

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT
Cesar O. Garcia, M.D.)	AGREEMENT
Complaint No. CR04-120)	

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against and conditions imposed upon the license to practice medicine in the State of Maine held by Cesar O. Garcia, M.D. The parties to the Consent Agreement are: Cesar O. Garcia, M.D. ("Dr. Garcia"), 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.A. § 8003(5)(B) and 32 M.R.S.A. § 3282-A.

STATEMENT OF FACTS

1. Dr. Garcia has held a license to practice medicine in the State of Maine since 1999. Since that time, he has practiced medicine in Waterville and Augusta, Maine, and is Board Certified in Internal Medicine.

2. On September 17, 2004, the Board received information from Maine General Medical Center pursuant to the Maine Health Security Act that indicated that Dr. Garcia had been released from employment "based upon a significant clinical event" that involved Dr. Garcia performing a lumbar puncture on a patient, adding saline to the specimen¹ collected from the lumbar puncture, and sending it to the hospital laboratory for evaluation. As a

¹ According to Dr. Garcia, this occurred accidentally.

result of Dr. Garcia's actions, Maine General Medical Center terminated his employment and reported the matter to the Board as required by law.

3. In October 2004, the Board reviewed the information received from Maine General Medical Center and initiated a complaint against Dr. Garcia's Maine medical license. The Board docketed the complaint as CR04-120 and sent Dr. Garcia a copy of the complaint.

4. On November 30, 2004, the Board received Dr. Garcia's written response to the complaint CR04-120. In his response, Dr. Garcia described the procedure that he employed in performing the lumbar puncture on the patient. Dr. Garcia stated that, after attempting the procedure, he "decided that there was not sufficient fluid (cerebral spinal fluid [CSF]) in either of the two tubes (tube 1 and tube 2) to send to the lab for cell analysis." Dr. Garcia stated that he intended to pick up a syringe which he believed to contain CSF, but may have mistakenly picked up a syringe with saline in it and emptied it into another tube (tube 3). Thereafter, Dr. Garcia stated that he then "combined the fluid in tube one into tube two hoping that the cumulative fluid would be sufficient for cell analysis." After combining the fluid, Dr. Garcia decided that he still did not have enough CSF for cell analysis, so he added the fluid from tube 3, which he thought contained CSF but which in fact contained saline. After combining the fluids from the three tubes, Dr. Garcia stated that he thought that he "now had sufficient fluid for cell analysis." As a result of reviewing Dr. Garcia's response, the Board ordered further investigation.

5. On January 5, 2005, the Board received additional information concerning complaint CR04-120 from Stephen D. Sears, M.D., Chief Medical Officer for Maine General Medical Center. In his letter, Dr. Sears indicated that the only material detected in the specimen Dr. Garcia submitted to the hospital laboratory following the lumbar puncture was saline, and that the specimen contained no sugar, no cells, and no glucose. In addition the specimen was colorless.

6. On March 16, 2005, the Board received copies of interviews of witnesses conducted by Attorney General Investigator Seth Blodgett. Those interviews included interviews of: Lawrence Kassman, M.D., Emergency Department Director at the Maine General Medical Center Thayer Unit in Waterville, Maine; Scott Kemmerer, M.D., Director of the Emergency Department at Maine General Medical Center in Augusta, Maine; Charles Sweigert, R.N., who assisted Dr. Garcia with the lumbar puncture, and who has been a registered nurse since 1973 and has been involved in hundreds of lumbar puncture procedures; and Connie Dumais-Felt, R.N., who assisted Dr. Garcia with the lumbar puncture procedure, and who has been a nurse for sixteen years. The interviews supported Maine General Medical Center's concerns regarding Dr. Garcia's procedures involving the lumbar puncture and his submission of fluid to the hospital's laboratory for analysis.

7. On May 9, 2006, the Board held an informal conference with Dr. Garcia concerning complaint CR04-120. During that informal conference, the Board noted that the patient record contained no procedure note by Dr. Garcia

concerning his performance of the lumbar puncture on the patient. Dr. Garcia had no explanation for the lack of any procedure note. Following the informal conference, the Board voted to set the complaint for an adjudicatory hearing, and authorize its legal counsel to proffer a Consent Agreement to Dr. Garcia that would resolve complaint CR04-120 without hearing.

8. Absent Dr. Garcia's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before November 13, 2006, the Board will resolve this matter by holding an adjudicatory hearing.

COVENANTS

9. Dr. Garcia admits that the Board has sufficient evidence from which it could reasonably conclude that he: (1) was responsible for normal saline arriving at the laboratory instead of CSF; (2) was responsible for miscommunications with the physicians who followed up with this incident; (3) was responsible for failing to create a procedure note for the lumbar puncture; and (4) was responsible for the techniques he employed in performing the lumbar puncture. Dr. Garcia admits that such conduct falls below the standard of care and constitutes unprofessional conduct and grounds for discipline of his Maine license pursuant to 32 M.R.S.A. § 3282-A(2)(F).

10. As discipline for the conduct admitted in paragraph 9 above, Dr. Garcia agrees to:

a. Accept a REPRIMAND from the Board. Dr. Garcia shall not engage in this type of conduct again, and shall ensure that he properly performs and documents all lumbar puncture procedures in the future; and

b. Dr. Garcia agrees to follow the guidelines for the standard resident work hours so that he does not become excessively fatigued, which the Board concludes was the cause of Dr. Garcia's conduct.

11. Dr. Garcia has been represented by Kenneth W. Lehman, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

12. Dr. Garcia waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement.

13. This Consent Agreement is a final order resolving complaint CR04-120, is not appealable, and is effective until modified or rescinded in writing by all of the parties hereto.

14. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Garcia 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.

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. Garcia 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. Garcia 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. Garcia's Maine medical license.

I, CESAR O. GARCIA, 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.

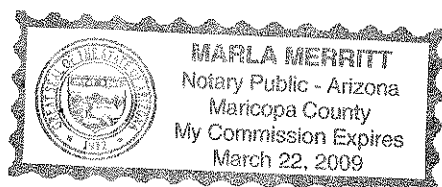
DATED: 11-10-06 Cesar O. Garcia
CESAR O. GARCIA, M.D.

STATE OF Arizona
MARICOPA, S.S.

Personally appeared before me the above-named Cesar O. Garcia, 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: 11-10-06 Marla Merritt
NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: 3-22-09



DATED:

11/1/2006



KENNETH W. LEHMAN, ESQ.
Attorney for Cesar O. Garcia, M.D.

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED:

11/14/06



EDWARD DAVID, M.D., Chairman

STATE OF MAINE OFFICE
OF THE ATTORNEY GENERAL

DATED:

11/14/06



DENNIS E. SMITH
Assistant Attorney General

Effective Date: