

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT
Thomas DeFanti, M.D.)	AGREEMENT
Complaint No. CR05-079/06-183)	

This document is a Consent Agreement, effective when signed by all parties, regarding a disciplinary and re-licensure action concerning and conditions imposed upon the license to practice medicine in the State of Maine held by Thomas DeFanti, M.D. The parties to the Consent Agreement are: Thomas Defanti, M.D. (“Dr. DeFanti”), the State of Maine Board of Licensure in Medicine (“the Board”) and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S.A. § 8003(5)(B) and 32 M.R.S.A. § 3282-A.

STATEMENT OF FACTS

1. Dr. DeFanti has held a license to practice medicine in the State of Maine since 1984, and is Board Certified in Obstetrics and Gynecology.
2. On or about June 11, 2002, Dr. DeFanti entered into a Consent Agreement with the Board. That Consent Agreement involved conduct by Dr. DeFanti during an approximate 18 month period of time from 1997 to 1999, where three patients on whom he performed medical surgical procedures suffered serious medical complications that required further surgery and extended hospitalizations. In that Consent Agreement, Dr. DeFanti admitted that in the fall of 1999, he had began participating in the Physicians Health Program due to increasing symptoms of depression and cannabis dependence. Dr. DeFanti accepted a reprimand from the Board based upon this factual

background, and agreed to the modification of his medical license which required him to:

a. Arrange for the monitoring of his laparoscopic procedures and provide the Board with relevant information regarding any surgical complications during the term of the Consent Agreement¹; and

b. Permanently abstain from the use of alcohol and/or illegal drugs, submit to monitoring and testing concerning his required abstinence, engage in professional management and treatment for substance abuse, and continue his involvement in the Physicians Health Program for four years following the execution of the Consent Agreement.

3. In June 2005, the Board received a copy of the National Practitioner Data Bank report from Southern Maine Medical Center indicating that restrictions had been placed upon Dr. DeFanti's clinical surgical privileges at that facility based upon a high rate of complications following surgical procedures² that he performed. The restriction required Dr. DeFanti to have a mandatory surgical assistant for all clinical procedures. As a result, on June 7, 2005, the Board requested that Southern Maine Medical Center provide it with all medical records, written statements, and correspondence related to its decision to restrict Dr. DeFanti's surgical privileges.

4. On July 1, 2005, the Board received the following documents from Southern Maine Medical Center: a copy of the OB/GYN complication rates for

¹ The Consent Agreement contains no specific time limit with regard to this issue.

² Those procedures included abdominal hysterectomy, vaginal hysterectomy, laparoscopic assisted vaginal hysterectomy, hysteroscopy, laparoscopy, incontinence procedures and exploratory laparotomy.

2003-2004; copies of medical records related to Dr. DeFanti's complications; and chronologic documentation of phone calls, meetings, minutes, and correspondence related to its decision to restrict Dr. DeFanti's surgical privileges. The surgical procedures performed by Dr. DeFanti in which there were post-surgical complications included vaginal hysterectomy, laparoscopic assisted vaginal hysterectomy, hysteroscopy, laparoscopy, incontinence procedures, and exploratory laparotomy.

5. On or about July 12, 2005, the Board reviewed the information provided by Southern Maine Medical Center, and, pursuant to Title 32 M.R.S.A. § 3282-A, initiated a complaint against Dr. DeFanti's Maine medical license. The Board docketed that complaint as CR05-079. In addition, the Board ordered that Dr. DeFanti undergo an examination pursuant to Title 32 M.R.S.A. § 3286.

6. On July 20, 2005, the Board received additional information from Southern Maine Medical Center including: documentation of further meetings and communications with and concerning Dr. DeFanti's surgical privileges; and a medical review of Dr. DeFanti's surgical procedures and complications. That documentation indicated that on May 2, 2005³, Dr. DeFanti had violated an agreement that he had entered into with Southern Maine Medical Center on March 11, 2005, where he agreed to "[h]ave a Board certified OB/GYN assist at

³ On May 2, 2005, Dr. DeFanti performed a diagnostic laparoscopy during which he biopsied an ovary, biopsied an endometrial implant and fulgrated multiple endometrial planes through the pelvis without having an OB/GYN assist. The day after this surgery, the patient was re-admitted for corrective surgery, which revealed approximately 750 ccs of intraperitoneal blood and blood clots.

all laparoscopic surgeries unless it is a tubal ligation or a straightforward laparoscopy.” As a result of violating his agreement with Southern Maine Medical Center not to perform certain surgical procedures without an OB/GYN assist, Southern Maine Medical Center placed additional restrictions upon his surgical privileges, to wit: it permitted him to perform only vaginal deliveries and circumcisions.

7. On or about July 22, 2005, the Board received a copy of the July 20, 2005, National Practitioner Data Bank report from Southern Maine Medical Center. That report reflected the additional restrictions that Southern Maine Medical Center had placed upon Dr. Defanti’s surgical privileges at its facility.

