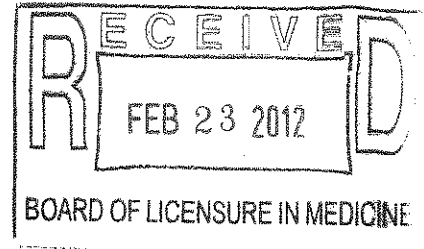


STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE



In re: )  
Michael S. Berry, M.D. ) SECOND AMENDMENT TO  
Complaint Nos. CR08-120/CR08-133 ) CONSENT AGREEMENT  
)

This document is a Second Amendment to a Consent Agreement that was entered into on October 14, 2008, regarding disciplinary action against and modifications to and conditions imposed upon the license to practice medicine in the State of Maine issued to Michael S. Berry, M.D. The parties to both the Second Amendment and the Consent Agreement are: Michael S. Berry, M.D. ("Dr. Berry"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General ("the Attorney General"). This Second Amendment to Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. On October 14, 2008, the parties entered into a Consent Agreement regarding disciplinary action against and modifications to and conditions imposed upon the license to practice medicine in the State of Maine issued to Michael S. Berry, M.D.
2. On February 17, 2011, the parties entered into a First Amendment to Consent Agreement, which among other things, reduced the frequency of urine testing to twice a month.
3. On January 13, 2012, the Board reviewed Dr. Berry's compliance with the terms and conditions of his Consent Agreement, and voted to reduce the frequency of urine testing to once per month.

AMENDMENT

4. Dr. Berry, the Board and the Office of Attorney General hereby agree to amend the Consent Agreement entered into on October 14, 2008, as follows:

- a. Paragraph 11(c)(iii) shall read as follows:

Frequency of Urine Testing. It is Dr. Berry's obligation to ensure that all the samples are given and tests occur as specified in this Consent Agreement. Testing shall be randomly scheduled. Notwithstanding any other provision of this Consent Agreement, the Board, the Supervising Physician, or the Board's

agent may request Dr. Berry to submit to testing at any time. Failure to maintain this schedule or the random nature of the tests shall be cause for suspension, non-renewal or revocation of Dr. Berry's Maine medical license, unless proof of genuine emergent medical circumstances (for Dr. Berry or a patient) exist which warrant less serious disciplinary actions being taken by the Board. For the indefinite period following the execution of this Second Amendment to Consent Agreement, Dr. Berry shall provide urine samples for testing for the presence of Prohibited Substances at least once every month.

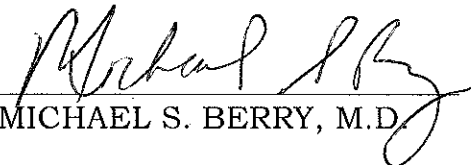
5. Dr. Berry acknowledges by his signature hereto that all other terms and conditions of the Consent Agreement effective October 14, 2008, as amended by the First Amendment to Consent Agreement effective February 17, 2011, remain in full force and effect.

6. Dr. Berry acknowledges by his signature hereto that he has read this Second Amendment to Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Second Amendment, that he executed this Second Amendment of his own free will and that he agrees to abide by all terms and conditions set forth herein

**I, MICHAEL S. BERRY, M.D., HAVE READ AND UNDERSTAND THE FOREGOING SECOND AMENDMENT TO CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING I WAIVE CERTAIN RIGHTS INCLUDING THE RIGHT TO FURTHER HEARINGS REGARDING THIS AMENDMENT. I ALSO WAIVE THE RIGHT TO APPEAL TO THE COURT REGARDING THIS SECOND AMENDMENT. KNOWING THIS, I SIGN IT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS SECOND AMENDMENT, TOGETHER WITH THE CONSENT AGREEMENT, CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN, OR OTHERWISE. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THIS SECOND AMENDMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.**

DATED:

2/16/12

  
MICHAEL S. BERRY, M.D.

STATE OF Maine  
Kennebec, S.S.

Personally appeared before me the above-named Michael S. Berry, 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: 2/16/2012

  
NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: JOAN L. EASTMAN  
NOTARY PUBLIC  
State of Maine  
My Commission Expires  
April 27, 2012


STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED: 2/25/12

  
GARY R. HATFIELD, M.D., Chairman

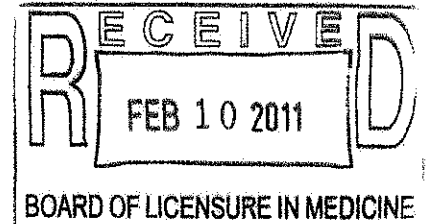
STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED: 2/29/12

  
DENNIS E. SMITH  
Assistant Attorney General

Effective Date: 2/29/12

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE



In re: )  
Michael S. Berry, M.D. ) FIRST AMENDMENT TO  
Complaint Nos. CR08-120/CR08-133 ) CONSENT AGREEMENT  
)

This document is a First Amendment to a Consent Agreement that was entered into on October 14, 2008, regarding disciplinary action against and modifications to and conditions imposed upon the license to practice medicine in the State of Maine issued to Michael S. Berry, M.D. The parties to both the First Amendment and the Consent Agreement are: Michael S. Berry, M.D. ("Dr. Berry"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General ("the Attorney General"). This First Amendment to Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. On October 14, 2008, the parties entered into a Consent Agreement regarding disciplinary action against and modifications to and conditions imposed upon the license to practice medicine in the State of Maine issued to Michael S. Berry, M.D.

2. On October 22, 2010, the Board received a written request from Dr. Berry to amend the following paragraphs of the Consent Agreement:

- a. Paragraph 11(c)(iii) – to require urine testing once every two weeks;
- b. Paragraph 11(d)(i) – to require substance abuse consultations at least twice monthly;
- c. Paragraph 11(d)(ii) – to require psychological counseling on an "as needed basis;" and
- d. Paragraph 11(f)(iii) – to require submission of reports of attendance at AA or NA to the Board every six months.

3. In support of his request for an amendment of the Consent Agreement, Dr. Berry submitted letters of support from his Board-approved psychologist and substance abuse counselor each of whom supported the amendments, and expressed the opinion that Dr. Berry has been compliant, does not pose a risk of relapse, and has been active in his recovery.

4. On December 14, 2010, the Board reviewed Dr. Berry's request to amend the Consent Agreement. Following its review, the Board voted to amend the Consent Agreement as requested by Dr. Berry.<sup>1</sup>

#### AMENDMENTS

5. Dr. Berry, the Board and the Office of Attorney General hereby agree to amend the Consent Agreement entered into on October 14, 2008, as follows:

a. Paragraph 11(c)(iii) shall read as follows:

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

b. Paragraph 11(d)(i) shall read as follows:

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

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<sup>1</sup> Paragraph 11(d)(ii) does not need to be amended, as it provides that "the therapy sessions shall occur at least monthly and continue until the therapist notifies the Board that treatment is no longer necessary or useful. The Board, in its sole discretion, will determine whether cessation of therapy is appropriate." Dr. Berry's Board-approved therapist notified the Board in writing that Dr. Berry "does not appear to be at risk of relapse and does not appear to be in need of monthly psychotherapy with me any further." In light of this information, the Board determined that cessation of therapy is appropriate at this time.

c. Paragraph 11(f)(iii) shall read as follows:

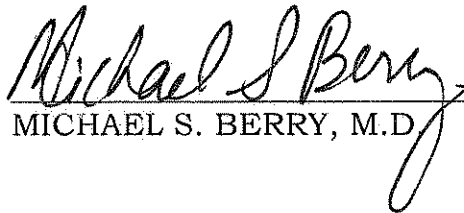
Reports of Attendance. Dr. Berry shall submit a signed, written report of his attendance at AA, NA or impaired professional self-help group meetings to the Board every six months. In complying with this condition, Dr. Berry shall provide the Board with the reports on or before January 31<sup>st</sup> and June 30<sup>th</sup> of each calendar year. Any instances of failure to attend the required numbers of meetings shall be noted, together with specific explanation detailing reasons.

6. Dr. Berry acknowledges by his signature hereto that he has read this First Amendment to Consent Agreement, that he has had an opportunity to consult with an attorney before executing this First Amendment, that he executed this First Amendment of his own free will and that he agrees to abide by all terms and conditions set forth herein

**I, MICHAEL S. BERRY, M.D., HAVE READ AND UNDERSTAND THE FOREGOING FIRST AMENDMENT TO CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING I WAIVE CERTAIN RIGHTS INCLUDING THE RIGHT TO FURTHER HEARINGS REGARDING THIS AMENDMENT. I ALSO WAIVE THE RIGHT TO APPEAL TO THE COURT REGARDING THIS FIRST AMENDMENT. KNOWING THIS, I SIGN IT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS FIRST AMENDMENT, TOGETHER WITH THE CONSENT AGREEMENT, CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN, OR OTHERWISE. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THIS FIRST AMENDMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.**

DATED:

2/7/2011

  
MICHAEL S. BERRY, M.D.

STATE OF

Maine

Kennebec

, S.S.

Personally appeared before me the above-named Michael S. Berry, 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:

2/7/2011

Joan L. Eastman  
NOTARY PUBLIC/ATTORNEY  
MY COMMISSION ENDS:

JOAN L. EASTMAN  
NOTARY PUBLIC  
State of Maine  
My Commission Expires  
April 27, 2012

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED:

2/12/2011

Sheridan R. Oldham, MD  
SHERIDAN R. OLDHAM, M.D., Chairman

STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED:

2/17/11

Dennis E. Smith  
DENNIS E. SMITH  
Assistant Attorney General

Effective Date:

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

In re: )  
Michael S. Berry, M.D. ) CONSENT AGREEMENT  
Complaint Nos. CR08-120/CR08-133 )  
)

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against and modifications to and conditions imposed upon the license to practice medicine in the State of Maine issued to Michael S. Berry, M.D. The parties to the Consent Agreement are: Michael S. Berry, M.D. ("Dr. Berry"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General ("the Attorney General"). This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. Dr. Berry has held a license to practice medicine in the State of Maine since June 9, 2006.
2. In June 2007, Dr. Berry was employed at Mid-Maine Radiology, which Works with MaineGeneral Medical Center's (MGMC) Imaging Services department. During that time, Dr. Berry reported to the Chief of Radiology at MGMC that he had a substance abuse problem and had diverted opiate drugs (fentanyl and morphine) from the MGMC radiology supply room. Investigation revealed that between January 2, 2007 and June 22, 2007, Dr. Berry inappropriately accessed the Pyxis pharmacy system at MGMC on 49 occasions and removed opiates for his personal use. Investigation also revealed that Dr. Berry avoided detection of his diversion by assigning the opiates to patients in the hospital system. In addition, investigation revealed that, in the majority of those instances, Dr. Berry obtained the opiates after the patients had left the unit, and that he billed the patients' insurers for the opiate medication that he diverted for his own use.
3. On or about August 7, 2007, legal counsel to MGMC notified the Maine Attorney General Health Care Crimes Unit of Dr. Berry's suspected Medicaid Fraud and drug diversion. Neither MGMC nor its legal counsel reported this information to the Board.
4. On or about April 1, 2008, the Board received a complaint filed against Dr. Berry's Maine medical license alleging that Dr. Berry was unprofessional in his communications with a patient and her family. The Board docketed that complaint as CR08-120.



5. On or about March 12, 2008, the Board received information from the Maine Attorney General Health Care Crimes Unit regarding Dr. Berry's diversion of opiates. On April 8, 2008, the Board reviewed that information, and pursuant to 32 M.R.S. § 3282-A, voted to initiate a complaint against Dr. Berry's Maine medical license. The Board docketed the complaint as CR08-133.

6. On June 4, 2008, Dr. Berry pled guilty to two counts of Unlawful Possession of Scheduled Drugs (Class D) in violation of 17-A M.R.S. § 1107-A(1)(C). Sentencing was deferred by the Court.

7. On July 8, 2008, the Board reviewed complaints CR08-120 and CR08-133. Following its review, the Board voted to schedule the complaints for an adjudicatory hearing. In addition, the Board authorized its legal counsel to negotiate a consent agreement to resolve complaints CR08-120 and CR08-133 without hearing.

8. Absent Dr. Berry's acceptance of this Consent Agreement by signing and dating it in front of a notary and returning it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before October 12, 2008, the matters shall be scheduled for an adjudicatory hearing.

9. By signing this Consent Agreement, Dr. Berry waives, in his personal capacity and through legal counsel, any and all objections to, and hereby consents to allow the Board's legal counsel to present this proposed Consent Agreement to the Board for possible ratification on October 12, 2008. Dr. Berry waives, in his personal capacity and through legal counsel, forever any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

#### COVENANTS

10. Dr. Berry admits, based upon the evidence in possession of the Board that:

a. With regard to complaint CR08-120, the Board has sufficient evidence from which it could reasonably conclude that Dr. Berry was unprofessional in his communications with a patient and her family. Dr. Berry acknowledges that such conduct constitutes grounds for discipline pursuant to 32 M.R.S. § 3282-A(2)(F); and

b. With regard to complaint CR08-133, the Board has sufficient evidence from which it could reasonably conclude that Dr. Berry: (i) engaged in the practice of fraud or deceit in connection with services

rendered within the scope of his Maine medical license; (ii) engaged in habitual substance abuse that was foreseeably likely to result in his performing services in a manner that endangered the health or safety of patients; (iii) engaged in unprofessional conduct by diverting and using opiates; and (iv) has been convicted of a crime that relates directly to the practice for which he is licensed. Dr. Berry acknowledges that such conduct constitutes grounds for discipline of his Maine medical license pursuant to 32 M.R.S. § 3282-A(2)(A), (B), (F), and (G).

#### DISCIPLINE/CONDITIONS OF LICENSURE

11. In light of the admissions in paragraph 10 above, as well as Dr. Berry's acceptance of responsibility, his efforts to seek treatment and his commitment to refrain from the use of illegal substances, the Board agrees to impose and Dr. Berry agrees to accept the following discipline:

With regard to CR08-120, a WARNING. Dr. Berry will communicate with all patients and their families in a professional manner.

With regard to CR08-133, an active license with a definite probationary period of five (5) years with the following conditions, which shall remain in place indefinitely or until this Consent Agreement is amended or rescinded by agreement of all of the parties hereto:

a. ABSTINENCE. Dr. Berry agrees that, following the execution<sup>1</sup> of this Consent Agreement, he shall completely abstain from the use of any and all Prohibited Substances. "Prohibited Substances" as used throughout this Consent Agreement shall mean: benzodiazepines; sedatives; hypnotics or similar drugs; opiates; alcohol; Fentanyl; morphine, Demerol, mood, consciousness or mind-altering substances, whether illicit or not; and all drugs which are dispensed to or prescribed for him by anyone other than a single primary care physician approved by the Board who is knowledgeable of Dr. Berry's medical history, including his substance abuse history, unless the circumstances constitute a genuine medical or surgical emergency.<sup>2</sup>

i. Prescription Medication. If any controlled drug is dispensed or prescribed for Dr. Berry for a personal medical condition, Dr. Berry 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

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<sup>1</sup> For purposes of this Consent Agreement the term "execution" means the date on which the final signature is affixed to the Consent Agreement.

<sup>2</sup> Notwithstanding this provision, the Board may approve Dr. Berry's treating psychiatrist to continue to prescribe all psychotropic medications for Dr. Berry's psychiatric care and treatment so long as Dr. Berry ensures that his single primary care physician is informed of any such prescriptions and coordinates his care and treatment with his treating psychiatrist.

followed by a written summary of all pertinent circumstances. The Board shall be apprised of all continuing pertinent circumstances regarding continued use of the controlled drug, and a written report thereof shall be submitted to the Board.

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

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

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

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

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

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

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

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

(b). Reporting Negative Test Results. Written reports of all tests shall be sent to the Board monthly, together with an explanation of the dates and times samples were provided and tests made, the type(s) of tests made, and the substances tested for (together with detectable levels tested for), and the test results. Dr. Berry shall ensure that all reports are made to the Board in a timely fashion.

(c). Confidentiality Waived. With regard to the Board and its agents and any process to be pursued by the Board, Dr. Berry hereby waives all claims of confidentiality and privilege with respect to all tests taken and test results pursuant to this Consent Agreement. Dr. Berry shall execute any and all releases in order for the Board to obtain access to and copies of all urine test results.

v. Rebuttable Presumption Raised by Positive Test. It is agreed and understood that a test evidencing the presence of any Prohibited Substance, shall raise a rebuttable presumption that such substance was in fact used by Dr. Berry. Such a positive test result shall alone be sufficient to

prove the use of the Prohibited Substance by Dr. Berry. Dr. Berry further agrees that the result of the test may be admitted into evidence in any proceeding regarding his Maine medical license, whether before the Board or before a Court of competent jurisdiction.

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

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

viii. Failure to Maintain Sampling Schedule or Failure to Appear or to Provide Sample. Failure by Dr. Berry: to maintain the sampling schedule; to appear when demanded to provide a sample; or to provide samples upon being demanded to do so shall be dealt with as follows:

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

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

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

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

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

ix. Amendment of Testing Provisions. After two (2) years of successful compliance with the terms and conditions of this Consent Agreement, Dr. Berry may file a written application with the Board to amend the testing conditions. Upon written application by Dr. Berry to the Board, the Board may amend the above agreed conditions for testing. Amendment of the testing conditions shall be in the sole discretion of the Board and shall be based upon such information as the Board deems pertinent. A decision regarding the amendment of testing provisions may be made by the Board, in its sole discretion, with or without providing a hearing. Any decision by the Board regarding a request to amend the testing conditions is not appealable. The Board can propose Amendment(s), which may or may not be agreed to by Dr. Berry.

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

d. PROFESSIONAL MANAGEMENT.

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

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

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

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

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

vi. Amendment of Aftercare Treatment Requirements. After one (1) year of successful compliance with the terms and conditions of

this Consent Agreement, Dr. Berry may file a written application with the Board to amend his substance abuse and/or mental health treatment. The Board shall retain the sole discretion, without hearing, to grant or deny such application. Dr. Berry acknowledges that any decision by the Board concerning this issue is not appealable.

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

viii. Reports from Treatment Providers. Dr. Berry shall ensure that on or before October 9<sup>th</sup>, January 9<sup>th</sup>, April 9<sup>th</sup>, and July 9<sup>th</sup> of each year following the execution of this Consent Agreement the Board-approved treatment provider(s) submit(s) to the Board a written report regarding: Dr. Berry's compliance with his schedule of meetings; Dr. Berry's ability to continue practicing medicine; and the prognosis of Dr. Berry's continued recovery. In addition, the treatment providers shall immediately notify the Board in writing whenever: (1) in his/her professional judgment, Dr. Berry poses a potential danger to the health, safety and welfare of patients; or (2) Dr. Berry terminates treatment or is non-compliant with the treatment plan. Dr. Berry hereby waives any privileges concerning such information, reports, records and disclosures to the Board.

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



obtain copies of any and all notes, records, and documentation concerning his treatment.

e. PROFESSIONAL OVERSIGHT.

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

(a) Togus VA Medical Center  
1 VA Center  
Augusta, ME 04330; and

(b) Redington-Fairview General Hospital  
46 Fairview Avenue  
P.O. Box 468  
Skowhegan, ME 04976

In addition, should Dr. Berry seek to change the location(s) of his medical practice, the Board may, as a condition of approving such location(s), require additional conditions upon Dr. Berry's medical license including but not limited to a physician monitor, a prohibition on Dr. Berry's possession or storage of certain drugs, and access to Dr. Berry's medical practice.

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

iii. Possession of Controlled Drugs. Dr. Berry agrees that, outside Togus VA Medical Center, following the execution of this Consent Agreement, he shall completely abstain from the possession of Prohibited Substances, including but not limited to benzodiazepines, sedatives, hypnotics or similar drugs, opiates, fentanyl, morphine, Demerol, marijuana and alcohol. In complying with this provision, Dr. Berry agrees that:

(a) he will not possess or have access to Prohibited Substances while at Redington-Fairview General Hospital and shall not order or accept samples or stocks of any Prohibited Substances; and

(b) he will not possess or have access to Prohibited Substances while at any other location outside of Togus VA Medical Center and shall not order or accept samples or stocks of any Prohibited Substances.

f. SELF-HELP GROUP MEETINGS.

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

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

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

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

g. MAINTENANCE OF OBLIGATIONS WHEN AWAY FROM

i. General. Dr. Berry agrees to maintain his obligations regarding substance monitoring and self-help group meetings at all times, including times when he is away from home but within the continental limits of the United States. Dr. Berry will notify the Director of the Medical Professionals Health Program sufficiently in advance of travel to make whatever arrangements the Director deems appropriate for monitoring before he leaves.

It shall be Dr. Berry's obligation to ensure that arrangements are made consistent with this Consent Agreement in such other location(s) to ensure the continuation and satisfaction of his obligations under this Consent Agreement. Any such occurrences shall be noted in writing sent to the Board by Dr. Berry explaining the arrangements made and how the arrangements were carried out.

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

h. INVOLVEMENT IN THE MAINE MEDICAL PROFESSIONALS HEALTH PROGRAM.

Dr. Berry shall enter into a contract with the Maine Medical Professionals Health Program and fully participate in that program as long as this Consent Agreement remains in force.

i. MAINTAINENCE OF LICENSE.

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

j. WAIVER OF CONFIDENTIALITY AND RELEASE OF RECORDS.

Dr. Berry agrees and understands that the Board and the Department of Attorney General shall have complete access to his present and future personal medical and counseling records regarding chemical dependency and mental health issues and to all otherwise confidential data pertaining to treatment or monitoring of Dr. Berry for substance abuse and mental health issues. Dr. Berry waives any privileges concerning such information, reports, or records, and agrees to execute any and all releases necessary to permit the Board access to such information. All releases must, in addition to waiving any relevant State law privileges or immunities, provide the Board with access to all material covered by 42 C.F.R., Part 2. In the event that the releases are not sufficient to obtain access to any information which the Board considers relevant, Dr. Berry agrees to personally obtain such information and furnish it to the Board, to the extent permitted by law.

12. SANCTION FOR VIOLATION OF CONSENT AGREEMENT.

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

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

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

13. DESIGNATED COPY OF CONSENT AGREEMENT.

Dr. Berry shall have his supervising physician, monitoring physician and all treatment providers read, date, and sign a copy of the Consent Agreement (the "Designated Copy"). Dr. Berry shall retain a copy of the Consent Agreement signed by all of the aforementioned individuals at his Board-approved medical practice locations and shall produce it upon request of the Board or its agent(s). A copy of the signature page shall be made and sent to the Board. Dr. Berry agrees that if new individuals assume the roles set forth in this Consent Agreement during the existence of this Consent Agreement, such individuals shall also read, date and sign the Consent Agreement.

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

14. BOARD'S JURISDICTION.

Dr. Berry acknowledges that the Board has jurisdiction over his license. Dr. Berry understands that, at the time the Board is agreeing to issue him this Conditional, Modified License, the Board has the statutory jurisdiction to revoke licenses. Pursuant to 10 M.R.S. § 8003(5)B, in consideration for the Board's issuing Dr. Berry his Maine medical license pursuant to this Consent Agreement, he agrees that, regarding any alleged violation of this Consent Agreement, the Board is granted jurisdiction to revoke his license or take such other disciplinary action as is available to the Courts, following an adjudicatory hearing conducted in accordance with the Maine Administrative Procedure Act.

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.

(i). Notice to the Board:

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

(ii). Notice to the Licensee:

Michael S. Berry, M.D.  
16 Morrill Ave  
Waterville, ME 04901

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

c. Costs. All costs incurred in performance of the Modifications and Conditions of this Consent Agreement shall be borne by Dr. Berry. If a violation of this Consent Agreement is proven to have occurred, regardless of the sanctions imposed, the Board may require Dr. Berry 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. DURATION OF CONSENT AGREEMENT.

Dr. Berry understands and agrees that the duration of this Consent Agreement is five (5) years. The probation and conditions imposed by this Consent Agreement shall remain in effect until amended or rescinded in writing by the parties hereto.

17. AMENDMENT OF CONSENT AGREEMENT.

Dr. Berry waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Berry agrees that this Consent Agreement is a final order resolving complaints CR08-120 and CR08-133, and 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 to this Consent Agreement by Dr. Berry shall be made in writing and submitted to the Board. Dr. Berry shall bear the burden of demonstrating that the Board should amend the Consent Agreement. The Board shall have the sole discretion to: (a) deny Dr. Berry's petition; (b) grant Dr. Berry's petition; and/or (c) grant Dr. Berry'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. Berry's request to modify this Consent Agreement need not be made pursuant to a hearing and is not appealable to any court.

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

19. PUBLIC RECORD. 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. § 408.

20. REPORTABLE DISCIPLINE. This Consent Agreement constitutes disciplinary action, and is reportable to the National Practitioner Data Bank, the Federation of State Medical Boards, and other licensing jurisdictions.

21. ADVICE OF COUNSEL. Dr. Berry has been represented by legal counsel, Ronald W. Schneider, Jr., Esq., with respect to the terms of this Consent Agreement.

22. WAIVER OF RIGHT TO APPEAL CONSENT AGREEMENT.

Dr. Berry waives his right to a hearing before the Board or any court regarding all facts, terms and conditions of this Consent Agreement. Dr. Berry agrees that this Consent Agreement is a final order resolving complaints CR08-120 and CR08-133, and that it is not appealable and is effective until modified or rescinded in writing by the parties hereto.

**I, MICHAEL S. BERRY, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS CONSENT AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.**

DATED: 10/1/2008 Michael S Berry MD  
MICHAEL S. BERRY, M.D.

STATE OF Maine  
Kennebec, S.S.

Personally appeared before me the above-named Michael S. Berry, 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: 10/1/08 Shawn White  
NOTARY PUBLIC/ATTORNEY  
MY COMMISSION ENDS: 9/14/2010

DATED:

10/6/08



RONALD W. SCHNEIDER, JR., ESQ.  
Attorney for Dr. Berry

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED:

10/14/08

  
SHERIDAN R. OLDHAM, M.D., Chairman

STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED:

10/14/08



DENNIS E. SMITH  
Assistant Attorney General

Effective Date: