

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT
John L. Newcomb, M.D.)	AGREEMENT
Complaint No. CR04-099/05-052)	

This document is a Consent Agreement, effective when signed by all parties, regarding a disciplinary action concerning the license to practice medicine in the State of Maine held by John L. Newcomb, M.D. The parties to the Consent Agreement are: John L. Newcomb, M.D. (“Dr. Newcomb”), 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.

INTRODUCTION AND BACKGROUND

1. Dr. Newcomb has held a license to practice medicine in the State of Maine since 1974. His medical specialty is psychiatry, however, he is not board certified.

2. On September 2, 2004, the Board received a complaint from Patient CG, a patient of Dr. Newcomb. Patient CG alleged that Dr. Newcomb charged her fees which were fully covered by CG’s insurance. The Board docketed that complaint as CR04-099.

3. On October 18, 2004, the Board received a response from Dr. Newcomb to complaint CR04-099. Dr. Newcomb asserted that the fees he charged Patient CG were direct payments generally related to the deficiency between the amount that he was reimbursed by Patient CG’s insurance company and the full bill for his psychiatric services.

4. On November 3, 2004, the Board received information from a physician psychiatrist who expressed concern about Dr. Newcomb's treatment records and treatment of five patients, GH, KL, RL, JR, & PM. As a result of receiving this information, the Board initiated an investigation.

5. On December 21, 2004, the Board sent Dr. Newcomb a letter regarding complaint CR04-099 requesting further information, including: what the payments by Patient CG were applied to; copies of Patient CG's treatment plan and treatment records; and whether or not Dr. Newcomb accepted Medicare assignment.

6. On March 7, 2005, the Board received a response from Dr. Newcomb to its December 21, 2004 letter. In his response, Dr. Newcomb included: a copy of a record showing that Patient CG made 18 cash payments to Dr. Newcomb totaling \$385.00; a copy of his treatment records for Patient CG; and a denial that he ever accepted Medicare assignment.

7. On or about May 18, 2005, the Board reviewed the investigative information regarding Dr. Newcomb's treatment of patients GH, KL, RL, JR, & PM, and voted to initiate a complaint against Dr. Newcomb's Maine medical license alleging unprofessional conduct and incompetence. The Board docketed the complaint as CR05-052.

8. On July 25, 2005, the Board received a response from Dr. Newcomb to complaint CR05-052. In his response, Dr. Newcomb denied providing substandard treatment to patients GH, KL, RL, JR, & PM.

9. On January 17, 2006, the Board requested that Cynthia Dunn, R.N., C.C.P., F.A.C.M.P.E. review Dr. Newcomb's patient treatment records for both complaints CR04-099 and CR05-052. More specifically, the Board requested answers to the following questions: whether or not Dr. Newcomb's medical records support his billing practices; whether or not Dr. Newcomb's medical records met the recognized, accepted standard of care for medical record documentation; and whether or not the billing records met the recognized, accepted standard for billing record documentation.

10. In March 2006, the Board received a report from Cynthia Dunn regarding her review of Dr. Newcomb's medical and billing records regarding the patients in complaints CR04-099 and CR05-052. According to Ms. Dunn's report, Dr. Newcomb's records: did not support his billing practices; did not meet the recognized, accepted standard for medical record documentation; and did not meet the recognized, accepted standard for billing record documentation. In addition, Ms. Dunn also noted that Dr. Newcomb's records for patient CG reflected that he did accept Medicare assignment.

11. On April 11, 2006, the Board reviewed complaints CR04-099 and CR05-052 and voted to schedule them for an adjudicatory hearing.

12. On November 2, 2006, the Board issued a Notice of Hearing regarding complaints CR04-099 and CR05-052, which scheduled the adjudicatory hearing for December 12, 2006. The adjudicatory hearing was subsequently continued by agreement of legal counsel for the Board and legal counsel for Dr. Newcomb to January 9, 2007.

13. This Consent Agreement has been negotiated by counsel for Dr. Newcomb and counsel for the Board in order to resolve complaints CR04-099 and the re-licensure matter CR05-052 without an adjudicatory hearing. Absent ratification of this proposed Consent Agreement by a majority vote of the Board on December 12, 2006, the matter will proceed to an adjudicatory hearing on January 9, 2007.

14. By signing this Consent Agreement, Dr. Newcomb and his legal counsel waive any and all objections to, and hereby consent to the presentation of this proposed Consent Agreement to the Board for possible ratification. Dr. Newcomb 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 fails to ratify this proposed Consent Agreement.

COVENANTS

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

15. Dr. Newcomb admits that with regard to complaints CR04-099 and CR05-052 that the Board has sufficient evidence from which it could reasonably conclude that: Dr. Newcomb's treatment of patients GH, KL, RL, JR, & PM did not meet the accepted standard or care; and Dr. Newcomb's treatment and billing records for patients CG, GH, KL, RL, JR, & PM did not meet the recognized, accepted standards for medical or billing records. Dr. Newcomb admits that the Board has sufficient evidence from which it could conclude that such conduct constitutes unprofessional conduct and

incompetence and grounds for discipline of his Maine medical license pursuant to 32 M.R.S.A. § 3282-A(2)(E) & (F).

16. As a consequence of the conduct described in paragraph 15 above, Dr. Newcomb agrees to the following discipline:

a. a REPRIMAND. Dr. Newcomb agrees that henceforth he shall comply with all acceptable standards of care with regard to the treatment of patients with psychopharmacologic medications and with regard to creating and maintaining treatment and billing records;

b. a LICENSE SUSPENSION for twelve months. However, the license suspension is suspended in its entirety, so long as Dr. Newcomb complies with the terms and conditions of his probation;

c. a five (5) year LICENSE PROBATION following the execution¹ of this Consent Agreement. During the five (5) year license probation, Dr. Newcomb shall comply with the following terms and conditions:

(i) Dr. Newcomb shall reimburse the Board Seven Thousand Three Hundred Sixty-Eight Dollars Ninety-Seven Cents (\$7,368.97) as the actual costs incurred by the Board for the investigation and prosecution of complaints CR04-099 and CR05-052. Payment shall be made by certified check or money order made payable to "The Maine Board of Licensure in Medicine," and remitted to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine

¹ For the purposes of this Consent Agreement, "execution" means the date on which the final signature is affixed to this Consent Agreement following its ratification by the Board.

04333-0137. Dr. Newcomb shall pay the Board costs within twenty-four months following the execution of this Consent Agreement;

(ii) Dr. Newcomb shall reimburse Patient CG Three Hundred Eighty-Five Dollars and Zero Cents (\$385.00) within thirty (30) days following the execution of this Consent Agreement. Dr. Newcomb shall also provide the Board with documentary proof of such reimbursement to patient CG within thirty (30) days following the execution of this Consent Agreement;

(iii) Dr. Newcomb shall, pursuant to Title 10 M.R.S.A. § 8003(5)(A-1)(4), pay all costs associated with complying with the terms and conditions of probation;

(iv) Dr. Newcomb agrees to establish a relationship with another Maine licensed psychiatrist approved by the Board, who shall monitor Dr. Newcomb's practice pursuant to a written monitoring agreement that is also approved by the Board. Dr. Newcomb understands that the monitoring psychiatrist will be an agent of the Board pursuant to Title 24 M.R.S.A. § 2511. Dr. Newcomb shall ensure that the duties of his monitoring psychiatrist include: on-going, regular monitoring; review of patient charts (including clinical scales performance, patients' responses to outcomes, and satisfaction reviews); review of the efficacy of prescribed medications; and consultation with other mental health providers involved in the patients' care. Dr. Newcomb shall permit the monitoring psychiatrist full access to all patient information.² In complying with this condition, Dr. Newcomb shall, within thirty (30) days

² Subject to the terms of the Board-approved monitoring agreement.

following the execution of this Consent Agreement, submit to the Board for its review and approval the name(s) of Maine license psychiatrist(s) he proposes to monitor his practice, and a copy of the proposed written monitoring agreement;

(v) Dr. Newcomb shall ensure that his Board-approved monitoring psychiatrist(s) provide(s) the Board with quarterly reports concerning the appropriateness of Dr. Newcomb's treatment of patients and the adequacy of Dr. Newcomb's patient medical and billing records;

(vi) Within sixty (60) days following the execution of this Consent Agreement, Dr. Newcomb shall engage a professional office management entity to evaluate his coding and documentation practices. Following the evaluation, Dr. Newcomb shall provide the Board with a copy of the evaluation, and shall implement all recommendations. In complying with this condition, Dr. Newcomb shall, within thirty (30) days following the execution of this Consent Agreement, submit to the Board for its approval, the identity of the professional office management entity which he shall engage to evaluate his coding and documentation practices;

(vi) Within twelve (12) months following the execution of this Consent Agreement, Dr. Newcomb shall enroll in and successfully complete the following courses:

(a) a Board-approved course regarding current pharmacologic medications in conjunction with psychotherapy; and

(b) a Board-approved course in ethics;

(vii) Dr. Newcomb 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;

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

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

18. Dr. Newcomb waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Newcomb agrees that this Consent Agreement and Order is a final order resolving the complaints CR04-099 and CR05-052. 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. Newcomb shall be made in writing and submitted to the Board. Dr. Newcomb may, at reasonable intervals, petition the Board for amendment of the terms and conditions of this Consent Agreement. Upon making such a petition, Dr. Newcomb shall bear the burden

of demonstrating that the Board should amend the Consent Agreement. The Board shall have the discretion to: (a) deny Dr. Newcomb's petition; (b) grant Dr. Newcomb's petition; and/or (c) grant Dr. Newcomb'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. Newcomb's request to modify this Consent Agreement need not be made pursuant to a hearing and is not appealable to any court.

19. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Newcomb 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. Newcomb 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. Newcomb 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. Newcomb's license.

23. Dr. Newcomb 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, JOHN L. NEWCOMB, 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: December 8, 2006 John L Newcomb MD
STATE OF Maine JOHN L. NEWCOMB, M.D.
Cumberland, S.S.

Personally appeared before me the above-named John L. Newcomb, 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: 12/8/2006 Leanne Lentz Spencer
NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: _____

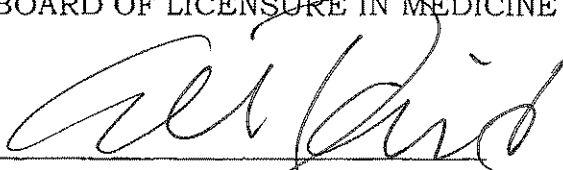
LEANNE LENTZ SPENCER
Notary Public, Maine
My Commission Expires January 26, 2013

DATED: December 8, 2006 John L. Newcomb

ROBERT O. NEWTON, ESQ.
ATTORNEY FOR DR. NEWCOMB

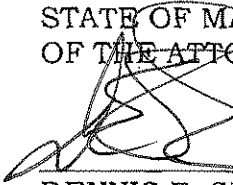
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 12-12-06


EDWARD DAVID, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 12/12/06


DENNIS E. SMITH
Assistant Attorney General

Effective Date: