



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

SHERIDAN R. OLDHAM, M.D.
CHAIRMAN

JOHN ELIAS BALDACCI
GOVERNOR

RANDAL C. MANNING
EXECUTIVE DIRECTOR

July 14, 2008

Bert I. Beverly, M.D.
258 Main Street
Waterville, ME 04901

Re: Completion of Consent Agreement

Dear Dr. Beverly:

This is to inform you that the Board of Licensure in Medicine reviewed your request to be released from your Consent Agreement at the July 2008 Board meeting. Based on the information provided to the Board, they agreed that you have complied with the terms of your Consent Agreement and have successfully completed its requirements effective July 8, 2008.

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

Please feel free to contact me at (207) 287-6931 if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads 'Maria A. MacDonald'.

Maria A. MacDonald
Investigator

Cc: Maureen Lathrop, Administrative Secretary ✓



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ANGUS S. KING, JR.
GOVERNOR

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

July 20, 1999

RANDAL C. MANNING
EXECUTIVE DIRECTOR

Bert I. Beverly, M.D.
18 East Side Road
Trevett, ME 04571

RE: Consent Agreement

Dear Dr. Beverly:

This is to reinforce that you are no longer required to submit to regular substance monitoring, although you may for the remainder of your career as a licensed physician undergo some level of substance monitoring to test whether you have used a Prohibited Substance, as defined in paragraph 1 of the Consent Agreement.

You no longer have need of a Supervising Physician. However, in accordance with Article 3,C,(3) of your Consent Agreement, "Following the period of five (5) years from the date hereon, the Board or the Supervising Physician may request random samples drawn at any time".

You are released from the requirement to attend Aftercare Treatment Sessions with a Specialist, and you are released from the requirement to attend Self-Help Group Meetings.

You no longer need to maintain triplicate prescriptions for controlled substances.

I wish to remind you that you continue to possess a conditional license to practice medicine in Maine, for the reasons presented to you in my letter of April 7, 1999.

Please don't hesitate to let me know whenever I may be of assistance.

Congratulations on your ongoing, daily recovery. I wish you every success in your medical career.

Very truly yours,

A handwritten signature in black ink that reads "Dan Sprague".

Dan Sprague,
Assistant Executive Director



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

RANDAL C. MANNING
EXECUTIVE DIRECTOR

April 7, 1999

Bert I. Beverly, M.D.
18 East Side Rd
Trevett, ME 04571

Dear Dr. Beverly;

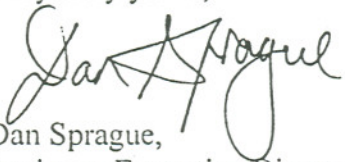
This is in response to your letter of April 4, 1999.

I would disagree that your Consent Agreement ends on June 8, 1999. For example, under "Conditions Of Licensure", Article 1, you have agreed to completely abstain from the use of any and all Prohibited Substances, in order to retain your Conditional License to practice medicine in Maine. Likewise, under Article 3, "Substance Monitoring", you have understood and agreed that you may for the remainder of your career as a licensed physician undergo some level of substance monitoring. See also Article 3, Section C, "Frequency of Urine Testing".

I recommend that you get that urine test around June 12, 1999.

Thank you for requesting advice on this matter. I trust you will enjoy attending your meeting in St. Louis.

Very truly yours,


Dan Sprague,
Assistant Executive Director

STATE OF MAINE

BOARD OF REGISTRATION IN MEDICINE

IN RE:) CONSENT AGREEMENT REGARDING
) CONDITIONAL, LICENSURE
BERT I. BEVERLY, M.D.) AND BOARD ORDER ISSUING LICENSE

This document is a Consent Agreement and Order, effective June 8, 1994, regarding the issuance to Bert I. Beverly, M.D. of a Conditional License to practice medicine in the State of Maine. The parties to this Consent Agreement are Dr. Beverly (the "Licensee"), the State of Maine Board of Registration in Medicine (the "Board") and the Department of the Attorney General.

Dr. Beverly applied for licensure by the Board by application dated October 28, 1993. He is currently not licensed to practice medicine in any jurisdiction. The Application and material received by the Board in investigating the application are incorporated by reference herein. Dr. Beverly's Application for Licensure is resolved by this Consent Agreement, which is entered into pursuant to 32 M.R.S.A. Section 3271(5), and Section 3282-A(1)(a) (1988 & Supp. 1990) and 10 M.R.S.A. Section 8003(5)(A-1)(4) (Supp. 1990).

BACKGROUND FACTS

On February 16, 1993, Dr. Beverly was involved in a motor vehicle accident, while driving in Caribou, Maine. He was subsequently charged with operating under the influence.

On February 17, 1993, while driving in Brunswick, Maine, Dr. Beverly was again arrested for operating under the influence.

Dr. Beverly voluntarily surrendered his license to practice medicine in Maine on February 18, 1993.

In September of 1993, Dr. Beverly pled guilty to both charges in the Sixth District Court, Division of Bath. He was ordered to pay a fine in the amount \$425.00 for each charge, his license was suspended for 90 days and he was put on probation for a period of one year.

In addition to the above-said convictions, the Board has been provided with thorough and complete documentation of Dr. Beverly's alcoholism and drug addiction, use and possession of controlled substances, primarily benzodiazepines and opiates.

Based upon review of monitoring and counseling reports, the Board finds that there is no evidence that Dr. Beverly has used any illicit substance or alcohol since he entered substance abuse treatment on March 3, 1993. Since his return to Maine from five and one-half months of residential treatment, Dr. Beverly has continued his involvement in the Maine Impaired Physicians Program and in a number of self-help groups and local monitoring.

Based on Dr. Beverly's acceptance of responsibility, his subsequent treatment of his substance abuse problem, his application, the positive letters of reference from physicians who have worked with him, based upon significant meetings between the Dr. Beverly and the Board, his successful completion of SPEX exam, and based upon the understanding and agreement that any future use of any illicit substance or alcohol by Dr. Beverly shall, unless otherwise explicitly specified herein, result in revocation of Dr. Beverly's license, the Board has voted that it shall issue to Dr. Beverly a conditional license to practice medicine in the State of Maine.

LICENSE MODIFICATIONS

1. LIMITATIONS REGARDING DRUGS. If the United States Drug Enforcement Agency issues to the Licensee a D.E.A. registration, then the Licensee's license to practice medicine in Maine shall be modified to the following extent:

A. No Ordering, Storing or Dispensing of Schedule Drugs. The Licensee shall not be permitted to order, receive, store, handle, administer, or dispense any Scheduled Drug. Medications which need to be dispensed to patients shall be done by a prescription or by a hospital order which is carried out by someone other than the Licensee.

B. Triplicate Prescriptions for Controlled Substances. The Licensee shall obtain consecutively numbered, triplicate, impression duplicable (carbon or NCR paper) prescription pads. These pads shall be preprinted with the number 1 and shall run consecutively thereafter (e.g., 1 through 9999).

(1) Writing Prescriptions. For each prescription of a controlled substance issued by the Licensee, the original shall be given to the patient, one of the duplicates shall become a permanent part of the Licensee's records on that particular patient and the second duplicate shall be kept in a separate filing system to be established and filed in the order the prescriptions were written (presumably in consecutively numbered order).

(a) Reports. Any use of the prescription pads in other than a consecutively numbered fashion shall be explained in a written report signed by Dr. Beverly which report shall be filed in the appropriate place in the file that contains the consecutively numbered prescriptions.

(b) Notice. Every six months, in February and July of each year, Dr. Beverly shall send to the Board copies of all the above-referenced reports written since the last notice to the Board.

(c) Hospital DEA Number. If the DEA shall not issue a number/license to Dr. Beverly but authorizes Dr. Beverly to prescribe under a hospital's DEA number/license the same limitations regarding triplicate and numerically ordered forms and the other limitations set forth above shall apply.

(2) Telephone Prescription Orders for Controlled Substances. Prescriptions for controlled substances telephoned by Dr. Beverly to a pharmacy shall be followed up as required by law, with duplicates files as set forth in subsection (B)(1) above; and where no original prescription needs to be filed with the pharmacy by law, then only the duplicate need be filed.

(3) Hospital Orders. The Licensee may write orders for controlled substance for patients in hospital records; otherwise he must utilize his consecutively numbered pads.

(4) Prescriptions for Patients Only. The Licensee shall not dispense any controlled substances or issue any prescriptions for controlled substances for himself, family members or for persons who are not his patients.

(5) Inspection. The Board may from time to time inspect Dr. Beverly's patient records and the required drug prescription files to ensure compliance with this provision and with the Consent Agreement generally.

C. Amendment of Limitations Regarding Drugs. The limitations regarding drugs on the Licensee's license shall continue in full force and effect without any opportunity for amendment for two years. If after that time period Dr. Beverly decides to seek amendment of these conditions, then he may petition the Board in writing. The Board may in its discretion grant or deny the application for good cause shown. Such decision may be made by the Board with or without providing the Licensee a hearing.

2. SANCTION FOR VIOLATION OF LICENSE MODIFICATIONS.

A. Automatic Suspension. Any oral or written report to the Board of violation, technical or otherwise, of these License Conditions shall result in the immediate, indefinite and automatic suspension of the Licensee's license. The automatic suspension of the Licensee's license shall become effective at the time the Licensee receives actual notice from the Board that a report of violation has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means. The indefinite, automatic suspension shall continue until the Board holds a hearing on the matter, unless the Board earlier determines that the report is without merit or decides that no further sanction is warranted.

B. Continued Suspension; Other Sanctions. The Licensee's indefinite automatic suspension shall continue for such time until the Board holds a hearing and reaches a decision. The Board shall attempt to hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both the Licensee and the Board agree to hold the hearing later) and shall be held pursuant to the Maine Administrative Procedure Act. The Board may impose such other discipline, including without limitation, fines, further suspension, probation, non-renewal or revocation, as the Board after hearing deems appropriate. By this Consent Agreement, the Licensee expressly accords the Board jurisdiction, concurrent with the Courts, to revoke his license if the Board deems it appropriate.

CONDITIONS OF LICENSURE

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

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

A. If any controlled drug is dispensed or prescribed for Dr. Beverly for a personal medical condition, Dr. Beverly or the Supervising Physician shall immediately notify the Board by telephone, which notice shall be followed by a written summary of all pertinent circumstances to be mailed to the Board within 48 hours. The Supervising Physician shall be apprised every five days of all continuing pertinent circumstances regarding continued use of the controlled drug, and a written report thereof shall be submitted to the Board for every five days that the use of the controlled drug continues after the initial 48-hour report.

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

2. SANCTION FOR VIOLATION OF LICENSE CONDITIONS.

A. Automatic Suspension. Any oral or written report to the Board of violation, technical or otherwise, of these License Conditions shall result in the immediate, indefinite and automatic suspension of the Licensee's license. The automatic suspension of the Licensee's license shall become effective at the time the Licensee receives actual notice from the Board that a report of violation has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means. The indefinite, automatic suspension shall continue until the Board holds a hearing on the matter, unless the Board earlier determines that the report is without merit or decides that no further sanction is warranted.

B. Continued Suspension; Other Sanctions. The Licensee's indefinite automatic suspension shall continue for such time until the Board holds a hearing and reaches a decision. The Board shall attempt to hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both the Licensee and the Board agree to hold the hearing later) and shall be held pursuant to the Maine Administrative Procedure Act. The Board may impose such other discipline, including without limitation, fines, further suspension, probation, non-renewal or revocation, as the Board after hearing deems appropriate. By this Consent Agreement, the Licensee expressly accords the Board jurisdiction, concurrent with the Courts, to revoke his license if the Board deems it appropriate.

3. SUBSTANCE MONITORING. The Licensee understands and agrees that he may for the remainder of his career as a licensed physician undergo some level of substance monitoring to test whether the Licensee has used a Prohibited Substance, as defined in paragraph 1. The monitoring shall be through urinalysis testing, intoxilyzer and blood testing, and any other reliable method which may later be developed and approved by the Board.

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

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

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

(1) It is the responsibility of the Licensee to ensure that the Supervising Physician or one of the Supervising Physician's approved designees is available to have the Licensee appear and provide urine samples as required by the Consent Agreement. In the event neither the Supervising Physician nor any designee is available (or anticipated to be available) at the given time to be responsible for urine monitoring, the Licensee shall immediately contact by telephone (followed up within 24 hours by writing) the Board Executive Director or Assistant Executive Director. The Licensee shall by telephone resolve with the Board Executive Director or Assistant Executive Director a plan for urine monitoring to be used for the duration of time that the Supervising Physician and all designees are unavailable. Under no circumstances shall the Licensee fail to provide a urine sample to some person pursuant to the plan which is preapproved by the Board Executive Director or Assistant Executive Director.

B. Process. All urine and blood samples shall be handled through legal chain of custody methods. All samples provided shall be analyzed by a certified laboratory which regularly handles these types of tests, and tests shall be conducted by such reliable methods as exist. Any changes must be approved by the Board.¹

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

(1) From the date of licensure and for a period of one (1) year from the date hereon, urine samples shall be drawn at least once each week. Further, the Board or the Supervising Physician may request random samples drawn at any time.

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

(3) Following the period of five (5) years from the date hereon, the Board or the Supervising Physician may request random samples drawn at any time.

¹ For example, currently, for urine screening, testing shall be by E.M.I.T. and/or gas chromatography-mass spectrometry. However, with the improvement of technology, changes in the methods of urine and other sampling and testing may be unilaterally mandated by the Board as set forth above.

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

(5) At any time during the term of this Consent Agreement, the Board may increase the level of testing back to the highest levels permitted under this Consent Agreement. Such action can be taken by the Board in its discretion with or without holding a hearing.

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

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

(2) Frequency of Intoxilyzer Samples and Testing.

(a) From the date of licensure and for a period of one (1) year from the date hereon, intoxilyzer shall be taken at least once each week. Further, the Board or the Supervising Physician may request random samples taken at any time.

(b) Following the period of one year from the date hereon, and for a period of four (4) years thereafter, intoxilyzer samples shall be taken at least once each month. Further, the Board or the Supervising Physician may request random samples taken at any time.

(c) Following the period of five (5) years from the date hereon, the Board or the Supervising Physician may request random samples taken at any time.

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

(e) At any time during the term of this Consent Agreement, the Board may increase the level of testing back to the highest levels permitted under this Consent Agreement. Such action can be taken by the Board in its discretion with or without holding a hearing.

(f) Intoxilyzer testing may be done by any medical facility or law enforcement agency approved by the Supervising Physician.

(3) Frequency of Blood Samples and Testing.

(a) Blood samples must be drawn anytime a intoxilyzer test evidences any level of a Prohibited Substance.

(b) Blood samples must be drawn anytime the intoxilyzer machine is reasonably suspected of not being properly calibrated or is otherwise not functioning properly.

(c) Blood samples must be drawn anytime conditions are such that a intoxilyzer sample could be unreliable, and

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

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

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

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

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

H. Reporting Test Results.

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

(2) Reporting Negative Test Results. Except as specified in paragraph 5(E), written reports of all other tests shall be sent to the Board monthly by the Supervising Physician, together with an explanation of the dates and times samples were provided and tests made, the type(s) of tests made, and the substances tested for (together with detectable levels tested for), and the test results.

Dr. Beverly shall ensure that all reports are made to the Board in a timely fashion.

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

(4) Retention of Reports. All original laboratory data and test reports shall be permanently retained by the Supervising Physician.

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

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

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

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

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

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

(a) Report. If the scheduled samples or the random samples are not drawn as required, then the Supervising Physician or his/her designee and the Licensee (and any other person knowledgeable of such failure) must within 24 hours telephone the Board and send to the Board a written report of such failure.

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

(c) Meeting with Board. Both the Licensee and the Supervising Physician (and the responsible designee, if any) shall appear before the Board regarding this situation at its next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the suspension, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

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

(2) Failure to Appear.

(a) Report and Meeting with Board. The Licensee and the Supervising Physician (and the responsible designee, if any) must, within 24 hours, telephone the Board and send to the Board a written report of such occurrence, and both the Licensee and the Supervising Physician shall appear before the Board, regarding any failure to appear when demanded to provide a sample, at the next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the report, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

(b) Suspension. An immediate, indefinite suspension of licensure shall result from any failure by the Licensee to appear for a scheduled or randomly ordered test, unless Dr. Beverly and the Supervising Physician present the failure as having been caused by a genuinely emergent circumstance beyond Dr. Beverly's control, as long as Dr. Beverly appeared within 6 hours of the scheduled or randomly called test. Except in this instance, the suspension shall begin the moment the Licensee actually learns a report has been made or sent to the Board.

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

(3) Failure to Provide Sample.

(a) Report and Meeting with Board. The Licensee and the Supervising Physician (and the responsible designee, if any) shall within 24 hours telephone the Board and send to the Board a written report of any occurrence regarding failure or refusal to provide a sample, and both the Licensee and the Supervising Physician shall appear before the Board at the next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the report, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

(b) Second Opportunity to Provide Urine Sample and Suspension. If the Licensee appears when scheduled or ordered, but fails to provide an adequate sample, then with regard to urine, after accurate notation of any and all substances consumed, (no substance shall be consumed which might affect the accuracy of the tests to be performed), a second opportunity to provide a urine sample shall be given after a reasonable time, not to exceed two hours. A repeat failure, or any refusal, shall result in an immediate, indefinite suspension of licensure. The suspension shall begin the moment of the occurrence.

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

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

N. **Increasing Testing.** For good cause shown (i.e. questionable reports or problems with providing samples), the Board can, in its discretion, without hearing, unilaterally increase the frequency of testing to the highest levels contemplated by this Consent Agreement, and may also add an additional four random tests per month. In addition, the Board may, in its discretion, without a hearing, extend the periods of testing by up to an additional five years. The Board can increase the level of testing beyond the parameters set forth above and/or extend the period beyond five years from the date hereon, only for good cause shown, after holding a hearing.

4. **PROFESSIONAL MANAGEMENT.**

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

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

C. **Change of Specialist.** If the licensee proposes to change the Specialist, then the Licensee shall make written application to the Board, including among other things a letter from the Licensee regarding his reasons for requesting such change and separate letters from the current Specialist and the proposed new Specialist relative to their understanding of the reasons for this request and, to the extent applicable, any concerns they may have. The Board may in its discretion grant or deny such request with or without a providing a hearing. If the request is denied, nothing precludes the Licensee from proposing another Specialist. In requesting a change of Specialist, the Licensee understands that the Board may inquire into any issues it deems pertinent with any person, including, without limitation, the current Specialist.

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

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

5. SELF-HELP GROUP MEETINGS.

A. Attendance at AA and NA. The Licensee agrees to attend Alcoholics Anonymous ("AA") and Narcotics Anonymous ("NA") a minimum of three times each week through one year and at least once each week through four years thereafter.

B. Impaired Physicians Self-Help Group. The Licensee agrees that he shall attend self-help group meetings of an impaired medical professional group, if available, on a regular basis. Meetings of the impaired professional self-help groups may be substituted on a one-for-one basis with meetings of AA or NA.

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

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

6. MAINTENANCE OF OBLIGATIONS WHEN AWAY FROM MAINE OR HOME. It is the intention of the parties that the Licensee's obligations regarding substance monitoring and self-help group meetings shall be maintained regardless of whether the Licensee is in Maine. For instance, if the Licensee is going on a business trip or a vacation, it shall be the Licensee's and the Supervising Physician's obligation to ensure that arrangements are made consistent with this Consent Agreement in such other locations(s) to ensure the continuation and satisfaction of his obligations under this Consent Agreement. Any such occurrences shall be noted in a writing sent to the Board explaining the arrangements made, followed by a separate writing detailing how the arrangements were carried out.

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

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

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

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

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

A. **The Hospital.** Notice to St. Andrews Hospital or to such other hospital at which Dr. Beverly shall practice shall be provided, at a minimum, to the Hospital CEO and the Chief of Medicine.

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

10. **DESIGNATED COPY OF CONSENT AGREEMENT.**

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

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

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

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

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

15. MISCELLANEOUS PROVISIONS.

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

(1) Notice to the Board:

State of Maine Board of Registration
in Medicine
Attention: Executive Director
State House - Station #137
Augusta, Maine 04333
Telephone: (207) 289-3601

(2) Notice to the Licensee:

Bert I. Beverly, M.D.

Home: East Side Road
Trevett, Maine 04571

Home Telephone: (207) 633-4175

Office: St. Andrews Hospital
St. Andrews Lane
Boothbay Harbor, Maine 04538

Office Telephone: (207) 633-6997

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

C. Costs. All costs incurred in performance of the Modifications and Conditions of this Consent Agreement shall be borne by the Licensee. If a violation of this Consent Agreement is proven to have occurred, regardless of the sanctions imposed, Dr. Beverly shall reimburse the Board for all costs and attorney's fees incurred in proving such violation.

D. Hearings. Unless otherwise specified, hearings shall be held consistent with the Maine Administrative Procedure Act.

E. Severance. If any clause of this Consent Agreement is deemed illegal or invalid, then that clause shall be deemed severed from this Consent Agreement.

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

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

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

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

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

I, **BERT I BEVERLY, M.D.**, HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE,. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

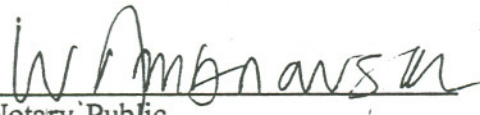
Dated: 6/8/94


Bert I. Beverly, M.D.


STATE OF MAINE
LINCOLN, SS.

Dated: June 8, 1994

Personally appeared before me the above named Bert I. Beverly, 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.


Notary Public
WENDY M. DOMBROWSKI
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES MARCH 23, 2000

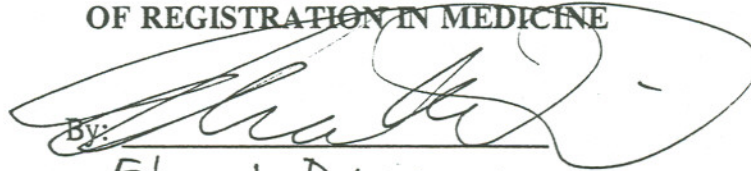
APPROVED:


Thomas A. Berry, Esquire
Counsel to Dr. Beverly

BOARD ORDER

IT IS HEREBY ORDERED, BY VOTE OF THE MAINE BOARD OF REGISTRATION IN MEDICINE, THAT **BERT I. BEVERLY, M.D.**, IN CONSIDERATION OF HIS COMPLIANCE WITH THIS CONSENT AGREEMENT WAS AFTER DUE AGREEMENT, ON 6/8, 1994 BE ISSUED A CONDITIONAL LICENSE TO PRACTICE MEDICINE IN THE STATE OF MAINE.


STATE OF MAINE BOARD
OF REGISTRATION IN MEDICINE

By: 
Edward David, MD, JD

APPROVED: Effective June 8th 1994

STATE OF MAINE DEPARTMENT
OF ATTORNEY GENERAL

Dated: 6/8/94

By: 
Assistant Attorney General

MAINE MEDICAL ASSOCIATION
COMMITTEE ON PHYSICIAN HEALTH

P.O. BOX 190 MANCHESTER, MAINE 04351

JOHN C. DALCO, M.D., Clinical Director
(207) 623-9266

May 23, 1994

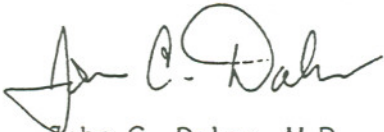
Polley Frawley
Attorney General's Office
State House Station #6
Augusta, Maine 04330

Dear Ms. Frawley:

At the request of Bert Beverly, M.D., I am writing to you at this time. Dr. Beverly is currently being monitored by Dr. Andrews of Boothbay Harbor.

1. His urine testing has been on a random basis. Our procedure is to monitor once or twice a week for about three months in people who have been in extended treatment, then the urine testing is reduced to no less than once a month for the duration of our agreement.
2. Dr. Beverly has also purchased and given to Dr. Andrews a relatively inexpensive breathalyzer and will be tested on a daily basis.
3. He will arrange monitoring on his return to work and I have suggested the surgeon with whom he shares an office (Dr. Garth Miller) and Dr. Andrews who's office abuts Dr. Beverly's.
4. He continues to attend AA meetings regularly.
5. He has been introduced to the Portland Caduceus Group.
6. Plans to continue as needed (currently monthly) in treatment with Dr. Charles Johnson, Psychiatrist at Maine Medical Center with knowledge of addictive disease.
7. He continues in weekly contact with me by phone and occasional random meetings, face to face.

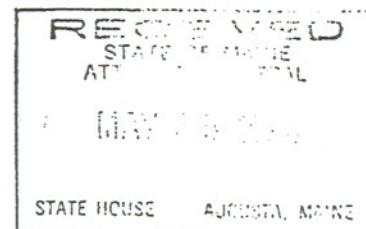
Yours truly,



John C. Dalco, M.D.
Clinical Director

JCD/caw

cc: Thomas Berry, Esq.



MAINE MEDICAL ASSOCIATION

IMPAIRED PHYSICIANS PROGRAM.

P.O. BOX 190 MANCHESTER, MAINE 04351

JOHN C. DALCO, M.D., Clinical Director
(207) 623-9266

CONTRACT BETWEEN SUBJECT AND PHYSICIAN MAINE MEDICAL ASSOCIATION IMPAIRED PHYSICIANS PROGRAM

The purpose of this contract is to establish, prior to any advocacy, as clearly and specifically as possible the duties and expectations of both parties. Also, it stipulates the specific actions to be taken by the committee in the event of violation of the contract. (The masculine pronoun is used throughout for the sake of consistency).

Confidentiality is of the utmost importance and will be respected in accordance with Federal law (see 42 U.S.C. 290 dd - 3 and 42 U.S.C. 290 ee - 3 for Federal laws and 42 cfr part 2 for Federal regulations.), except in the case of:

- 1) Written request of the physician to specifically designated parties of clearly defined information for a specified period of time.
- 2) Threatened or imminent danger of the commission of a Class A, B, or C crime.
- 3) Suspicion of child abuse, adult abuse, or other statutory reporting mandate.
- 4) Medical emergencies to the treating physician as needed for their care of the physician.
- 5) Violation of the contract.
- 6) Damage done to a patient or there is imminent danger of damage being done to a patient.

The contracting parties agree that the Committee has as its primary responsibility the protection of the public. However it also has a commitment and responsibility to aid the physician in his recovery in any way possible within the confines of its protocol and agreement with the Board of Registration in Medicine.

The Committee agrees it is responsible:

1) For helping the physician to realize that he is suffering from an illness that has or will interfere with his safe and effective practice of medicine.

2) For guiding the physician thru the therapeutic process and helping to choose appropriate therapy acceptable to both parties.

3) For monitoring and documenting the therapeutic process.

4) For monitoring and documenting the recovery process and aiding in his re-entry into the safe and effective practice of medicine.

5) For advocacy, upon request, with hospital officers, committees, administrators, insurance carriers, and the Board of Registration in Medicine concerning the compliance with the details of this contract.

The subject physician agrees:

1) To abstain from any use of alcohol or any other psychoactive drug during the term of this contract.

2) To inform the committee of any legal actions (civil or criminal) past, present, or expected and any actions past, present or expected by any governmental agency, professional group, hospital or licensing authority: This agreement applies to any action in any location, not just within the State of Maine.

3) To choose a personal treating physician agreeable to both parties, whom he will inform of his impairment. This treating physician will conduct a complete and thorough physical examination with indicated laboratory and x-ray studies as soon as possible. The subject physician will subsequently have physical examinations as needed, but at least annually.

4) As determined by the treatment plan, the subject physician will choose a therapist (counselor, psychologist, or psychiatrist) agreeable to both parties. He will see his therapist at the intervals specified below. It is the physician's responsibility to see that monthly documentation of attendance and co-operation with therapy is submitted to the committee. The committee requires only a short form. It has no desire or intention to violate patient/therapist confidentiality.

5) As indicated by the nature of his illness, to attend the appropriate self-help group (AA, NA, CA) at the intervals specified below.

A diary will be kept indicating the locations and dates of attendance of the meetings and a sufficient amount of particulars about the meeting to verify attendance. This diary is to be available to the committee upon request. It is the responsibility of the subject physician to maintain the diary and keep it current. The committee has no desire or intention of violating the traditions of the self-help groups.

6) To inform his chief of service and hospital administrator of his impairment and to be responsible for having them send short, monthly reports to the committee as to the physician's activity within the institutional setting.

7) To arrange to have as many monitors as possible who see the physician on a daily basis. Short reports from these monitors will also be submitted on a monthly basis.

8) To have spouse or concerned significant other submit monthly report, if deemed advisable.

9) To have, as indicated below, appropriate laboratory examinations of blood and urine:

- a. For the first three months monitored urines by an agreed upon observer at a specified laboratory with a verifiable chain of custody of the specimen. He shall arrange for a portion of the specimen to be frozen and saved. If a screening test is positive, a confirmatory test by another method will be performed. If needed, the above may be further re-checked on the frozen sample. The committee is to be informed in advance if it is anticipated that any urine specimen may be missed or if any planned absence from the area is scheduled.
- b. After the initial three months, random specimens will be requested by the team leader or director.
- c. In the case of alcoholism, B.A.C.'s may be requested at any time by the chief of service, hospital director, or the committee.
- d. In the case of alcoholism, serial blood test for enzymes will be required.

10) That he will not prescribe any medication for himself.

11) That the committee is to be informed immediately if he is taking any psycho-active medication prescribed by another treating physician for the treatment of any condition. He must also be aware that some over the counter medications may give positive urine tests.

12) That if for any reason he is taking any psycho-active medication, particularly narcotics or sedative hypnotics prescribed by another physician, he must suspend practice during the period of treatment.

13) That he is to be in contact, at least monthly, with a team member, preferably in person.

14) That if he suffers a relapse during the period of this contract, the team leader, director, and committee chairman are to be informed immediately and must immediately suspend practice until otherwise directed.


15) The term of the contract is for 5 Years.

Failure to comply with this contract will mean that the committee will cease its advocacy. The committee will inform all parties with whom it is advocating that it has ceased to do so.

If it is deemed that the physician has damaged a patient or is in imminent danger of doing so, the Board of Registration in Medicine will also be notified immediately.

It has been the experience of impaired physician committees that in spite of the difficulties this contract presents, and indignity involved, the end result is worth the effort and sacrifices.

Signed



Approved

Team Leader _____

Director _____

Chairman _____

MAINE-MEDICAL ASSOCIATION
IMPAIRED PHYSICIANS PROGRAM

P.O. BOX 190 MANCHESTER, MAINE 04351

JOHN C. DALCO, M.D., Clinical Director
(207) 623-9266

I Bert Beverly

Agree to:

- 1) Attend 3 AA/NA/Al-Anon/ACOA/CA meetings a week
- 2) Attend no therapy sessions per.....
- 3) Have monitor letters sent once a month by:
.....
.....
.....
- 4) Attend 0 professional groups per.....
- 5) Contact committee member or clinical director 1 times/mo.
- 6) Submit 2 specimens per wk for 3 mo
then 1+ per mo random for 1 yr
- 7) The duration of this contract will be 5

Signed

Bert Beverly

Approved

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