8. On or about December 14, 2005, the Board received a response from Dr. Defanti to the Board’s complaint. In his response, Dr. Defanti asserted that his surgical complication rate was not inordinately high, and that he had been diagnosed with moderately severe Obstructive Sleep Apnea, which he asserted may have contributed to the high rate of surgical complications

9. On or about January 10, 2006, the Board reviewed the complaint materials, including Dr. Defanti’s response, and voted to offer Dr. Defanti a Consent Agreement in which Dr. Defanti admitted to incompetent medical practice and agreed to the immediate conversion of his Maine medical license to “inactive” status.⁴ In addition, the Board voted to set the complaint for an adjudicatory hearing.

⁴ An “inactive” license status does not permit a physician to practice medicine in this State.

10. On or about January 31, 2006, the Board's legal counsel received a letter from Dr. Defanti's attorney, Christopher Taintor, Esq., which requested that the letter be presented to and considered by the Board.

11. On February 14, 2006, the Board voted to unset the matter for an adjudicatory hearing in order to review and consider the correspondence sent by Mr. Taintor to the Board's legal counsel. Following its review of Mr. Taintor's letter, the Board voted to re-offer the original Consent Agreement and reset the matter for an adjudicatory hearing.

12. On June 2, 2006, the Board received an application from Dr. DeFanti for the renewal of his Maine medical license. On June 13, 2006, the Board voted to preliminarily deny Dr. DeFanti's application for the renewal of his Maine medical license. The Board docketed that action as CR06-183. On June 21, 2006, the Board received Dr. DeFanti's written appeal of the Board's decision to preliminarily deny his application for re-licensure. On July 28, 2006, the Board issued a Notice of Consolidated Adjudicatory Hearing to Dr. DeFanti regarding the pending complaint and re-licensure actions.

13. This Consent Agreement has been negotiated by counsel for Dr. DeFanti and counsel for the Board in order to resolve complaint CR05-079 and the re-licensure matter CR06-183 without an adjudicatory hearing. Absent the Board's acceptance of this Consent Agreement by ratifying it on October 10, 2006, the matter will proceed to an adjudicatory hearing on that date.

14. By signing this Consent Agreement, Dr. DeFanti and his legal counsel waive any and all objections to, and hereby consent to the presentation

of this Consent Agreement to the Board for possible ratification. Dr. DeFanti and his legal counsel also forever waive any arguments of bias or otherwise against any of the Board members in the event that the Board failed to ratify this proposed Consent Agreement.

COVENANTS

In lieu of proceeding to an adjudicatory hearing in this matter, Dr. DeFanti agrees to the following :

15. Dr. DeFanti admits that with regard to complaint CR05-079 and re-licensure matter CR06-183 the Board has sufficient evidence from which it could reasonably conclude that he had an unusually high rate of complications as a result of certain surgical procedures that he performed, and that he was, therefore, not competent to perform them. Dr. DeFanti admits that the Board has sufficient evidence from which it could conclude that such conduct constitutes incompetence and grounds for discipline of his Maine license and/or the denial of his application for the renewal of his Maine medical license pursuant to 32 M.R.S.A. § 3282-A.

16. As discipline for the conduct admitted in paragraph 15 above, Dr. DeFanti agrees to accept, and the Board agrees to issue, the following discipline:

- a. a REPRIMAND;
- b. a PERMANENTLY MODIFIED/RESTRICTED LICENSE

subject to the following conditions:

(i) Dr. DeFanti shall NOT perform any of the following surgical procedures:

- (a) abdominal hysterectomy;
- (b) vaginal hysterectomy;
- (c) laparoscopic assisted vaginal hysterectomy;
- (d) laparoscopy or laparoscopy assisted procedures;
- (e) incontinence procedures; and
- (f) exploratory laparotomy.

(ii) Dr. DeFanti shall restrict his practice of medicine to an “office based medical practice” approved by the Board;

(iii) Dr. DeFanti shall permit the Board or its agent(s) complete access to his office based medical practice, including but not limited to all patient records, employee records, office records, and office equipment;

(iv) Dr. DeFanti shall permit the Board or its agent(s) to conduct random and/or announced inspections of his office based medical practice. Dr. DeFanti shall bear the cost of any such inspection(s) by the Board or its agent(s);

(v) Dr. DeFanti may, pursuant to this Consent Agreement, petition the Board for permission to perform the following procedures in his office based medical practice:

- (a) post-partum sterilization/tubal ligation⁵ (not including laparoscopic tubal ligation); and
- (b) hysteroscopy.

In obtaining permission from the Board to perform these procedures, Dr. DeFanti shall ensure that, at a minimum, he provides the Board with satisfactory proof that: (1) he has been trained in these procedures; (2) he has successfully completed a Board-approved proctorship of between 5-7 cases in these procedures; and (3) he has permitted the Board or its agent(s) to inspect his office based medical practice to ensure that it is adequately set up to perform such procedures. In no event shall Dr. DeFanti employ IV sedation in his office based medical practice in order to perform these procedures, if they are approved by the Board. The Board may, in its sole discretion, approve or deny Dr. DeFanti's application to perform the above procedures in his office based medical practice. Any decision by the Board on this issue need not be made pursuant to a hearing and is not appealable. In the event that the Board denies Dr. DeFanti's request to perform the above procedures, nothing prevents Dr. DeFanti from, at reasonable intervals, petitioning the Board for permission to perform them;

(vi) In the event that the Board approves Dr. DeFanti's request to perform post-partum sterilizations/tubal ligations and hysteroscopy in his office based medical practice, Dr. DeFanti shall provide the Board with

⁵ The procedures anticipated by this provision of the Consent Agreement are the "Essure Procedure" and endometrial ablations. This is done using a hysteroscope and looking into the uterus, and placing a "spring" into the ostia of the fallopian tube.

quarterly reports regarding the number of such procedures performed by him and the number of complications occurring during or after such procedures.

(vii) Dr. DeFanti shall enroll in and successfully participate in the Maine Medical Association's Committee on Physician's Help Program;

(viii) Dr. DeFanti shall continue his treatment for Obstructive Sleep Apnea. Pursuant to this condition, Dr. DeFanti shall provide the Board with all necessary medical releases to allow it access to his treatment records related to this condition; and

(ix) Dr. DeFanti shall continue with his counseling, and shall provide the Board with all necessary medical releases to allow it access to his counseling and/or treatment records.

17. Dr. DeFanti waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Defanti agrees that this Consent Agreement and Order is a final order resolving the complaints CR05-079 and the license renewal matter CR06-183. This Consent Agreement is not appealable and is effective until modified or rescinded 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. Requests for amendments by Dr. Defanti shall be made in writing and submitted to the Board. Dr. DeFanti may, at reasonable intervals, petition the Board for amendment of the terms and conditions of this Consent Agreement. Upon making such a petition, Dr. Dentil shall bear the burden of demonstrating that the Board should amend the

the Consent Agreement. The Board shall have the discretion to: (a) deny Dr. DeFanti's petition; (b) grant Dr. DeFanti's petition; and/or (c) grant Dr. DeFanti's petition in part as it deems appropriate to ensure the protection of the public. Any decision by the Board on this issue need not be made pursuant to a hearing and is not appealable.

18. Violation of any of the terms or conditions of this Consent Agreement by Dr. DeFanti shall constitute grounds for discipline, including potential modification, suspension, or revocation of licensure or the denial of re-licensure.

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

20. 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.

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

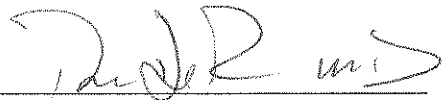
22. The Board and Dr. DeFanti agree that no further agency or legal action will be initiated against him by the Board based upon the facts described herein, except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Board may however consider the conduct described above as evidence of a pattern of misconduct in the event that similar true allegations are brought against Dr. DeFanti 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. DeFanti's license.

23. The term of this Consent Agreement is indefinite from the date of execution, and remains in full force and effect until it is modified in writing by agreement of the parties. Dr. DeFanti may request amendments or changes to this agreement by submitting such request in writing to the Board which may decide the matter without a hearing pursuant to paragraph 17 above.

24. Dr. DeFanti 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, THOMAS DEFANTI, 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: October 10 2006 
THOMAS DEFANTI, M.D.

STATE OF Maine

Cumberland, S.S.

Personally appeared before me the above-named Thomas DeFanti, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED:

10/10/06

Bridget Everest
NOTARY PUBLIC / ATTORNEY

MY COMMISSION ENDS: _____

BRIDGET E. EVEREST
Notary Public, Maine
My Commission Expires November 21, 2009

DATED:

10/10/06

Christopher Taintor
CHRISTOPHER C. TAINTOR, ESQ.
ATTORNEY FOR DR. DEFANTI

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED:

10/10/06

Edward David
EDWARD DAVID, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED:

10/10/06

Dennis E. Smith
DENNIS E. SMITH
Assistant Attorney General

Effective Date:



STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE
137 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0137

JOHN ELIAS BALDACCI
GOVERNOR

EDWARD DAVID, M.D., J.D.
CHAIRMAN

November 29, 2004

RANDAL C. MANNING
EXECUTIVE DIRECTOR

Thomas R. Defanti, M.D.
PrimeCare Women's Health
26 West Cole Road
Biddeford, ME 04005

RE: CONSENT AGREEMENT EXPIRATION

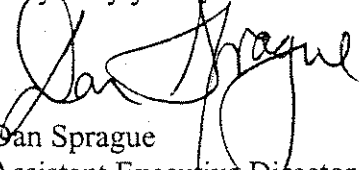
Dear Dr. Defanti:

This is to confirm that you have complied with the terms of your Consent Agreement dated June 11, 2002 and have successfully completed its requirements. The Consent Agreement has expired, effective September, 2004.

The Board will make reports to the National Practitioner Data Bank and to the Federation Of State Medical Boards documenting your successful fulfillment and the resulting closure of the Consent Agreement.

Please let me know if you have any questions. I can be reached at 287-6930.

Very truly yours,


Dan Sprague
Assistant Executive Director

Cc: David Simmons, M.D.

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

IN RE: Thomas R. DeFanti, M.D.)
)
) **CONSENT AGREEMENT
) FOR DISCIPLINE AND
) MODIFICATION OF LICENSE**

This document is a Consent Agreement and Order, effective when signed by all parties, regarding discipline and the modification of a license to practice medicine in the State of Maine held by Thomas R. DeFanti, M.D. The parties to the Consent Agreement are: Thomas R. DeFanti, M.D. (the "Licensee"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Department of Attorney General.

FACTUAL BACKGROUND

1. Thomas DeFanti, M.D., has been licensed to practice medicine in the State of Maine since 1984. He is a Board-certified obstetrician-gynecologist.
2. In a period of approximately 18 months from 1997 to 1999, three patients on whom the Licensee had performed laparoscopies suffered serious complications of either perforated blood vessels and/or a perforated bowel. The complications required further surgery and extended hospitalizations.
3. In the fall of 1999, the Licensee began participating in the Physicians Health Program because of increasing symptoms of depression as well as dependency on cannabis. He received intensive in-patient treatment at the Farley Center in Williamsburg, Virginia from November 2, 1999 until December 21, 1999. He returned to practice in January 2000 and has been compliant with his contract with the Physicians Health Program.

DISCIPLINE.

Based on Dr. DeFanti's acceptance of responsibility for his actions, his continuing treatment of his substance abuse problem and his depression, as well as the understanding and agreement between Dr. DeFanti and the Board that any future use of any illicit substance by Dr. DeFanti will result in revocation of his license, the Board will issue and Dr. DeFanti will agree to accept the following discipline and modifications to his license.

1. The Licensee is hereby **REPRIMANDED**.
2. The Licensee will arrange for monitoring of his laparoscopic procedures and provide the Board with relevant information regarding any complications during the term of this agreement.

CONDITIONS OF LICENSURE

The Licensee and the Board agree and understand that maintenance of his license shall be conditioned upon the Licensee's compliance with the following conditions of licensure. Except as may be specified below, failure to comply with any of the following conditions may result in the non-renewal or revocation of the Licensee's license to practice medicine in the State of Maine.

1. **ABSTINENCE.** The Licensee agrees that henceforth he shall completely abstain from the use of any and all Prohibited Substances. "Prohibited Substances" as used throughout this Consent Agreement shall mean: opiates; alcohol; cocaine; fentanyl; mood, consciousness or mind-altering substances, whether illicit or not; and all drugs which are dispensed to or prescribed for the Licensee by anyone other than a treating physician knowledgeable of the Licensee's history of substance abuse, unless the circumstances constitute a genuine medical or surgical emergency.

A. **Prescription Medication.** If any controlled drug is dispensed or prescribed for the Licensee for a personal medical condition, the Licensee 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 Supervising Physician shall be apprised every five days of all continuing pertinent circumstances regarding continued use of the controlled drug, and a written report thereof shall be submitted to the Board for every five days that the use of the controlled drug continues after the initial 48-hour report.

B. **Future Use of Prohibited Substances Shall Result in Loss of Licensure.** The Licensee agrees and understands that any reliable evidence of use at any time in the future, whether in Maine or elsewhere, of any Prohibited Substance shall constitute a violation of this Consent Agreement, which MAY RESULT IN THE IMMEDIATE, INDEFINITE AUTOMATIC SUSPENSION OF LICENSURE, AND PROOF OF USE MAY RESULT IN AUTOMATIC REVOCATION/NON-RENEWAL OF LICENSURE.

2. **SANCTION FOR VIOLATION OF LICENSE CONDITIONS.**

A. **Automatic Suspension.** Any reliable oral or written report to the Board of violation, technical or otherwise, of these License Conditions may result in the immediate, indefinite and automatic suspension of the Licensee's license. The automatic suspension of the Licensee's license shall become effective at the time the Licensee receives actual notice from the Board that a reliable report of violation 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. The Licensee's indefinite automatic suspension shall continue for such time until the Board holds a hearing and reaches a decision. The Board shall attempt to hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both the Licensee 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, as the Board after hearing deems appropriate. By this Consent Agreement, the Licensee expressly accords the Board jurisdiction, concurrent with the Courts, to revoke his license if the Board deems it appropriate.

3. SUBSTANCE MONITORING. The Licensee understands and agrees that he may, for the remainder of his career as a licensed physician, undergo some level of substance monitoring to test whether the Licensee has used a Prohibited Substance, as defined in Paragraph 1. 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.

The Licensee irrevocably agrees that the Board and the Maine Department of Attorney General must have full access to all test data and reports.

Reasonable changes in testing to more reliable methods of detection of usage may be proposed by the Licensee or the board and changes shall be made in the Board's discretion, with or without a hearing. It is the Licensee's obligation to ensure that the plan for testing, as stated herein, is complied with in full.

A. Supervising Physician. The Licensee shall propose a Supervising Physician, who shall be approved by the Board (the "Supervising Physician") and who shall have the Licensee appear and provide samples as provided below. The Supervising Physician may appoint designees, who must also be physicians and who must also be approved in advance by the Board.

1. It is the responsibility of the Licensee to ensure that the Supervising Physician or one of the Supervising Physician's approved designees is available to have the Licensee appear and provide urine samples as required by the Consent Agreement. In the event neither the Supervising Physician nor any designee is available (or anticipated to be available) at the given time to be responsible for urine monitoring, the Licensee shall contact by telephone as soon as possible (followed up within 24 hours by writing) the Board Executive Director or Assistant Executive Director. The Licensee shall by telephone resolve with the Board Executive Director or Assistant Executive Director a plan for urine monitoring to be used for the duration of time that the

Supervising Physician and all designees are unavailable. Under no circumstances shall the Licensee fail to provide a urine sample to some person pursuant to the plan which is preapproved by the Board Executive Director or Assistant Executive Director.

B. Process. All urine and blood samples shall be handled through legal chain of custody methods. All samples provided shall be analyzed by a certified laboratory, which regularly handles these types of tests, and tests shall be conducted by such reliable methods as exist. The Board must approve any changes.

C. Frequency of Urine Testing. It is the Licensee's obligation to ensure that all the samples are given and test occur as specified and that the random samples are in fact random and that they are provided within 2 hours after notice to the Licensee (without any foreknowledge by the Licensee) and are of at least the frequency required. Failure to maintain this schedule or the random nature of the tests shall be cause for suspension, non-renewal or revocation of the Licensee's license, unless proof of genuine emergent medical circumstances (for the Licensee or a patient of his) exist which warrant less serious disciplinary actions being taken by the Board.

1. Following the period of one year from September 1999, and for a period of four (4) years thereafter, urine samples shall be provided at least once each month. Further, the Board or the Supervising Physician may request random samples drawn at any time.

2. Following the period of five (5) years from September 1999, the Board or the Supervising Physician may request random samples provided at any time.

3. The frequency of urine testing shall continue as outlined herein even while the Licensee is on vacation or other leave of absence. He shall be responsible for making arrangements that the testing is carried out with the frequency and standards outlined in this Consent Agreement.

D. Blood Testing. It is the Licensee's obligation to ensure that all of the samples are given and tests occur as specified and that the random samples are in fact random and that they are provided within two hours after notice to the Licensee (without any foreknowledge by the Licensee) and are of at least the frequency required. Failure to maintain this schedule or the random nature of the tests shall be cause for suspension, non-renewal or revocation of the Licensee's license, unless proof of genuine emergent medical circumstances (for the Licensee or a patient) exist which warrants less serious disciplinary action being taken by the Board.

1. Process. The Licensee shall remain present while the results of the samples are tested to ensure the Licensee's availability if it tests positive and a blood sample is then needed as specified in this Consent Agreement or in the plan.

2. Frequency of Blood Samples and Testing.

a. Blood samples must be drawn any time a test evidences any level of a Prohibited Substance.

b. Blood samples must be drawn any time the Supervising Physician or the Board deems one is warranted.

E. Visual Samples. The Licensee shall provide each urine and blood sample in the physical presence and under the direct observation of the Supervising Physician or his/her designee who shall visually observe the Licensee providing the sample. Otherwise, the sample shall be deemed unacceptable and the Licensee shall immediately provide another sample. Any such occurrence shall be reported to the Board by the Licensee and by the Supervising Physician, both by telephone and in writing within 24 hours or as soon thereafter as possible. In addition, the unacceptable sample shall be retained and tested, with the intention that the tests of the unacceptable and the acceptable samples both are sent upon completion to the Board.

F. Second Sample. At the same time as each urine and blood sample is taken, the Licensee must provide a second sample (or shall have provided sufficient quantity to constitute a valid second sample) which shall also be taken in the physical presence and under the visual observation of the person collecting the sample. Responsibility for providing a second sample shall be the Licensee's. The second urine or blood sample shall be frozen (or maintained by other appropriate means approved by the Board), stored in a controlled setting, kept under a legal chain of custody, inaccessible to the Licensee, and shall be stored for subsequent testing in the event the first sample tests positive for a Prohibited Substance.

(1) Testing the Second Sample. The Executive Director of the Board shall designate where the test of the second sample shall be executed.

G. Standards for Tests. Standards for detectable levels of Prohibited Substances for which the urine and blood samples shall be tested shall be set forth in the Licensee's written, preapproved plan for substance monitoring.

H. Reporting Test Results.

1. Immediate Report of Positive Test Results. Any test result evidencing any level of a Prohibited Substance, whether by urine sample, intoxilyzer

sample, or blood sample, shall be reported to the Board by the Supervising Physician by telephone and in writing within 24 hours or as soon thereafter as possible.

2. Reporting Negative Test Results. Written reports of all tests shall be sent to the Board monthly by the Supervising Physician, 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. The Licensee shall ensure that all reports are made to the Board in a timely fashion.

3. Confidentiality Waived. With regard to the Board and its agents and any process to be pursued by the Board, the Licensee hereby waives all claims of confidentiality and privilege with respect to all tests taken pursuant to this Consent Agreement.

4. Retention of Reports. The Supervising Physician shall permanently retain all original laboratory data and test reports.

