board, the Supervising Physician, or the Board's agent may request Dr. Fahey to submit to testing at any time. Failure to maintain this schedule or the random nature of the tests shall be cause for suspension, non-renewal or revocation of Dr. Fahey's Maine medical license, unless proof of genuine emergent medical circumstances (for Dr. Fahey or a patient) exist which warrant less serious disciplinary actions being taken by the Board. For the indefinite period following the execution of this Consent Agreement for Conditional Licensure, Dr. Fahey shall provide urine samples for testing for the presence of Prohibited Substances at least once a week.

iv. Reporting Test Results. It is Dr. Fahey's responsibility to ensure that all test results are reported promptly to the Board.

(a). Immediate Report of Positive Test Results. Any test result evidencing any level of a Prohibited Substance, whether by urine or other sample, shall be reported to the Board by telephone and in writing within 24 hours or as soon thereafter as possible.

(b). Reporting Negative Test Results. Written reports of all tests shall be sent to the Board monthly, together with an explanation of the dates and times samples were provided and tests made, the type(s) of tests made, and the substances tested for (together with detectable levels tested for), and the test results. Dr. Fahey 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 to be pursued by the Board, Dr. Fahey hereby waives all claims of confidentiality and privilege with respect to all tests taken and test results pursuant to this Consent Agreement for Conditional Licensure. Dr. Fahey shall execute any and all releases in order for the Board to obtain access to and copies of all urine test results.

v. Rebuttable Presumption Raised by Positive Test. It is agreed and understood that a test evidencing the presence of any Prohibited Substance, shall raise a rebuttable presumption that such substance was in fact used by Dr. Fahey. Such a positive test result shall alone be sufficient to prove the use of the Prohibited Substance by Dr. Fahey. Dr. Fahey further agrees that the result of the test may be admitted into evidence in any proceeding regarding his Maine medical license, whether before the Board or before a Court of competent jurisdiction.

vi. Immediate, Indefinite, Automatic Suspension for Positive Test. If any urine or blood test is positive (i.e., in any manner evidences any use of any Prohibited Substance), then the result shall be the immediate, indefinite, automatic suspension of Dr. Fahey's Maine medical license, which shall continue until the Board holds a hearing on the matter, unless the Board, or the Board Secretary and the Department of Attorney General, earlier determine that the report is without merit. The suspension shall begin the moment Dr. Fahey first learns of a positive test or report of a positive test to the Board, whether from the Supervising Physician or his designee, from the Board or from any other source in writing, orally or by any other means. This shall include non-confirmed, positive tests.

vii. Board Hearing to Determine if Dr. Fahey Used Any Prohibited Substance. After receiving a positive report evidencing use by Dr. Fahey of any Prohibited Substance, the Board shall investigate the situation, including demanding a response from Dr. Fahey. The Board will hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both Dr. Fahey and the Board agree to hold the hearing later) and it shall be held pursuant to the Maine Administrative Procedure Act.

viii. Failure to Maintain Sampling Schedule or Failure to Appear or to Provide Sample. Failure by Dr. Fahey: to maintain the sampling

schedule; to appear when demanded to provide a sample; or to provide samples upon being demanded to do so shall be dealt with as follows:

(a). Report. If Dr. Fahey fails to appear to provide a sample, fails to maintain the sampling/testing schedule, or fails to provide a urine sample, then the Supervising Physician and Dr. Fahey must telephone the Board as soon as possible and send to the Board a written report of such failure within 48 hours.

(b). Second Opportunity to Provide Urine Sample. If Dr. Fahey appears when scheduled or ordered, but fails to provide an adequate sample, then with regard to urine, after accurate notation of any and all substances consumed (no substance shall be consumed which might affect the accuracy of the tests to be performed), a second opportunity to provide a urine sample shall be given after a reasonable time. A repeat failure or any refusal shall result in an immediate, indefinite suspension of medical licensure. The suspension shall begin the moment of the occurrence.

(c). Suspension. An immediate, indefinite suspension of licensure shall result from any failure by Dr. Fahey to comply with the mandated schedule of samples, failing to appear to provide a sample, or failing to provide a urine sample after given a second opportunity. The suspension shall begin the moment Dr. Fahey actually learns a report has been made or sent to the Board.

(d). Meeting with Board. Both Dr. Fahey and the Supervising Physician shall, at the discretion of the Board, be required to appear before the Board regarding this situation at its next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the suspension, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

(e). Board Action. The Board may order Dr. Fahey's Maine medical license reinstated or, if appropriate, may continue the suspension and may set the matter for hearing. The Board shall attempt to hold a hearing within 60 days of the automatic suspension, or as soon thereafter as practicable, at which time it may take such action as it deems appropriate, including without limitation, reinstatement, fines, probation, suspension, non-renewal and revocation.

ix. Amendment of Testing Provisions. After five years of successful compliance with the terms and conditions of this Consent Agreement for Conditional Licensure, Dr. Fahey may file a written application with the Board to amend the testing conditions. Upon written application by Dr. Fahey to the Board, the Board may amend the above agreed conditions for testing. Amendment of the testing conditions shall be in the sole discretion of

the Board and shall be based upon such information as the Board deems pertinent. A decision regarding the amendment of testing provisions may be made by the Board, in its sole discretion, with or without providing a hearing. Any decision by the Board regarding a request to amend the testing conditions is not appealable. The Board can propose Amendment(s), which may or may not be agreed to by Dr. Fahey.

x. Increasing Testing. For good cause shown (i.e., questionable reports or problems with providing samples), the Board can, in its sole discretion, without hearing, unilaterally increase the frequency of testing to the highest levels contemplated by this Consent Agreement for Conditional Licensure, and may also add an additional four random tests per month. Any decision made by the Board pursuant to this paragraph does not require a hearing and is not appealable.

e. PROFESSIONAL MANAGEMENT.

i. Substance Abuse Treatment. Within thirty (30) days following the execution of this Consent Agreement for Conditional Licensure, Dr. Fahey shall submit for Board approval the name of a licensed individual or agency in the treatment of substance abuse with whom Dr. Fahey shall consult and counsel for the purpose of working on all issues pertaining to his substance abuse issues, including Dr. Fahey's compliance with this Consent Agreement, which consultations shall be at least twice monthly following the execution of this Consent Agreement.

ii. Psychological Treatment. Within thirty (30) days following the execution of this Consent Agreement for Conditional Licensure, Dr. Fahey shall submit for Board approval the name of a licensed individual with whom he shall consult and counsel for the purpose of working on all issues pertaining to his depression and any other mental health issues. Dr. Fahey must have prior Board approval before changing his therapist. The Board in its discretion may approve the same individual approved by the Board to provide Dr. Fahey with substance abuse treatment to provide him with mental health treatment pursuant to this paragraph. The therapy sessions shall occur at least monthly and continue until the therapist notifies the Board that treatment is no longer necessary or useful. The Board, in its sole discretion, will determine whether cessation of therapy is appropriate.

iii. Single Primary Care Physician. Within thirty (30) days following the execution of this Consent Agreement for Conditional Licensure, Dr. Fahey shall submit for Board approval the name of a primary care physician who shall prescribe all necessary medications for Dr. Fahey, and who shall coordinate Dr. Fahey's treatment and pharmacological therapy with the Board-approved substance abuse and psychological providers.

iv. Prior Evaluation and Treatment Records. The Board and Dr. Fahey agree that Dr. Fahey shall execute all releases necessary to permit the transmission and disclosure of all records from previous treatment providers to the Board approved primary care physician and Board-approved treatment provider(s).

v. Communication of Treatment Providers. The Board and Dr. Fahey agree that all treatment providers involved in his care shall have full communication allowed among themselves, any prior treatment providers and, when requested, with the Board or its agent(s). Dr. Fahey waives any privileges concerning such information, reports, records, and communications among his treatment providers and the Board.

vi. Amendment of Aftercare Treatment Requirements. After five years of successful compliance with the terms and conditions of this Consent Agreement for Conditional Licensure, Dr. Fahey may file a written application with the Board to amend his substance abuse and/or mental health treatment. The Board shall retain the sole discretion, without hearing, to grant or deny such application. Dr. Fahey acknowledges that any decision by the Board concerning this issue is not appealable.

vii. Change of Primary Care Physician or Treatment Provider(s). If Dr. Fahey desires to change his primary care provider or treatment provider(s), then he shall make written application to the Board, including among other things a letter regarding his reasons for requesting such change(s) and separate letters from the current primary care physician or treatment provider(s) and the proposed new primary care physician or treatment provider(s) relative to their understanding of the reasons for this request and, to the extent applicable, any concerns they may have. The Board shall retain the sole discretion to grant or deny such application without hearing. Dr. Fahey acknowledges that any decision by the Board concerning this issue is not appealable. If the request is denied, nothing precludes Dr. Fahey from proposing another primary care physician or treatment provider for approval. In requesting a change of primary care physician or treatment provider, Dr. Fahey understands that the Board may inquire into any issues it deems pertinent with any person, including, without limitation, the current primary care physician or treatment provider(s).

viii. Reports from Treatment Providers. Commencing one month following the execution of this Consent Agreement for Conditional Licensure, and continuing indefinitely thereafter, within a month after every session, Dr. Fahey shall ensure that the Board-approved treatment provider(s) submit(s) to the Board a written report regarding: Dr. Fahey's compliance with his schedule of meetings; Dr. Fahey's ability to continue practicing medicine; and the prognosis of Dr. Fahey's continued recovery. In addition, the treatment providers shall immediately notify the Board in writing whenever: (1)

in his/her professional judgment, Dr. Fahey poses a potential danger to the health, safety and welfare of patients; or (2) Dr. Fahey terminates treatment or is non-compliant with the treatment plan. Dr. Fahey hereby waives any privileges concerning such information, reports, records and disclosures to the Board.

ix. Board Investigation. At any time the Board may deem appropriate, the Board or its agent may contact Dr. Fahey and/or the Board-approved treatment providers to obtain further information relative to Dr. Fahey. In addition, if the Board deems it appropriate, it may directly contact the treatment providers regarding any issues concerning Dr. Fahey's treatment. In complying with this requirement, Dr. Fahey waives any privileges concerning such information, reports, records and disclosures to the Board. Dr. Fahey shall execute any and all releases necessary to enable the Board and/or the Attorney General to communicate directly with his treatment provider(s) and to obtain copies of any and all notes, records, and documentation concerning his treatment.

f. PROFESSIONAL OVERSIGHT.

i. Clinical Setting. Prior to engaging in the active practice of medicine pursuant to this Consent Agreement, Dr. Fahey must have a Board-approved practice location. In complying with this requirement, Dr. Fahey shall submit to the Board for its approval practice location(s), which locations the Board has the sole discretion to approve or deny.

ii. Practice Plan. Prior to engaging in the active practice of medicine pursuant to this Consent Agreement, Dr. Fahey must have a Board-approved practice plan. In complying with this requirement, Dr. Fahey shall submit to the Board for its approval a practice plan, which the Board has the sole discretion to approve or deny.

iii. Physician Monitor. Prior to engaging in the active practice of medicine pursuant to this Consent Agreement, Dr. Fahey must have a Board-approved practice monitor who shall monitor his medical practice. In complying with this requirement, Dr. Fahey shall submit to the Board for its approval a practice monitor, which the Board has the sole discretion to approve or deny. The monitoring physician must be in direct contact with Dr. Fahey and observe him within his medical practice at least once a week, and inform the Board if Dr. Fahey demonstrates any issues with regard to isolation, inappropriate boundaries or decision-making, ability to concentrate, absenteeism, drug abuse, incompetence, unprofessionalism or any other concerns. The monitoring physician shall report such information to the Board by telephone and in writing within 24 hours or as soon thereafter as possible. Dr. Fahey understands that the monitoring physician will be an agent of the Board pursuant to Title 24 M.R.S. § 2511. Dr. Fahey shall permit the

monitoring physician full access to his medical practice, including but not limited to all patient information. The Board-approved monitor shall provide the Board with quarterly reports regarding Dr. Fahey's medical practice.

iv. Board Access to Medical Practice. Dr. Fahey shall permit the Board or its agent(s) complete access to his medical practice, including but not limited to all patient records, employee records, office records, and office equipment to ensure his compliance with this Consent Agreement for Conditional Licensure. In addition, Dr. Fahey shall permit the Board or its agent(s) to conduct random and/or announced inspections of his medical practice. Dr. Fahey shall bear the cost of any such inspection(s) by the Board or its agent(s).

g. SELF-HELP GROUP MEETINGS.

i. Attendance at AA and NA. Dr. Fahey agrees to attend Alcoholics Anonymous ("AA") and/or Narcotic Anonymous ("NA") or another non-faith-based self-help group meeting approved by the Board a minimum of twice per week from the effective date of this Consent Agreement for Conditional Licensure.

ii. Impaired Physicians Self-Help Group. Dr. Fahey agrees that he shall attend self-help group meetings of an impaired medical professional group (*i.e.* Caduceus), on a regular basis for the term of this Consent Agreement for Conditional Licensure. Meetings of the impaired professional self-help groups may be substituted on a one-for-one basis with meetings of AA or NA.

iii. Reports of Attendance. Dr. Fahey shall submit a signed, written quarterly report of his attendance at AA, NA or impaired professional self-help group meetings to the Board beginning three months after the execution of this Consent Agreement for Conditional Licensure. Any instances of failure to attend the required numbers of meetings shall be noted, together with specific explanation detailing reasons.

iv. Failure to Meet This Requirement. It is the parties' understanding that, periodically, reasonable explanations may exist for occasionally missing a meeting; however, unexcused continuous or repeated failures to comply with the requirements of this section of the for Conditional Licensure shall constitute a violation of the Consent Agreement which, after hearing before the Board, can result in licensure discipline, including without limitation a fine, suspension, non-renewal, or revocation of Dr. Fahey's conditional Maine medical license.

h. MAINTENANCE OF OBLIGATIONS WHEN AWAY FROM MAINE OR HOME.

i. General. Dr. Fahey agrees to maintain his obligations regarding substance monitoring and self-help group meetings at all times, including times when he is away from home but within the continental limits of the United States. Dr. Fahey will notify the Director of the Physician's Health Program sufficiently in advance of travel to make whatever arrangements the Director deems appropriate for monitoring before he leaves. It shall be Dr. Fahey's obligation to ensure that arrangements are made consistent with this Consent Agreement in such other location(s) to ensure the continuation and satisfaction of his obligations under this Consent Agreement. Any such occurrences shall be noted in writing sent to the Board by Dr. Fahey explaining the arrangements made and how the arrangements were carried out.

ii. Failure to Comply. Any failure by Dr. Fahey to meet the conditions of the Consent Agreement for Conditional Licensure outside of Maine shall constitute a violation of this Consent Agreement, and may result in the immediate suspension by the Board of Dr. Fahey's Maine medical license pending hearing, and, following hearing, other sanctions as permitted by law including but not limited to suspension, modification, or revocation of licensure.

i. INVOLVEMENT IN THE MAINE COMMITTEE ON PHYSICIANS' HEALTH.

Dr. Fahey shall enter into a contract with the Maine Committee on Physicians' Health and fully participate in that program as long as this Consent Agreement for Conditional Licensure remains in force.

j. MAINTAINENCE OF LICENSE.

Dr. Fahey shall be required to maintain his Maine license to practice medicine for as long as this Consent Agreement for Conditional Licensure is in effect. In the event that Dr. Fahey applies for licensure in other jurisdictions during the term of this Consent Agreement, Dr. Fahey shall notify said jurisdiction of the existence of this Consent Agreement for Conditional Licensure.

k. WAIVER OF CONFIDENTIALITY AND RELEASE OF RECORDS.

Dr. Fahey agrees and understands that the Board and the Department of Attorney General shall have complete access to his present and future personal medical and counseling records regarding chemical dependency and mental health issues and to all otherwise confidential data pertaining to treatment or monitoring of Dr. Fahey for substance abuse and

mental health issues. Dr. Fahey waives any privileges concerning such information, reports, or records, and agrees to execute any and all releases necessary to permit the Board access to such information. All releases must, in addition to waiving any relevant State law privileges or immunities, provide the Board with access to all material covered by 42 C.F.R., Part 2. In the event that the releases are not sufficient to obtain access to any information which the Board considers relevant, Dr. Fahey agrees to personally obtain such information and furnish it to the Board, to the extent permitted by law.

9. SANCTION FOR VIOLATION OF LICENSE CONDITIONS.

a. Automatic Suspension. Any reliable oral or written report to the Board of violation(s) of the conditions of licensure as described above shall result in the immediate, indefinite and automatic suspension of Dr. Fahey's Maine medical license. The automatic suspension of Dr. Fahey's Maine medical license shall become effective at the time that he receives actual notice from the Board that a report of violation(s) has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means. The indefinite, automatic suspension shall continue until the Board holds a hearing on the matter, unless the Board earlier determines that the report is without merit or decides that no further sanction is warranted.

b. Continued Suspension; Other Sanctions. Dr. Fahey's indefinite automatic suspension shall continue for such time until the Board holds a hearing and reaches a decision. The Board will hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both Dr. Fahey and the Board agree to hold the hearing later) and shall be held pursuant to the Maine Administrative Procedure Act. The Board may impose such other discipline, including without limitation, fines, further suspension, probation, non-renewal or revocation of licensure, as the Board after hearing deems appropriate.

c. General Acknowledgment. Dr. Fahey acknowledges that, pursuant to Title 10 M.R.S. § 8003(5)(B), his failure to comply with any of the terms or conditions of this Consent Agreement for Conditional Licensure shall constitute grounds for disciplinary action against his Maine medical license, including but not limited to an order, after hearing, modifying, suspending, or revoking his license.

10. DESIGNATED COPY OF CONSENT AGREEMENT.

Dr. Fahey shall have his supervising physician, monitoring physician and all treatment providers read, date, and sign a copy of the Consent Agreement for Conditional Licensure (the "Designated Copy"). Dr.

Fahey shall retain a copy of the Consent Agreement for Conditional Licensure signed by all of the aforementioned individuals at his office and shall produce it upon request of the Board or its agent(s). A copy of the signature page shall be made and sent to the Board. Dr. Fahey agrees that if new individuals assume the roles set forth in this Consent Agreement during the existence of this Consent Agreement, such individuals shall also read, date and sign the Consent Agreement.

Dr. Fahey shall provide a copy of this Consent Agreement to any hospital or medical practice with whom he becomes affiliated.

11. BOARD'S JURISDICTION.

Dr. Fahey acknowledges that the Board has jurisdiction over his license. Dr. Fahey understands that, at the time the Board is agreeing to issue him this Conditional, Modified License, the Board has the statutory jurisdiction to revoke licenses. Pursuant to 10 M.R.S. § 8003(5)B, in consideration for the Board's issuing Dr. Fahey his Maine medical license pursuant to this Consent Agreement for Conditional Licensure, he agrees that, regarding any alleged violation of this Consent Agreement, the Board is granted jurisdiction to revoke his license or take such other disciplinary action as is available to the Courts, following an adjudicatory hearing conducted in accordance with the Maine Administrative Procedure Act. Such revocation by the Board shall be deemed final agency action appealable only to the Superior Court pursuant to 5 M.R.S. § 11001, and *not* be reviewable de novo in the District Court pursuant to 10 M.R.S. § 8003(5)F.

12. MISCELLANEOUS PROVISIONS.

a. Notice. Unless otherwise specified in this Consent Agreement for Conditional Licensure, written notice shall be deemed served upon mailing by first class mail, postage prepaid.

(i). Notice to the Board:

State of Maine Board of Licensure in Medicine
Attention: Board Investigator
137 State House Station
Augusta, Maine 04333-0137
Telephone: (207) 287-3601

(ii). Notice to the Licensee:

Joseph P. Fahey
83 Wilton Street
Springfield, MA 01109-1841

b. Address Change. If Dr. Fahey changes jobs, moves his residence or practice, changes telephone numbers at work or at home, or secures privileges at a hospital, he shall provide written notice to the Board within ten (10) days of any such change. In addition, Dr. Fahey shall notify the Board of any attempts to seek licensure in another jurisdiction, and shall disclose to the licensing authority in such jurisdiction his status with this Board.

c. Costs. All costs incurred in performance of the Modifications and Conditions of this Consent Agreement for Conditional Licensure shall be borne by Dr. Fahey. If a violation of this Consent Agreement is proven to have occurred, regardless of the sanctions imposed, the Board may require Dr. Fahey to reimburse the Board for all costs and attorney's fees incurred in proving such violation.

d. Hearings. Unless otherwise specified, hearings shall be held consistent with the Maine Administrative Procedure Act.

e. Severance. If any clause of this Consent Agreement for Conditional Licensure is deemed illegal or invalid, then that clause shall be deemed severed from this Consent Agreement.

13. DURATION OF CONSENT AGREEMENT FOR CONDITIONAL LICENSURE.

Dr. Fahey understands and agrees that the duration of this Consent Agreement for Conditional Licensure is indefinite. The modifications and conditions imposed by this Consent Agreement shall remain in effect until amended or rescinded in writing by the parties hereto. After five years of successful compliance with the terms and conditions of this Consent Agreement for Conditional Licensure, Dr. Fahey may file a written application with the Board to modify or amend the terms and conditions of this Consent Agreement.

14. AMENDMENT OF CONSENT AGREEMENT FOR CONDITIONAL LICENSURE.

Dr. Fahey waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement for Conditional Licensure. Dr. Fahey agrees that this Consent Agreement for Conditional Licensure is a final order resolving his application for reinstatement of his Maine medical license. This Consent Agreement for Conditional Licensure is not appealable and is effective until modified or rescinded by the parties hereto. This Consent Agreement for Conditional Licensure 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. Requests for amendments to this Consent Agreement for Conditional Licensure by Dr. Fahey shall be made in writing and submitted to the Board. Dr. Fahey may, at reasonable intervals, petition the Board for amendment of the terms and conditions of this Consent Agreement for Conditional Licensure. Upon making such a petition, Dr. Fahey shall bear the burden of demonstrating that the Board should amend the Consent Agreement. The Board shall have the sole discretion to: (a) deny Dr. Fahey's petition; (b) grant Dr. Fahey's petition; and/or (c) grant Dr. Fahey's petition in part as it deems appropriate to ensure the protection of the public. Any decision by the Board as a result of Dr. Fahey's request to modify this Consent Agreement for Conditional Licensure need not be made pursuant to a hearing and is not appealable to any court.

15. COMMUNICATIONS. The Board and the Attorney General may communicate and cooperate regarding Dr. Fahey's practice or any other matter relating to this Consent Agreement.

16. PUBLIC RECORD. This Consent Agreement for Conditional Licensure 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. § 408.

17. ADVICE OF COUNSEL. Dr. Fahey acknowledges that he has a right to be represented by an attorney at his own cost concerning the negotiation of this Consent Agreement for Conditional Licensure.

18. WAIVER OF RIGHT TO APPEAL CONSENT AGREEMENT FOR CONDITIONAL LICENSURE.

Dr. Fahey waives his right to a hearing before the Board or any court regarding all facts, terms and conditions of this Consent Agreement for Conditional Licensure. Dr. Fahey agrees that this Consent Agreement for Conditional Licensure is a final order resolving his application for reinstatement of his Maine medical license pending before the Board. This Consent Agreement for Conditional Licensure is not appealable and is effective until modified or rescinded in writing by the parties hereto.

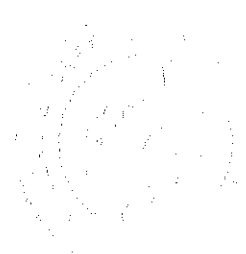
I, JOSEPH P. FAHEY, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT FOR CONDITIONAL LICENSURE AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS CONSENT AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT 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: 3/11/08

Joseph P. Fahey MD
JOSEPH P. FAHEY, M.D.

STATE OF Maine

Kennebec, S.S.



Personally appeared before me the above-named Joseph P. Fahey, M.D., 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: 3/11/2008
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Jean M. Greenwood
NOTARY PUBLIC/ATTORNEY
MY COMMISSION ENDS: 9/29/2014

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 3/11/08

Kimberly K. Gooch
KIMBERLY K. GOOCH, M.D., Acting
Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 3/11/08

Dennis E. Smith
DENNIS E. SMITH
Assistant Attorney General

Effective Date: