

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

In re:	)	CONSENT AGREEMENT FOR
Reinaldo O. de los Heros, M.D.	)	CONDITIONAL LICENSE
Application for Licensure	)	

This document is a Consent Agreement regarding licensing action involving the license application of Reinaldo O. de los Heros, M.D. to practice medicine in the State of Maine. The effect of this Consent Agreement is to issue a conditional license to practice medicine to Reinaldo O. de los Heros, M.D. The parties to this Consent Agreement are: Reinaldo O. de los Heros, M.D. ("Dr. de los Heros"), 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 pursuant to 10 M.R.S.A. § 8003(5)(B) and 32 M.R.S.A. § 3282-A.

FACTUAL BACKGROUND

1. On September 29, 2005, the Board received an application from Reinaldo O. de los Heros, M.D. to practice medicine in the State of Maine. His medical specialty is psychiatry, in which he is board certified.

2. On April 11, 2006, the Board reviewed Reinaldo O. de los Heros' application for licensure. As part of that review, the Board noted: (a) his prior disciplinary history, which included: the 1997 revocation of his license to practice medicine in Massachusetts; the 1997 surrender of his license to practice medicine in New Hampshire; the 1999 revocation of his license to

practice medicine in North Carolina; and his March 13, 1997 criminal felony convictions of one count of Medicaid Fraud and one count of Larceny under Massachusetts law, which formed the basis of all of the foregoing adverse licensing actions; (b) the fact that he has not been eligible to participate in Medicaid and/or Mainecare since 1997, when he was excluded from those programs; (c) the fact that he had last treated a patient ten (10) years ago; (d) the fact that he has been an active participant in the Massachusetts Physician Health Services between 1997 and 2003; (e) the fact that he has been an active participant in the Maine Physician Health Program since 2004; (f) the fact that he has been in counseling with Charles Johnson, M.D., P.A. since August 1997; and (g) the fact that In February 2006, the Massachusetts Board of Registration in Medicine reinstated his medical license pursuant to a probation agreement.

3. In lieu of denying Reinaldo O. de los Heros' application for licensure, the Board voted to offer him this Consent Agreement in order to grant him a conditional license to practice medicine in this State. Absent Reinaldo O. de los Heros' acceptance of this proposed Consent Agreement on or before July 15, 2006, by signing and dating it in front of a notary public, and returning it to Daniel Sprague, Assistant Executive Director, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137, the Board shall deny Reinaldo O. de los Heros' application for licensure.

## COVENANTS

4. Dr. de los Heros admits that his prior disciplinary history and lack of recent medical practice could constitute grounds for the denial of his application for medical licensure pursuant to 32 M.R.S.A. § 3282-A(2)(E) & (F).

5. In light of the admission in paragraph 4 above, the Board and Dr. de los Heros agree that Dr. De Los Heros will be issued a conditional license to practice medicine in the State of Maine. Until this Consent Agreement is modified in writing by all of the parties hereto, Dr. de los Heros' license to practice medicine shall be subject to the following condition(s):

a. Dr. de los Heros will restrict his practice to working in a supervised relationship under another Maine licensed psychiatrist. Because he has been out of practice since March 1997, Dr. de los Heros' re-entry into medical practice will be monitored, pursuant to a written monitoring agreement, by a supervising psychiatrist who, while acting that capacity as supervising/monitoring psychiatrist, will be an agent of the Board pursuant to Title 24 M.R.S.A. § 2511. Dr. de los Heros' supervising/monitoring psychiatrist(s) and the written monitoring agreement<sup>1</sup> must be approved by the Board before he is issued a license to practice medicine in this State;

b. Dr. de los Heros shall ensure that the duties of his

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<sup>1</sup> A copy of the Board-approved written monitoring agreement is attached to this Consent Agreement as "Exhibit A."

supervising/monitoring psychiatrist shall include: on-going, regular supervision; review of patient charts (including clinical scales performance, patients' responses to outcome, and satisfaction reviews); review of the efficacy of prescribed medications; and consultation with other mental health providers involved in the patients' care. In complying with this requirement, Dr. de los Heros shall permit his supervising/monitoring psychiatrist full access to all patient information;

c. If Dr. de los Heros' psychiatric practice supervisor(s)/monitor(s) raises a concern about any aspect of Dr. de los Heros' medical practice or ethics, he/they shall immediately notify the Board in writing;

d. Dr. de los Heros shall ensure that his Board-approved supervising psychiatrist(s) provide the Board with quarterly reports concerning his participation and progress towards eventual independent practice;

e. The Board may, at any time, order a neuropsychiatric evaluation of Dr. de los Heros pursuant to 32 M.R.S.A. § 3286. If so ordered by the Board, Dr. de los Heros shall submit to and fully cooperate with such evaluation;

f. Dr. de los Heros will abstain from consuming alcohol and mood or mind altering substances or medications, illicit or not (collectively referred to as "illicit substances") for the term of this Consent

Agreement. Dr. de los Heros may only take medications that are prescribed by a physician who is knowledgeable about Dr. de los Heros' disciplinary history on file with the Board. Further, Dr. de los Heros shall not prescribe any medication(s) for himself or his family members and/or any fiancés or girlfriends;

g. Dr. de los Heros shall continue to participate in the Maine Medical Association's Committee on Physician Health (CPH);

h. Dr. de los Heros shall submit to testing by the CPH for the presence of alcohol or mind altering substances. Dr. de los Heros shall submit to random monthly urine monitoring for the presence of alcohol or mind altering substances. All costs associated with such monitoring shall be paid for by Dr. de los Heros.

i. If a urine specimen produced pursuant to this Consent Agreement tests positive for the presence of any illicit substance, Dr. de los Heros shall ensure that the positive test shall be reported to the Board within 24 hours. The report shall be in writing and by telephone, and shall include a copy of the positive test result;

j. All positive test results received by the Board shall constitute a rebuttable presumption and *prima facie* evidence that Dr. de los Heros violated the terms and conditions of this Consent Agreement, and that he consumed alcohol or an illicit substance prohibited by this Consent Agreement;

k. Upon report of a positive test, the Board may, in the exercise of its discretion and without hearing, decide that Dr. de los Heros poses a risk of harm to patients or himself, and may take any actions permitted by law, including but not limited to an immediate, automatic suspension of his license to practice medicine in this State. In the event that the Board suspends Dr. de los Heros' license based upon a positive urine test, it shall endeavor to hold a hearing within thirty (30) days of the notice of any such license suspension;

l. If Dr. de los Heros leaves the State, he is required maintain his random urine monitoring schedule pursuant to this Consent Agreement and shall comply with all terms of this Consent Agreement while he is out of State;

m. Dr. de los Heros shall ensure that, each calendar quarter following the execution of this Consent Agreement, the Board receives the results of all of his urine tests administered by the CPH;

n. If Dr. de los Heros moves out of State or ceases the practice of medicine, he shall immediately report such facts to the Board;

o. Dr. de los Heros agrees and understands that during the term of this Consent Agreement, the Board will have complete access to his present and future personal medical and counseling records regarding matters related to this Consent Agreement and to all otherwise confidential data related to treatment or monitoring under this Consent

Agreement.

p. Dr. de los Heros agrees that during the term of this Consent Agreement, he shall provide a copy of this Consent Agreement to any employers, partners or peers with whom he intends to practice medicine. He will also provide a copy of this Consent Agreement to any person involved in the monitoring, treatment or counseling of him pursuant to the terms of this Consent Agreement;

q. Dr. de los Heros agrees that during the term of this Consent Agreement, he shall, through a document approved by the Board<sup>2</sup>, advise all other professionals with whom he has a consulting relationship that he is working under the supervision of Dr. Sullivan;

r. Dr. de los Heros agrees that he shall apply for Medicare and Medicaid (Mainecare) certification on May 15, 2007, and shall immediately thereafter provide documentary proof of such application to the Board ;

s. Dr. de los Heros agrees that, following the execution of this Consent Agreement and upon receipt of his Maine medical license, he will treat without charge 15% of indigent patients, and shall provide documentary proof of his treatment of indigent patients to the Board each calendar quarter following the execution of this Consent Agreement.

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<sup>2</sup> A copy of the Board-approved document is attached to this Consent Agreement as "Exhibit B."

Dr. de los Heros shall continue to treat without charge 15% of indigent patients until such time as he becomes an approved and participating member in Medicare and Medicaid (Mainecare);

6. Pursuant to 10 M.R.S.A. § 8003(5)(B) the Board and Dr. de los Heros agree that, in addition to any other disciplinary action available to it by law, the Board has the authority to issue an order modifying, suspending, or revoking his license in the event that he fails to comply with any of the terms or conditions of this Consent Agreement.

7. After successfully completing one year of practice under this Consent Agreement, Dr. de los Heros may apply to the Board to modify the terms and conditions of this Consent Agreement. Upon receipt of a request, the Board may grant or deny the request without hearing.

8. This Consent Agreement may only be modified in writing by all of the parties hereto.

9. Dr. de los Heros waives any further hearings before the Board or appeal to the Courts regarding all terms and conditions of this Consent Agreement.

10. The Board and the Attorney General may communicate and cooperate regarding Dr. de los Heros' practice or any other matter relating to this Consent Agreement.

11. 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.

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

**I, REINALDO O. DE LOS HEROS, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, 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: 7/11/06

*Reinaldo O. de los Heros*  
REINALDO O. DE LOS HEROS, M.D.

STATE OF Maine  
Kennebec, S.S.

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

DATED: 7/11/06

*Jean M. Greenwood*  
NOTARY PUBLIC/ATTORNEY

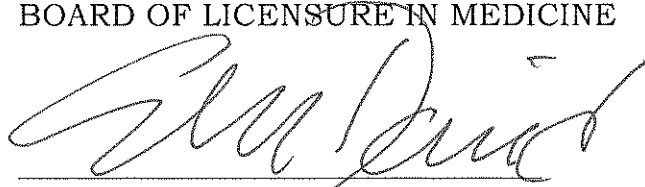
MY COMMISSION ENDS:

Jean M. Greenwood  
State of Maine Notary Public  
My Commission Expires 9/25/07

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED:

7-11-06




EDWARD DAVID, M.D., Chairman

STATE OF MAINE OFFICE  
OF THE ATTORNEY GENERAL

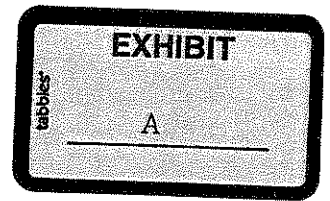
DATED:

7/11/06



DENNIS E. SMITH  
Assistant Attorney General

APPROVED  
EFFECTIVE:



## MONITORING AGREEMENT

AGREEMENT dated this 26<sup>th</sup> day of June, 2006 by and between Reinaldo de los Heros, M.D. , a physician with an office in Portland, Maine ( "Dr. de los Heros") and William M. Sullivan, M. D., a physician with an office in Portland, Maine ( "Dr. Sullivan" )

### PREAMBLE:

A. Dr. de los Heros is in the process of returning to the practice of medicine after an absence of ten years

B. Dr. de los Heros is subject to the terms of a Consent Agreement for Conditional Licensure effective July 11<sup>th</sup>, 2006 ( the "Consent Agreement"), issued by the State of Maine Board of Licensure in Medicine. ( the "Board").

C. The Consent Agreement requires that re-entry into practice be monitored by another physician, and subject to peer supervision.

D. Dr. Sullivan has reviewed the Consent Agreement and has agreed to monitor and supervise Dr. de los Heros' re-entry into practice.

E. The Parties to this Monitoring Agreement are Dr. de los Heros and Dr. Sullivan.

NOW THEREFORE, in consideration of One Dollar and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Scope: Dr. Sullivan will monitor and supervise Dr. de los Heros as follows:

a) There will be regular meetings, both in Dr. Sullivan's and Dr. de los Heros' respective offices for practice monitoring. There will also be periodic, unscheduled visits by Dr. Sullivan to Dr. de los Heros' office for observation of office atmosphere and for other purposes as Dr. Sullivan deems appropriate.

b) Dr. de los Heros shall provide Dr. Sullivan access to a complete deidentified list of all of Dr. de los Heros current and prospective patients, which for all current patients he shall include patient's age, presenting problem, diagnosis and treatment plan, including medications and for prospective patients he shall include such of this information as available at the time.

c) Dr. Sullivan shall be able to review with Dr de los Heros all new patients accepted into Dr. de los Heros' practice since their last meeting and shall assist Dr. de los Heros in developing strategies for practice management as Dr. de los Heros resumes practice and increases the number of patients he is treating or evaluating over the term of this Agreement. Practice management shall include patient mix, managing an increasing

number of patients, scheduling, timeliness of sessions, management of phone calls and of all other patient contacts including after-hours care, and billing and collection fees;

d) Dr. de los Heros shall notify all referral sources by written correspondence Dr. Sullivan's monitoring/supervisory relationship to Dr. de los Heros as requested by Board, with complete description of Dr. Sullivan's role and availability for possible reciprocal feedback between Dr. Sullivan and referral sources.

e) At Dr. Sullivan's discretion, he may instruct Dr. de los Heros to audiotape specific patient sessions, if Dr. Sullivan believes it will assist in their work. This will only occur with the patient's advanced full agreement and written consent.

f) At their meetings, Dr. Sullivan shall review and discuss with Dr. de los Heros his care and treatment of any patients on the list referenced in paragraph b) above. Dr. de los Heros shall make available to Dr. Sullivan a deidentified copy of treatment records, as requested by Dr. Sullivan. Patient issues to be discussed shall be raised by Dr. Sullivan regarding any of Dr. de los Heros patients. Case review shall include exploration of patient care issues, general and specific clinical judgment and competency issues.

2. No PHI. The parties will make reasonable attempts to discuss cases without disclosing Protected Health Information, as such terms is defined in the regulation of the Health Insurance Portability and Accountability Act of 1996 relating to the privacy of individually identifiable health information ("PHI").

3. Frequency of Meetings: The parties shall meet in person at the following frequency: for the first three months at least once a week and more often as determined by either physician; for the next three months at least every other week; and for the remainder of the Term at least monthly. At these meetings, the parties shall discuss the matters set forth in section 1. If Dr. de los Heros has concerns he would like to discuss with Dr. Sullivan between scheduled meetings, he will contact Dr. Sullivan by e-mail or phone and Dr. Sullivan will make reasonable efforts to meet or speak with Dr. de los Heros as soon as possible.

4. Terms and Termination: The term of this Agreement shall commence upon approval by the Board and shall end when the Board lifts the monitoring agreement set forth in the Consent Agreement. This Monitoring Agreement may be terminated by Dr. Sullivan prior to the end of the term upon ninety (90) days written notice. This Agreement may be terminated by Dr. de los Heros also at any time, but Dr. de los Heros understands that it is his responsibility to remain in compliance with the Consent Agreement. Such termination does not relieve Dr. de los Heros of the obligation to pay Dr. Sullivan for all services provided during the monitoring period.

5. Payment: Dr. Sullivan shall bill Dr de los Heros \$ 150.00 per hour for services provided pursuant to this Agreement. It is understood by the parties that Dr. Sullivan's services shall include review of reports, preparation of reports and correspondence, along

with actual time spent in face to face supervision. This shall be billed monthly and paid by Dr. de los Heros immediately upon receipt.

6. Reports.

a) Dr. Sullivan shall make quarterly reports to the Board regarding Dr. de los Heros participation under this Monitoring Agreement. It is understood that this may be a simple form document regarding Dr. de los Heros participation and compliance with this Monitoring Agreement.

b) Dr. Sullivan shall make only the following other reports to the Board with respect to Dr. De los Heros (i) any report required under the Consent Agreement, and (ii) any report required by law (i.e. pursuant to the Maine Health Security Act, 24 M.R.S.A. & 2501 et seq.). The following procedure shall be used if Dr. Sullivan believes such a report may be needed:

1) If Dr. Sullivan determines that there may be grounds for making a report to the Board, he will first review the matter with Dr. de los Heros, unless Dr. Sullivan concludes the situation poses an emergent or urgent patient care issue.

2) The decision to file a report is in the sole discretion of Dr. Sullivan and any report will be processed as a report received by the Board pursuant to 24 M.R.S.A. & 2505.

7. Confidential Arrangement. At all times the parties are, and will hold themselves out to the public, other practitioners and their patients as, separate and unaffiliated practitioners. Neither party shall encourage third parties to assume that their practices are combined or affiliated in any manner.

8. Dr. de los Heros is solely responsible for his patient care and he agrees to indemnify and hold Dr. Sullivan harmless for any and all care, treatment decisions, clinical outcomes, and interactions regarding his patients that are not covered by Dr. Sullivan's insurance. Dr. Sullivan does not assume any responsibility for any issues with Dr. de los Heros' patient care.

9. Insurance Coverage and Premiums: This Agreement is conditional on Dr. Sullivan being able to obtain reasonable malpractice insurance and general liability insurance coverage for all risks reasonably related to this Agreement. If Dr. Sullivan's premium for malpractice or general liability insurance is raised directly as a result of this Agreement, Dr. de los Heros shall reimburse Dr. Sullivan for the portion of the increase related to this Agreement. Should Dr. Sullivan's role under this Agreement require any appearance at the Board or any response to any complaint to or inquiry by the Board arising out of this Agreement with Dr. de los Heros, Dr. de los Heros agrees to pay Dr. Sullivan for his services reasonably related thereto, and for any reasonably out of pocket expenses including legal fees incurred by Dr. Sullivan in this regard.

10. Independent Contractor Status: The parties shall at all times remain independent contractors and not employees of one another.

11. Mediation: If a dispute arises under this Agreement which the parties are unable to resolve through direct negotiations, the parties agree to engage jointly the services of a professional mediator and to participate in good faith in such mediation and to abide by its outcome or decision.

12. Access to information and outside communication with referral sources: Dr. de los Heros shall provide any and all access to releases authorizing Dr. Sullivan to obtain records from or to discuss in person or by phone with the referral sources or ancillary psychotherapist or physician under the terms of this Consent agreement information regarding the status or progress of Dr. de los Heros' patients as independently assessed by such clinicians.

13. Dr. de los Heros shall provide releases of information to Dr. Sullivan to talk in person or by phone with any of Dr. de los Heros' treating medical specialists, primary care physician or any therapist from whom Dr. de los Heros is receiving any treatment, drug or alcohol monitoring or therapy, including substance abuse, mental health or counseling.


14. Dr. Sullivan as Board's Agent: It is understood between the parties that the Maine board of Licensure in Medicine considers Dr. Sullivan's services under this Monitoring Agreement to be performed as an Agent of the Board, pursuant to the Maine Health Security Act, 24 M.R.S.A. & 2501 et seq., and more specifically pursuant to 24 M.R.S.A. & 2511.

15. This Agreement contains all of the material terms of the parties to the subject matter hereof and may not be modified or changed, waived, or terminated orally or in any other but by written instrument executed by both parties to be given notice by certified or registered mail return receipt requested.

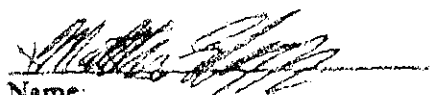
16. This Agreement shall be governed by and construed in accordance with the laws of Maine. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof


IN WITNES WHEREOF, the parties have executed this Agreement as of the date first written above,

WITNESS

  
Name: DAVID MARGOLIS PH.D.

  
Reinaldo de los Heros, M.D.

  
Name:

  
William M. Sullivan, M.D.

Dear Dr.

I appreciate your referral and request for evaluation and psychopharmacology management of Mr./ Mrs. \_\_\_\_\_. Per my agreement with The Maine Licensure in Medicine dated June \_\_\_, 2006, and in consideration of the fact that after several years of not having practiced psychiatry, Dr William Sullivan has kindly agreed to provide formal supervision as needed. Among other things, his role will include review of patient charts and the possibility of requesting some feedback from my referral sources, regarding patient outcome and satisfaction with the evaluation and treatment provided.

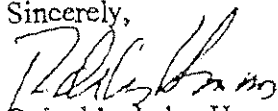
This approach should well complement the very intensive and thorough continuing medical education training which I have obtained for the past several years, with major emphasis in the fields of Neuropsychiatry, Neurology, Primary Care and Preventive Medicine, among others.

As a very conscientious physician, who trained in Sheppard Pratt, John Hopkins and Boston University Hospitals, was faculty member of The Boston University Medical School, was research collaborator with Harvard Medical school, and had a private practice for over seventeen years, I believe that this approach will provide the highest quality of care that any physician should provide for his patients.

Once I have completed my evaluation of Mr./ Mrs. \_\_\_\_\_, with his/her permission I will be forwarding you a copy of the clinical findings, initial treatment plans and recommendations, which will be followed with the routinely administered clinical scales and patient satisfaction appraisal forms. By using this approach, you should be able to have a fairly clear and objective appraisal of the patient's clinical progress.

If at any point you have any questions or concerns of any type, please feel free to contact me and/or Dr. Sullivan directly at \_\_\_\_\_.

Sincerely,



Reinaldo de los Heros, M.D.

Board Certified in Psychiatry