I. Rebuttable Presumption Raised by Positive Test. It is agreed and understood that a test (whether by urine sample or blood sample) evidencing any Prohibited Substance, when confirmed, shall raise a rebuttable presumption that such substance was in fact used by the Licensee. Such a positive test result shall alone be sufficient to prove the use of the Prohibited Substance by the Licensee. The Licensee further agrees that the result of the test may be admitted into evidence in any proceeding regarding the Licensee's license, whether before the Board or before a Court of competent jurisdiction. The confirmatory test shall be performed immediately upon any initial positive test result and it may also be admitted into evidence in any proceeding regarding the Licensee's license

J. 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 the Licensee's 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 the Licensee first learns of a positive test or report of a positive test to the Board, whether from the Supervising Physician or his/her designee, from the Board or from any other source in writing, orally or by any other means. This shall include non-confirmed, positive tests.

K. Board Hearing to Determine if Licensee Used Any Prohibited Substance. After receiving a positive report evidencing use by the Licensee of any Prohibited Substance, the Board shall investigate the situation, including demanding a response from the Licensee. The Board shall attempt to hold a hearing within 60 days

of the automatic suspension or as soon thereafter as practicable (unless both the Licensee and the Board agree to hold the hearing later), and it shall be held pursuant to the Maine Administrative Procedure Act. By this Consent Agreement, the Licensee expressly accords the Board jurisdiction, concurrent with the Courts, to revoke his license if it determines he used any Prohibited Substance.

L. Failure to Maintain Sampling Schedule or Failure to Appear or to Provide Sample. Failure by the Licensee: to maintain the sampling schedule; to appear when demanded to provide a sample; to appear within two hours of being so notified; or to provide samples upon being demanded to do so shall be dealt with as follows:

1. Failure to Maintain Sampling Schedule. It is the Licensee's responsibility to ensure that both the schedule for sampling and the random sampling required are maintained.

a. Report. If the scheduled samples or the random samples are not drawn as required, then the Supervising Physician or his/her designee and the Licensee (and any other person knowledgeable of such failure) must telephone the Board as soon as possible and send to the Board a written report of such failure within 48 hours.

b. Suspension. An immediate, indefinite suspension of licensure may result from any failure by the Licensee to comply with the mandated schedule of samples or if the random samples are not provided as required. The suspension shall begin the moment the Licensee actually learns a report has been made or sent to the Board.

c. Meeting with Board. Both the Licensee and the Supervising Physician (and the responsible designee, if any) shall 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.

d. Board Action. The Board may order the Licensee's 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.

2. Failure to Appear.

a. Report and Meeting with Board. The Licensee and the Supervising Physician (and the responsible designee, if any) must, telephone the board as soon as possible and send to the board a written report of such occurrence within 48 hours, and both the Licensee and the Supervising Physician shall appear before the Board, regarding any failure to appear when demanded to provide a sample, at the next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the report, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

b. Suspension. An immediate, indefinite suspension of licensure may result from any failure by the Licensee to appear for a scheduled or randomly ordered test, unless the Licensee and the Supervising Physician present the failure as having been caused by a genuinely emergent circumstance beyond the Licensee's control, as long as the Licensee appeared within six hours of the resolution of the emergency. Except in this instance, the suspension shall begin the moment the Licensee actually learns a report has been made or sent to the Board.

c. Board Action. The Board may order the Licensee's license reinstated or, if appropriate, may continue the suspension and 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.

3. Failure to Provide Sample.

a. Report and Meeting with Board. The Licensee and the Supervising Physician (and the responsible designee, if any) shall telephone the Board as soon as possible and send to the Board a written report of any occurrence regarding failure or refusal to provide a sample within 48 hours, and both the Licensee and the Supervising Physician shall appear before the Board at the next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the report, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

b. Second Opportunity to Provide Urine Sample. If the Licensee 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, not to exceed two hours. A repeat failure, if within the Licensee's control, or any refusal, shall result in an immediate, indefinite suspension of licensure. The suspension shall begin the moment of the occurrence.

c. Board Action. The Board may order the Licensee's license reinstated, or, if appropriate, may continue the suspension and 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 is practicable, at which time it may take such action as it deems appropriate, including without limitation reinstatement, fines, probation, suspension, non-renewal and revocation.

M. Amendment of Testing Provisions. Upon written application by the Licensee to the Board, the Board may amend the above agreed conditions for testing as long as such changes are otherwise consistent with the schedule set forth in this Consent Agreement. Amendment from the conditions shall be in the discretion of the Board and shall be based upon such information as the Board deems pertinent. A decision may be made by the Board, in its discretion, with or without providing a hearing. The Board can propose Amendment(s), which may or may not be agreed to by the Licensee.

N. Increasing Testing. For good cause shown (i.e., questionable reports or problems with providing samples), the Board can, in its discretion, without hearing, unilaterally increase the frequency of testing to the highest levels contemplated by this Consent Agreement, and may also add an additional four random tests per month. In addition, for good cause shown, the Board may, in its discretion, without a hearing, extend the periods of testing by up to an additional five years.

4. PROFESSIONAL MANAGEMENT.

A. Aftercare Treatment Sessions. The Licensee agrees to submit for Board approval the name of a licensed individual or agency in the treatment of substance abuse with whom the Licensee shall consult and counsel for the purpose of working on all issues pertaining to the Licensee's chemical dependency, including the Licensee's compliance with this Consent Agreement, which consultations shall be monthly with at least one of the approved individuals or agencies for one year beginning on the date of this Consent Agreement and at least annually for the following four years.

B. Amendment of Aftercare Treatment Requirements. After three years, upon written application to the Board by the Licensee, the Board may amend this schedule. Amendment shall be in the discretion of the Board and shall be based upon such information as the Board deems pertinent. A decision may be made with or without providing a hearing.

C. Change of Specialist. If the Licensee proposes to change the Specialist, then the Licensee shall make written application to the Board, including among other things a letter from the Licensee regarding his reasons for requesting such change and separate letters from the current Specialist and the proposed new Specialist relative to their understanding of the reasons for this request and, to the extent applicable, any

concerns they may have. The Board may in its discretion grant or deny such request with or without providing a hearing. If the request is denied, nothing precludes the Licensee from proposing another Specialist. In requesting a change of Specialist, the Licensee understands that the Board may inquire into any issues it deems pertinent with any person, including, without limitation, the current Specialist.

D. Reports from the Specialist. Beginning one month from the date hereon and continuing thereafter, within a month after every session, the Specialist shall submit to the Board a written report regarding the Licensee's compliance with his schedule of meetings, the Licensee's competency to continue practicing medicine, and the prognosis of the Licensee's continued recovery.

E. Board Investigation. At any time the Board may deem appropriate, the Board or its agent may contact the Licensee and/or the Specialist to receive further information relative to the Licensee. In addition, if the Board deems it appropriate, it may meet to inquire directly of the Specialist about the Licensee's progress.

5. SELF-HELP GROUP MEETINGS.

A. Attendance at AA and NA. The Licensee agrees to attend Alcoholics Anonymous ("AA") and/or Narcotic Anonymous ("NA") a minimum of three times each week through one year from the effective date of this agreement and at least once each week through four years thereafter.

B. Impaired Physicians Self-Help Group. The Licensee agrees that he shall attend self-help ground meetings of an impaired medical professional group, if available, on a regular basis for the term of this agreement which is 5 years beginning on September, 1999. Meetings of the impaired professional self-help groups may be substituted on a one-for-one basis with meetings of AA or NA.

C. Reports of Attendance. Beginning three months from the date hereon and continuing every three months thereafter, the Licensee shall submit to the Board a signed, written quarterly report of his attendance at AA, NA or impaired professional self-help group meetings. Any instances of failure to attend the required numbers of meetings shall be noted, together with specific explanation detailing reasons.

D. 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 Consent Agreement 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, probation or revocation of the Licensee's conditional, probational license.

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

It is the intention of the parties that the Licensee's obligations regarding substance monitoring and self-help group meetings shall be maintained regardless of whether the Licensee is in Maine. For instance, if the Licensee is going on a business trip or a vacation, it shall be the Licensee's and the Supervising Physician'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. If necessary, the Licensee shall consult with his Supervising Physician and the Physician's Health Program to establish a schedule to meet his obligations under this Agreement which will be acceptable to the Board. Any such occurrences shall be noted in writing sent to the Board explaining the arrangements made and how the arrangements were carried out.

A. It is the parties' intention that the Licensee notify the Board in writing in advance of departure regarding the arrangements made. Failure to do so in advance shall be excused only for good cause shown.

B. Failure to meet the conditions outside of Maine shall be dealt with in the same manner as failure otherwise to maintain the obligations of this Consent Agreement.

7. INVOLVEMENT IN THE MAINE COMMITTEE ON PHYSICIANS' HEALTH. The Licensee shall continue his contractual involvement with the Maine Committee on Physicians' Health as long as any term of this Consent Agreement remains in force. The Licensee is encouraged to actively participate in the Committee.

8. MONITORING OF BEHAVIOR. The Licensee agrees that his behavior will be monitored by a physician, approved by the Board, who is in contact with the Licensee on an average of four or five times a week. This physician will agree to inform the Board if the Licensee demonstrates any signs of withdrawal or behavior change, which could result from the use of a Prohibited Substance. The monitoring physician shall report such information by telephone and in writing within 24 hours or as soon thereafter as possible.

9. NOTICE TO HOSPITALS. Within 10 days after execution of this agreement by the Board and approved by the Department of Attorney General, the Licensee shall provide a copy of this Consent Agreement to:

A. **The Hospital.** Notice to Southern Maine Medical Center or to such other hospital at which the Licensee shall practice be provided, at a minimum, to the Hospital CEO and the Hospital Medical Director.

B. **Others.** Any other entity or person involved in the monitoring or treatment process which or whom the Board deems appropriate shall receive and review this Consent Agreement.

10. DESIGNATED COPY OF CONSENT AGREEMENT.

A. **Reading and Signing the Consent Agreement by Others.** The Licensee shall have each person set forth in Paragraph 9 above read, date, and sign a copy of the Consent Agreement (the "Designated Copy"). The Designated Copy shall also be read and signed by the Supervising Physician, all designees and by the Evaluator. The original Designated Copy which is signed by the above-referenced persons shall at all times be kept on file at the Licensee's office and shall be subject to inspection upon request of the Board or its agent. A copy of the signature page shall be made and sent to the Board. The Licensee agrees that if new individuals assume the roles set forth in Paragraph 9 during the existence of this Agreement, such individuals shall also read, date and sign the Agreement.

11. The Licensee shall be required to maintain his Maine license to practice medicine for as long as this Agreement is in effect. In the event that the Licensee applies for licensure in other jurisdictions during the pendency of this Agreement, the Licensee shall notify said jurisdiction of the existence of this Agreement.

12. **REQUIREMENT REPORT.** The Licensee agrees and hereby irrevocably directs that IF ANYONE HAS REASON TO SUSPECT THAT THE LICENSEE HAS USED A PROHIBITED SUBSTANCE OR HAS OTHERWISE VIOLATED THIS CONSENT AGREEMENT, SUCH PERSON MUST REPORT THE LICENSEE TO THE BOARD WITHIN 24 HOURS OR AS SOON THEREAFTER AS POSSIBLE. SUCH REPORT SHALL BE MADE BY TELEPHONE AND IN WRITING. ALL PERTINENT FACTS AND CIRCUMSTANCES RELATED TO THE ALLEGED VIOLATION SHALL BE REPORTED TO THE BOARD.

13. **WAIVER OF CONFIDENTIALITY AND RELEASE OF RECORDS.** The Licensee agrees and understands that the Board and the Department of Attorney General shall have complete access to the Licensee's present and future personal medical and counseling records regarding chemical dependency and to all otherwise confidential data pertaining to treatment or monitoring of the Licensee for chemical dependency.

14. **BOARD'S JURISDICTION.** The Licensee acknowledges that the Board has jurisdiction over his license. The Licensee understands that, at the time the Board is agreeing to issue him this Conditional, Probationary License, the Board does not have the statutory jurisdiction to revoke licenses. In consideration for the Board's issuing to the Licensee his license pursuant to this Consent Agreement, the Licensee 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. The Board may also, if it deems it preferable, refer such matter for action in Court.

15. MISCELLANEOUS PROVISIONS.

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

1. Notice to the Board:

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

2. Notice to the Licensee:

Thomas R. DeFanti, M.D.
26 West Cole Road
Biddeford, ME 04005

B. Address Change. If the Licensee changes jobs, moves his residence, moves his office practice, changes telephone numbers at work or at home, or secures privileges at a hospital, the Licensee shall provide notice to the Board within two weeks after such occurrence.

C. Costs. All costs incurred in performance of the Modifications and Conditions of this Consent Agreement shall be borne by the Licensee. If a violation of this Consent Agreement is proven to have occurred, regardless of the sanctions imposed, the Board may require the Licensee 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 is deemed illegal or invalid, then that clause shall be deemed severed from this Consent Agreement.

16. AMENDMENT OF CONSENT AGREEMENT. This Consent Agreement cannot be amended orally. It can be amended only by a writing signed by the parties hereto and approved by the Department of Attorney General.

A. Requests for amendments made by the Licensee shall be made in writing submitted to the Board.

B. The Board may also propose amendments by sending a written proposal to the Licensee.

17. ADVICE OF COUNSEL. The Licensee has been informed that he has the right to legal counsel. He has consulted with an attorney who has negotiated this Consent Agreement on his behalf.

18. WAIVER OF RIGHT TO APPEAL BOARD'S DECISION AND CERTAIN FUTURE BOARD DECISIONS. In regard to all terms and conditions of this Consent Agreement, the Licensee waives any further hearings or appeal to the Court regarding the Conditional License issued hereunder. Nothing in this paragraph shall be deemed a waiver of the Licensee's rights under rule, statute or the Maine or United States Constitutions, to appeal a decision or action later taken by the Board except as the Licensee may have agreed herein, such as with discretionary decisions by the Board and which may occur with or without a hearing, increased jurisdiction of the Board to revoke his license for violation of this Consent Agreement. The Licensee agrees that this Consent Agreement and Order is a final order resolving the Licensee's application for Licensure.

I, THOMAS R. DEFANTI, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT 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: 5-16-02



THOMAS R. DeFANTI, M.D.

STATE OF MAINE
CUMBERLAND, ss.

Dated: 5/16/02

Personally appeared before me the above named Thomas R. DeFanti, 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.

Wau

~~Notary Public~~
~~ATTORNEY AT LAW~~

My Commission Expires: _____

Dated: 5/16/02

Wau

Counsel to Dr. Thomas R. DeFanti

**STATE OF MAINE BOARD OF
REGISTRATION IN MEDICINE**

Dated: 6/11/02

Ed David

Edward David, M.D., Chairman

**STATE OF MAINE DEPARTMENT
OF ATTORNEY GENERAL**

Dated: 4/11/02

Ruth E. McNiff

Ruth E. McNiff
Assistant Attorney General

EFFECTIVE DATE: 6/11/02
monitoring 9/1/99