

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

<u>In re:</u>	)	THIRD AMENDMENT TO CONSENT
Kevin M. Kendall, M.D.	)	AGREEMENT FOR DISCIPLINE AND
Complaint No. CR12-162	)	PROBATIONARY LICENSURE

This document is a Third Amendment to Consent Agreement for Discipline and Probationary Licensure effective February 12, 2013, regarding disciplinary action and conditions imposed upon the license to practice medicine in the State of Maine held by Kevin M. Kendall, M.D (“Third Amendment”). The parties to this Third Amendment are: Kevin M. Kendall, M.D. (“Dr. Kendall”), the State of Maine Board of Licensure in Medicine (“the Board”), and the Department of the Attorney General (the “Attorney General”). This Third Amendment is entered into pursuant to 32 M.R.S. § 3282-A and 10 M.R.S. § 8003(5).

**BACKGROUND**

1. On February 12, 2013, the parties entered into a Consent Agreement for Discipline and Probationary Licensure upon the license to practice medicine in the State of Maine held by Kevin M. Kendall, M.D (“the Consent Agreement”).
2. On July 30, 2013, the parties entered into a First Amendment to the Consent Agreement amending paragraphs 16(f)(iii) and paragraph 16(f)(iv) regarding permissible work hours and times.
3. On March 27, 2014, the parties entered into a Second Amendment to the Consent Agreement again amending paragraphs 16(f)(iii) and paragraph 16(f)(iv) regarding permissible work hours and times.

4. On or about April 8, 2015, the Board received information that Dr. Kendall is currently working for multiple employers, and that for at least one week in March, he exceeded the clinical hour limitation contained in paragraph 16(f)(iii) of the Consent Agreement as amended. In addition, the Board received additional information directly from Dr. Kendall's workplace monitor regarding recent workplace performance.

5. On April 14, 2015, the Board reviewed the information stated above and voted to offer Dr. Kendall this Third Amendment to the Consent Agreement. Absent acceptance of this Third Amendment to the Consent Agreement by Dr. Kendall by signing it and dating it in front of a notary and returning it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before May 15, 2015, the Board shall take any further action it deems necessary as permitted by law.

#### AMENDMENT

6. Dr. Kendall, the Board, and the Department of the Attorney General hereby agree to amend the Consent Agreement dated February 12, 2013, as amended by the First Amendment dated July 30, 2013, and as amended by Second Amendment dated March 27, 2014, as follows:

a. By amending paragraph 16(f)(iii) to read as follows:

Maximum of thirty-six (36) work hours per week. Dr. Kendall agrees that he will work no more than a total of thirty-six (36) hours per week, including clinical, administrative, or any other type of work. Dr. Kendall shall work for no more than twelve (12) consecutive hours per shift. In addition, Dr. Kendall will not "take call" or be "on call." After six (6) months of successful medical practice under this condition, Dr. Kendall may request that the

Board amend or delete these conditions. The Board has the sole discretion to grant or deny a request to amend or delete these conditions. Any action by the Board regarding such a request does not require a hearing and is not subject to appeal or judicial review.

- h. By inserting a new paragraph 16(f)(v) to read as follows:

Practice at One Facility. Dr. Kendall agrees that he shall practice medicine at one facility only. He further agrees that within two (2) weeks of the effective date of this Third Amendment to the Consent Agreement, he shall provide written notice to the Board of the one facility at which he shall practice medicine. He further agrees that should there be any change in the facility identified in accordance with this subparagraph, he shall provide written notice to the Board within two (2) weeks of the effective date of any change. After six (6) months of successful medical practice under this condition, Dr. Kendall may request that the Board amend or delete this condition of this Consent Agreement. The Board has the sole discretion to grant or deny a request to amend or delete this condition. Any action by the Board regarding such a request does not require a hearing and is not subject to appeal or judicial review.

7. Dr. Kendall agrees to accept a Reprimand for violating the clinical hour limitation contained in paragraph 16(f)(iii) of the Consent Agreement as previously amended.

8. Dr. Kendall acknowledges by his signature hereto that all other terms and conditions of the Consent Agreement effective February 12, 2013, as amended by this Third Amendment remain in full force and effect.

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

**I, KEVIN M. KENDALL, M.D., HAVE READ AND UNDERSTAND THE FOREGOING THIRD 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 THIRD AMENDMENT. I ALSO WAIVE THE RIGHT TO APPEAL TO THE COURT REGARDING THIS AMENDMENT. KNOWING THIS, I SIGN IT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS THIRD 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 AGREEMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.

Dated: 5/6/15

Kevin Kendall  
KEVIN M. KENDALL, M.D.

STATE OF MAINE  
Sagadahoc County, SS.

Before me this 6 day of May, 2015, personally appeared Kevin M. Kendall, M.D., who after first being duly sworn, signed the foregoing Third Amendment to Consent Agreement in my presence or affirmed that the signature above is his own.

Courtney Lavigne  
Notary Public/Attorney at Law  
My commission expires: 5/30/21



DATED: 5-12-2015

Michael A. Duddy  
MICHAEL A. DUDDY, ESQ.  
Attorney for Kevin M. Kendall, M.D.

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED: 5/15/15

Maroulla S. Gleaton  
MAROULLA S. GLEATON, M.D.,  
Chairman

STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED:

May 14 2015



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MICHAEL MILLER  
Assistant Attorney General

Effective Date: 5/15/15

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

<u>In re:</u>	)	SECOND AMENDMENT TO CONSENT
Kevin M. Kendall, M.D.	)	AGREEMENT FOR DISCIPLINE AND
Complaint No. CR12-162	)	PROBATIONARY LICENSURE

This document is a Second Amendment to a Consent Agreement for Discipline and Probationary Licensure (“Consent Agreement”) effective February 12, 2013, regarding a disciplinary action against and conditions imposed upon the license to practice as a physician in the State of Maine held by Kevin M. Kendall, M.D. The parties to this Second Amendment of that Consent Agreement are: Kevin M. Kendall, M.D. (“Dr. Kendall”), the State of Maine Board of Licensure in Medicine (“the Board”), and the Office of the Attorney General (the “Attorney General”). This Second Amendment to Consent Agreement is entered into pursuant to 32 M.R.S. § 3282-A and 10 M.R.S. § 8003(5).

**BACKGROUND**

1. On February 12, 2013, the parties entered into a Consent Agreement regarding a disciplinary action concerning and conditions imposed upon the license to practice as a physician in the State of Maine held by Kevin M. Kendall, M.D.
2. On July 30, 2013, the parties entered into a First Amendment to the Consent Agreement.
3. On February 10, 2014, the Board received a written request from Dr. Kendall’s attorney for amendment of the Consent Agreement to increase the total number of clinical hours from twenty-seven (27) to thirty-nine (39) or alternatively to deleting the hour restrictions, with the exception of retaining the restriction that he work no more than

12 consecutive clinical hours per shift.

4. On February 11, 2014, the Board reviewed the request of Dr. Kendall's attorney. Following its review and discussion with Dr. Kendall, the Board voted to offer Dr. Kendall this Second Amendment to the Consent Agreement.

#### AMENDMENT

5. Dr. Kendall, the Board, and the Office of Attorney General hereby agree to amend the Consent Agreement dated February 12, 2013, as amended by the First Amendment dated July 30, 2013 as follows:

a. By amending paragraph 16(f)(iii) to read as follows:

Maximum of forty (44) work hours per week. Dr. Kendall agrees that he will work no more than a total of forty-four (44) hours per week, including clinical, administrative, or any other type of work. Of the total of forty-four (44) work hours per week, Dr. Kendall will work no more than thirty-nine (39) clinical hours per week and for no more than twelve (12) consecutive hours per shift. In addition, Dr. Kendall will not "take call" or be "on call." After six (6) months of successful medical practice under this condition, Dr. Kendall may request that the Board amend or delete these conditions. The Board has the sole discretion to grant or deny a request to amend or delete these conditions. Any action by the Board regarding such a request does not require a hearing and is not subject to appeal or judicial review.

b. By amending paragraph 16(f)(iv) to read as follows:

Day Work Only. Dr. Kendall agrees that he will work only during the day, and that he will not work at night, which is defined as the period of time from 12:00 a.m. to 07:00 a.m. After six (6) months of successful medical practice under this condition, Dr. Kendall may request that the Board amend or delete this condition of this Consent Agreement. The Board has the sole discretion to grant or deny a request to amend or delete this condition. Any action by the Board regarding such a request does not require a hearing and is not subject to appeal or judicial review.

6. Dr. Kendall acknowledges by his signature hereto that all other terms and

conditions of the Consent Agreement effective February 12, 2013, as amended by this Second Amendment to Consent Agreement, remain in full force and effect.

7. Dr. Kendall 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, KEVIN M. KENDALL, 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 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 AGREEMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.

Dated: 3/13/14

  
KEVIN M. KENDALL, M.D.

STATE OF MAINE  
Cumberland, SS.

Before me this 13<sup>th</sup> day of March, 2014, personally appeared Kevin M. Kendall, M.D., who after first being duly sworn, signed the foregoing Second Amendment to Consent Agreement in my presence or affirmed that the signature above is his own.

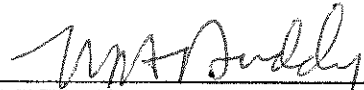


Notary Public/Attorney at Law  
My commission expires:

KATH D. CHANDLER  
Notary Public, Maine  
My Commission Expires July 8, 2017



DATED: 3-21-2014

  
MICHAEL A. DUDDY, ESQ.  
Attorney for Kevin M. Kendall, M.D.


STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED: 3/26/14

  
MAROULLA S. GLEATON, M.D.,  
Chairman

STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED: 3/27/14

  
DENNIS E. SMITH  
Assistant Attorney General

Effective Date: 3/27/14

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

<u>In re:</u>	)	FIRST AMENDMENT TO CONSENT
Kevin M. Kendall, M.D.	)	AGREEMENT FOR DISCIPLINE AND
Complaint No. CR12-162	)	PROBATIONARY LICENSURE

This document is a First Amendment to a Consent Agreement for Discipline and Probationary Licensure (“Consent Agreement”) effective February 12, 2013, regarding a disciplinary action against and conditions imposed upon the license to practice as a physician in the State of Maine held by Kevin M. Kendall, M.D. The parties to this First Amendment of that Consent Agreement are: Kevin M. Kendall, M.D. (“Dr. Kendall”), the State of Maine Board of Licensure in Medicine (“the Board”), and the Office of the Attorney General (the “Attorney General”). This First Amendment to Consent Agreement is entered into pursuant to 32 M.R.S. § 3282-A and 10 M.R.S. § 8003(5).

**BACKGROUND**

1. On February 12, 2013, the parties entered into a Consent Agreement regarding a disciplinary action concerning and conditions imposed upon the license to practice as a physician in the State of Maine held by Kevin M. Kendall, M.D.
2. On July 3, 2013, the Board received a written request from Dr. Kendall’s attorney for clarification of the intent of certain language of the Consent Agreement. More specifically, Dr. Kendall’s attorney asked whether paragraph 16(f)(iii) entitled “Maximum work hours per week,” and which limited Dr. Kendall to work “no more than twenty-seven (27) hours per week” was meant to include both administrative and clinical medical practice.
3. On July 9, 2013, the Board reviewed the request of Dr. Kendall’s attorney.

In addition, the Board reviewed the terms of the Consent Agreement and discussed with Dr. Kendall his plans for work, which included working part-time at two different hospital emergency departments, performing 16 hours of administrative work for a third hospital, and acting as a medical director for an EMS Board. Following its review and discussion with Dr. Kendall, the Board voted to offer Dr. Kendall this First Amendment to the Consent Agreement.

#### AMENDMENT

4. Dr. Kendall, the Board, and the Office of Attorney General hereby agree to amend the Consent Agreement dated February 12, 2013, as follows:

a. By amending paragraph 16(f)(iii) to read as follows:

Maximum of forty (40) work hours per week. Dr. Kendall agrees that he will work no more than a total of forty (40) hours per week, including clinical, administrative, or any other type of work. Of the total of forty (40) work hours per week, Dr. Kendall will work no more than twenty-seven (27) clinical hours per week and for no more than twelve (12) consecutive hours per shift. In addition, Dr. Kendall will not “take call” or be “on call.” After six (6) months of successful medical practice under this condition, Dr. Kendall may request that the Board amend or delete these conditions. The Board has the sole discretion to grant or deny a request to amend or delete these conditions. Any action by the Board regarding such a request does not require a hearing and is not subject to appeal or judicial review.

b. By amending paragraph 16(f)(iv) to read as follows:

Day Work Only. Dr. Kendall agrees that he will work only during the day, and that he will not work at night, which is defined as the period of time from 9:00 p.m. to 07:00 a.m. After six (6) months of successful medical practice under this condition, Dr. Kendall may request that the Board amend or delete this condition of this Consent Agreement. The Board has the sole discretion to grant or deny a request to amend or delete this condition. Any action by the Board regarding such a request does not require a hearing and is not subject to appeal or judicial review.

5. Dr. Kendall acknowledges by his signature hereto that all other terms and conditions of the Consent Agreement effective February 12, 2013, as amended by this First Amendment to Consent Agreement, remain in full force and effect.

6. Dr. Kendall 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, KEVIN M. KENDALL, 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 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 AGREEMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.**

Dated: 7/25/13

  
\_\_\_\_\_  
KEVIN M. KENDALL, M.D.

STATE OF MAINE  
Cumberland, SS.

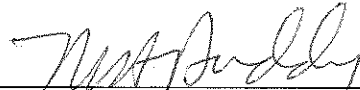
Before me this 25 day of July, <sup>2013</sup>~~2011~~, personally appeared Kevin M. Kendall, M.D., who after first being duly sworn, signed the foregoing First Amendment to Consent Agreement in my presence or affirmed that the signature above is her own.

  
\_\_\_\_\_  
Notary Public/Attorney at Law  
My commission expires:

**KELLYANNE JARVIS**  
Notary Public, Maine  
My Commission Expires March 9, 2014

DATED:

7-25-2013

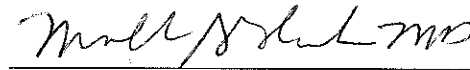


MICHAEL A. DUDDY, ESQ.  
Attorney for Kevin M. Kendall, M.D.

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED:

7/29/13



MAROULLA S. GLEATON, M.D.,  
Chairman

STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED:

7/30/13



DENNIS E. SMITH  
Assistant Attorney General

Effective Date:

7/30/13

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

In re: )  
Kevin M. Kendall, M.D. )     CONSENT AGREEMENT FOR DISCIPLINE  
Complaint No. CRI2-162 )     AND PROBATIONARY LICENSURE

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

STATEMENT OF FACTS

1. Pursuant to Title 32 Chapter 48 the Legislature endowed the Board with the power and duty to regulate the practice of physicians and physician assistants licensed by the Board, including setting standards of practice and investigating complaints. Pursuant to 10 M.R.S. § 8008 the Legislature provided that the sole purpose of the Board is to “protect the public health and welfare” and that “other goals or objectives may not supersede this purpose.”

2. The Board first issued Dr. Kendall a license to practice medicine in Maine on August 14, 1997. Dr. Kendall specializes in Emergency Medicine. On September 30, 1998, Dr. Kendall entered into a consent agreement with the Board and the Office of Attorney General regarding his addiction to Stadol, a synthetically derived opioid agonist-antagonist analgesic, and his actions in illegally obtaining and using it. The consent agreement required Dr. Kendall to abstain from the use of all prohibited substances, continuing counseling, and undergo monitoring. On August 27, 1998, Dr. Kendall submitted a urine sample that was positive for

Morphine and Codeine, which resulted in the immediate suspension of Dr. Kendall's Maine medical license. Following a hearing on November 10, 1998, the Board reinstated Dr. Kendall's Maine medical license as it determined that it was more likely than not that the positive urine screen was caused by his ingestion of poppy seed bagels. In addition, the Board increased the frequency of Dr. Kendall's urine testing and prohibited him from consuming foods containing poppy seeds. Dr. Kendall successfully complied with the terms of the consent agreement, and on January 14, 2003, the Board released him from it.

3. On or about April 1, 2011, Dr. Kendall filed an on-line application to renew his Maine medical license. On that application, he disclosed his prior consent agreement with the Board as well as an alcohol dependency that resulted in his entering in-patient treatment in 2010. Dr. Kendall also disclosed that he had entered into the Maine Medical Professionals Health Program (MPHP) for assistance with and monitoring of his sobriety.<sup>1</sup> The MPHP is a "professional review committee" as defined by 24 M.R.S. § 2502(4-A):

"Professional review committee" means a committee of health care Practitioners formed by a professional society for the purpose of identifying and working with health professionals who are disabled or impaired by virtue of physical or mental infirmity or by the misuse of alcohol or drugs, as long as the committee operates pursuant to protocols approved by the various licensing boards that license the health professionals the committee serves.

24 M.R.S. § 2502(5) defines a "professional society" as "a state professional organization of physicians, surgeons or osteopathic physicians." The MPHP is, therefore, a professional review committee that is organized and operated by the Maine Medical Association, a private professional society of Maine physicians. The primary purpose of the MPHP is to operate a comprehensive monitoring and advocacy program offering limited confidentiality subject to the

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<sup>1</sup> The Maine Medical Professionals Health Program also provided the Board with a letter indicating Dr. Kendall's enrollment with and active successful participation in that program.

limits of state law and the reporting requirements within the various written protocols the MPHP has with a number of professional licensing boards, including the Maine Board of Licensure in Medicine.

4. On May 10, 2011, the Board granted Dr. Kendall's application for the renewal of his Maine medical license without any conditions based in reliance upon Dr. Kendall's representations and the information provided by the MPHP.

5. On or about August 6, 2012, the Board received information from the MPHP that Dr. Kendall was removed from his Emergency Department shift at Bridgton Hospital<sup>2</sup> due to concerns that Dr. Kendall was not himself and appeared to be impaired when he reported for his shift at the emergency department. Following an evaluation of his impairment, Dr. Kendall was sent home from the hospital and was arrested for Operating Under the Influence due to erratic driving that resulted his hitting a mail box. According to the MPHP, Dr. Kendall was placed on leave from the hospital, was being evaluated, and would not be allowed to return to work until he completed recommended treatment.

6. On August 17, 2012, the Board reviewed the foregoing information and voted to initiate a complaint against Dr. Kendall's Maine medical license pursuant to 32 M.R.S. § 3282-A. The Board docketed the complaint as CR12-162 and sent it to Dr. Kendall for a response.

7. On August 22, 2012, the parties entered into an Interim Consent Agreement that resulted in the voluntary suspension of Dr. Kendall's Maine medical license pending further action by the Board regarding complaint CR12-162.

8. On October 18, 2012, the Board received a written response from Dr. Kendall to complaint CR12-162. In his response, Dr. Kendall admitted that he had been suffering from the

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<sup>2</sup> Bridgton Hospital is a member of the Central Maine Medical Family, an integrated healthcare delivery organization, and a subsidiary of Central Maine Medical Center.



disease of substance abuse for many years, and that he entered recovery in 1997 after prolonged treatment. Dr. Kendall stated however, that he initially went to meetings for substance abuse, but gradually stopped. In addition, Dr. Kendall did not maintain a sponsor or a safety net of recovery friends. According to Dr. Kendall, in 2006 his life and recovery began to fall apart due to personal family stressors and significant injuries he suffered in an accident. As a result, Dr. Kendall admitted that he relapsed to the use of alcohol in 2009. In February 2010, Dr. Kendall completed a brief in-patient treatment program, after which he entered into a contract with the MPHP. In addition, Dr. Kendall began psychotherapy. According to Dr. Kendall, he was able to abstain from using alcohol, but developed a dependence upon a sedative/hypnotic medication due to increasing difficulty sleeping. Dr. Kendall stated that during the summer of 2010, he self-prescribed a sedative/hypnotic. Although the MPHP did not report this conduct to the Board as a breach of his MPHP contract, Dr. Kendall stated that the MPHP required him to commence treatment with a physician. According to Dr. Kendall, in 2011 he was abusing the sedative/hypnotic medication because he craved sleep and was only able to sleep a few hours per night. Dr. Kendall's employer noted that he appeared very sleepy at the end of his shifts at the emergency department, for which he was given a written warning and counseled to complete a sleep study. In addition, Dr. Kendall's work shifts were reduced. According to Dr. Kendall, he continued to abuse the sedative/hypnotic medication by taking more than was prescribed in order to get to sleep. Dr. Kendall admitted that he began ordering the sedative/hypnotic medication over the internet for his personal use, which resulted in a second written warning at work for sleepiness/confusion. According to Dr. Kendall, his life over the ensuing year became unmanageable until the incident at Bridgton hospital on July 29, 2012, which resulted in his resignation from employment at Central Maine Medical Center (CMMC) in lieu of termination.

Following that incident, Dr. Kendall stated that he successfully completed residential treatment for substance abuse, and is in an active recovery program. In addition, Dr. Kendall expressed shame for his actions and acknowledged that if the Board allowed him to practice medicine under the terms of a consent agreement that it would likely be his last opportunity.

9. On October 19, 2012, the Board received information from Bridgton Hospital regarding the incident on July 29, 2012. According to that information, the emergency department nursing supervisor became aware that Dr. Kendall was having difficulty writing prescriptions (i.e. Dr. Kendall was writing the wrong names, wrong doses and wrong medications). In addition, nursing staff observed Dr. Kendall acting strangely and confused, and that he was unable to answer questions. According to that information, the nursing staff took Dr. Kendall to a hospital bed, admitted him as a patient, and contacted another physician to come to the hospital to complete Dr. Kendall's shift. According to that information, Dr. Kendall left the hospital at approximately 0715, and was prevented from taking some original patient charts with him. In addition, according to that information: on August 1, 2012, CMMC placed Dr. Kendall on unpaid administrative leave; on August 9, 2012, Dr. Kendall submitted a letter of resignation to CMMC; and on August 10, 2012, CMMC accepted Dr. Kendall's resignation in lieu of termination.

10. On or about October 19, 2012, the Board received a letter from the MPHP, which confirmed Dr. Kendall's enrollment in that program, including weekly urine screens, weekly therapy sessions, and a work monitor. The MPHP expressed support for Dr. Kendall's return to medical practice once he is released as "fit for duty" by his treating physician.

11. On November 16, 2012, the Board received executed releases from Dr. Kendall to obtain for review his substance abuse treatment and medical records. The Board subsequently used the releases and obtained copies of these records.

12. On January 8, 2013, the Board reviewed complaint CR12-162, including all investigative information obtained to date. Following its review, the Board voted to offer Dr. Kendall this Consent Agreement to resolve complaint CR12-162 without further proceedings.

13. This Consent Agreement has been negotiated by legal counsel for Dr. Kendall and legal counsel for the Board. Absent acceptance of this Consent Agreement by Dr. Kendall by signing it 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 February 22, 2013, the Board may take any action permitted by law regarding complaint CR12-162.

14. By signing this Consent Agreement, Dr. Kendall waives, in his personal capacity and through legal counsel, any and all objections to, and hereby consents to the presentation of this proposed Consent Agreement to the Board for possible ratification. Dr. Kendall 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

15. Dr. Kendall admits that the foregoing facts constitute grounds to discipline his Maine medical license pursuant to the following subsections of 32 M.R.S.A. § 3282-A(2):

a. Subsection B: Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients;

b. Subsection F: Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice for which the licensee is licensed. For purposes of this paragraph, "disruptive behavior" means aberrant behavior that interferes with or is likely to interfere with the delivery of care; and

c. Subsection J: Prescribing narcotic or hypnotic or other drugs listed as controlled substances by the Drug Enforcement Administration for other than accepted therapeutic purposes.

16. Based upon Dr. Kendall's the admissions in paragraph 15 above as well as Dr. Kendall's efforts to maintain an active and effective recovery, the Board and Dr. Kendall agree to the following discipline of his Maine medical license. Until this Consent Agreement is modified or rescinded in writing by all of the parties hereto, Dr. Kendall's license to practice medicine in the State of Maine shall be probationary for the next five (5) years following the execution<sup>3</sup> of this Consent Agreement and subject to the following conditions/restrictions:

a. Abstinence. Dr. Kendall shall totally refrain from the use or possession of any and all Prohibited Substances except drugs that are dispensed or prescribed to him by physicians approved by the Board or drugs that are dispensed or prescribed under circumstances that constitute a genuine medical or surgical emergency. "Prohibited Substances" as used throughout this Consent Agreement shall mean all controlled substances (i.e. benzodiazepines; sedatives; hypnotics or similar drugs; opiates), alcohol, and all mood and/or consciousness or mind-altering substances, whether illicit or not. In

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<sup>3</sup> For the purposes of this Consent Agreement, the term "execution" means the date on which the final signature is affixed to this Consent Agreement.

the event that the Board or Board staff receives a report of use or possession of any Prohibited Substance by Dr. Kendall, it shall result in the immediate suspension of his Maine medical license, which shall continue to be suspended until the Board holds a hearing on the matter.

b. Monitoring and Testing. Dr. Kendall shall submit to random “forensic level toxicological” screens by an individual or entity approved by the Board. In complying with this condition, Dr. Kendall shall submit to at least three (3) such random screens per calendar month for three (3) calendar months following the execution of this Consent Agreement.

- (i) Positive tests. Dr. Kendall shall ensure that any positive tests are reported to the Board in accordance with paragraph 16d(iii) below. In addition, any positive test shall result in the immediate suspension of Dr. Kendall’s Maine medical license and be treated in accordance with paragraph 16d(v)-(viii) below.
- (ii) Negative tests. In the event that all of the tests of Dr. Kendall are negative during the three (3) calendar months, then he shall be continued to be randomly tested pursuant to a schedule established by the MPHP and approved by the Board pursuant to paragraph 16d below.

c. Substance Abuse Counseling. Dr. Kendall shall engage in and maintain a relationship with a qualified substance abuse counselor and/or treatment provider approved by the Board. Dr. Kendall shall ensure that he consults with his substance abuse counselor and/or treatment provider as frequently and for the duration recommended by his Board-approved counselor. To comply with this condition, Dr. Kendall shall, **within fourteen (14) days from the date he affixes his signature to this Consent Agreement**, submit to the Board for approval the name of his proposed qualified substance abuse counselor and/or treatment provider. Dr. Kendall shall execute any and all releases necessary for the Board and the Office of Attorney General to obtain complete access to his substance abuse counseling records. **Dr. Kendall shall ensure that his Board-approved substance abuse counselor and/or treatment provider provides the Board with written reports regarding Dr. Kendall every three (3) calendar months following the execution of this Consent Agreement.**

d. Enrollment and Successful Participation in the Maine Medical Professionals Health Program. Dr. Kendall shall enroll in and fully and successfully participate in the Maine Medical Professionals Health Program (MPHP) pursuant to a written contract approved by the Board. **No later than February 15, 2013**, Dr. Kendall shall provide the Board with documentation of his enrollment in and successful participation in the MPHP. Dr. Kendall understands and agrees that his written contract with the MPHP must be approved by the Board, and that any changes to his written contract with the MPHP must be approved by the Board. In complying with this provision, Dr. Kendall specifically and explicitly waives vis a vis the Board, the Board

staff, and the Department of Attorney General any claims of confidentiality regarding: (i) the written contract with the MPHP; (ii) any and all records pertaining to his compliance with his contract with the MPHP; and (iii) any records, including but not limited to substance abuse treatment records and laboratory reports, in the possession of the MPHP regarding Dr. Kendall. The MPHP contract must include a condition that Dr. Kendall submit to testing or monitoring for the presence of any Prohibited Substances as defined under this Consent Agreement. Dr. Kendall agrees to comply with the following conditions:

(i) Immediate, Indefinite, Automatic Suspension for Failure to Enroll in and Successfully Participate in the MPHP. Dr. Kendall's failure to enroll in and/or successfully participate in the MPHP shall result in the immediate, indefinite, automatic suspension of Dr. Kendall's Maine medical license, which shall continue until the Board holds a hearing on the matter. The suspension shall become effective at the time that Dr. Kendall 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.

(ii) To undergo such testing of the type (including but not limited to urine, blood, hair or fingernail analysis) as determined by the MPHP<sup>4</sup> and as frequently and for the duration agreed to in the written contract with the MPHP. Failure to undergo such testing as required by the written contract with the MPHP shall constitute a violation of this Consent Agreement, which shall be immediately reported to the Board within 24 hours by the MPHP, and grounds for the immediate suspension of Dr. Kendall's Maine medical license pending hearing. The suspension shall become effective at the time that Dr. Kendall receives actual notice from the Board that a report of a failure to undergo testing 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.

(iii) Immediate Report of Positive Test Results. Any test result which indicates any level of a prohibited substance shall be reported by Dr. Kendall immediately to the Board in writing within 24 hours after Dr. Kendall receives notice of the positive test. Dr. Kendall understands that MPHP has a separate duty to report under its contract with the Board. By way of clarification, immediate reports will not be required if the tests show a positive result for a mood or mind altering drug that is known to the Board and MPHP to be a drug prescribed by Dr. Kendall's treatment provider for a medical condition and the levels appear consistent with the quantity and dosage prescribed.

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<sup>4</sup> The MPHP contract may include a condition that Dr. Kendall submit to different types of testing.

(iv) Retention of Reports. During the term of this Consent Agreement, all original laboratory data and test reports shall be retained by the MPHP until instructed otherwise by the Board.

(v) Rebuttable Presumption and Admission into Evidence of Test Results. 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. Kendall. Such a positive test result shall alone, including any test result showing the presence of ethyl glucuronide, ethyl sulfate, or phosphatidyl ethanol, be sufficient to prove the use of the Prohibited Substance by Dr. Kendall. Dr. Kendall further agrees that the result of the test shall be admitted into evidence in any proceeding regarding his Maine physician license, whether before the Board or before a Court of competent jurisdiction.

(vi) Accidental Ingestion/Exposure Not a Defense. Dr. Kendall is hereby advised that the ingestion of poppy seeds, mouthwash and over the counter cough or cold medicines or remedies has from time to time been raised as a defense to a positive screen result for morphine, opiates and/or alcohol. For that reason, Dr. Kendall agrees to refrain from ingesting poppy seeds in any food substances, mouthwash and over the counter cough or cold medicines or remedies during the period of probation. In the event that Dr. Kendall has a positive screen for morphine, opiates and/or alcohol, Dr. Kendall agrees that the ingestion of poppy seeds and/or mouthwash and/or over the counter cough or cold medicines shall not constitute a defense to such a positive screen. In addition, Dr. Kendall is hereby advised that the use of alcohol-based hand sanitizers has from time to time been raised as a defense to a positive screen result for alcohol. For that reason, Dr. Kendall agrees to refrain from using alcohol-based hand sanitizers during the period of probation and agrees that in the event of a positive screen for alcohol that the use of an alcohol-based hand sanitizer shall not constitute a defense to such a positive screen.

(vii) 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 – including a positive result for the presence of ethyl glucuronide, ethyl sulfate, or phosphatidyl ethanol), then the result shall be the immediate, indefinite, automatic suspension of Dr. Kendall's Maine medical license, which shall continue until the Board holds a hearing on the matter, unless the Board, or the Board Executive Secretary and the Board's assigned Assistant Attorney General, earlier determine that the report is without merit. The suspension shall become effective at the time that Dr. Kendall 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.

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

(ix) Releases. Dr. Kendall agrees to execute any and all releases necessary for the Board, Board staff, and the Board's assigned Assistant Attorney General to:

- (a) communicate directly with the Maine Medical Professionals Health Program regarding his compliance with that program; and
- (b) review and obtain copies of any and all documentation regarding his participation in the MPHP.
- (c) communicate directly with anyone who is involved with his care and treatment; and
- (d) review and obtain copies of any and all documentation regarding his medical care and treatment and treatment for substance abuse issues.

e. Notification to Employer(s)/Potential Employers/Licensing Jurisdictions. Dr. Kendall shall provide a copy of this Consent Agreement to any employer(s) or potential employer(s), and to any jurisdiction in which he holds or seeks a medical license.

f. Professional Management. Dr. Kendall agrees to comply with the following conditions regarding his practice of medicine:

- (i) Board-Approved Physician Monitor. Prior to his return to the active practice of medicine, Dr. Kendall must have a Board-approved practice monitor who shall monitor his medical practice pursuant to a plan approved by the Board. In complying with this requirement, Dr. Kendall shall submit to the Board for its approval the names of a proposed primary practice monitor and a secondary practice monitor, whom the Board has the sole discretion to approve or deny. The monitoring physician(s) must be in direct contact with Dr. Kendall (i.e. physically present) and observe him within his medical practice at least twelve (12) hours a week, and inform the Board if Dr. Kendall demonstrates any issues with regard to



isolation, inappropriate boundaries or decision-making, ability to concentrate, absenteeism, substance abuse, incompetence, unprofessionalism or any other concerns. The monitoring physician(s) shall report such information to the Board by telephone and in writing within 24 hours or as soon thereafter as possible. Dr. Kendall understands that the monitoring physician(s) will be (an) agent(s) of the Board pursuant to Title 24 M.R.S. § 2511. Dr. Kendall shall permit the monitoring physician(s) full access to his medical practice, including but not limited to all patient information. Dr. Kendall shall ensure that his Board-approved monitor(s) provide(s) the Board with reports regarding his medical practice every three (3) calendar months following the Board's approval of the practice monitor(s). Dr. Kendall shall not actively practice medicine until the Board has approved a physician monitor(s) pursuant to this provision. After six (6) months of successful medical practice under this monitoring, Dr. Kendall may request that the Board amend or delete this condition of this Consent Agreement. The Board has the sole discretion to grant or deny a request to amend or delete this condition. Any action by the Board regarding such a request does not require a hearing and is not subject to appeal or judicial review.

(iii) Maximum work hours per week. Dr. Kendall agrees that he will work no more than twenty-seven (27) hours per week and for no more than twelve (12) consecutive hours per shift, including "on call" hours. After six (6) months of successful medical practice under this condition, Dr. Kendall may request that the Board amend or delete this condition of this Consent Agreement. The Board has the sole discretion to grant or deny a request to amend or delete this condition. Any action by the Board regarding such a request does not require a hearing and is not subject to appeal or judicial review.

(iv) Day Shift Only. Dr. Kendall agrees that he will work shifts only during the day, and that he will not work any night shifts, which is defined as the period of time from 11:00 p.m. to 07:00 a.m. After six (6) months of successful medical practice under this condition, Dr. Kendall may request that the Board amend or delete this condition of this Consent Agreement. The Board has the sole discretion to grant or deny a request to amend or delete this condition. Any action by the Board regarding such a request does not require a hearing and is not subject to appeal or judicial review.

g. Waiver of Confidentiality and Release of Records. Dr. Kendall 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. Kendall for substance abuse and mental health issues. Dr. Kendall waives any privileges concerning such information, reports, or

records, and agrees to execute any and all releases necessary to permit the Board or the Department of Attorney General access to such information. All releases must, in addition to waiving any relevant State law privileges or immunities, provide the Board and the Department of Attorney General 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. Kendall agrees to personally obtain such information and furnish it to the Board, to the extent permitted by law.

17. Violation of any of the terms or conditions of this Consent Agreement by Dr. Kendall shall constitute unprofessional conduct and grounds for additional discipline of his Maine medical license by the Board, including but not limited to possible fines, additional period(s) of suspension, and revocation. Dr. Kendall agrees that the Board has the authority pursuant to 32 M.R.S. § 3282-A and 10 M.R.S. § 8003(5) to suspend or revoke his Maine medical license.

18. Dr. Kendall has been represented by legal counsel, Michael A. Duddy, Esq. with respect to the terms of this Consent Agreement.

19. This Consent Agreement is not appealable, constitutes disciplinary action, is reportable to the National Practitioner Data Bank, the Federation of State Medical Boards, and other licensing jurisdictions, and is effective until modified or rescinded in writing by all of the parties hereto.

20. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

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

I, KEVIN M. KENDALL, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS. 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: 2/11/13 Kevin M Kendall  
KEVIN M. KENDALL, M.D.

STATE OF Maine  
Cumberland, S.S.

Personally appeared before me the above-named Kevin M. Kendall, 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: 02/11/13 Heather Adams  
HEATHER ADAMS  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES OCTOBER 29, 2016  
NOTARY PUBLIC  
MY COMMISSION ENDS: 10/29/16

DATED: 2/12/2013 MAAuddy  
MICHAEL A. DUDDY, ESQ.  
Attorney for Dr. Kendall

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED: 2/12/13 Maroulla S Gleaton MD  
MAROULLA S. GLEATON, M.D.  
Acting Chairman  
STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED: 2/12/13 Dennis E Smith  
DENNIS E. SMITH  
Assistant Attorney General

APPROVED  
EFFECTIVE: 2/12/13



positive urine screen was caused by his ingestion of poppy seed bagels. In addition, the Board increased the frequency of Dr. Kendall's urine testing and prohibited him from consuming foods containing poppy seeds. Dr. Kendall successfully complied with the terms of the consent agreement, and on January 14, 2003, the Board released him from it.

2. On or about April 1, 2011, Dr. Kendall filed an on-line application to renew his Maine medical license. On that application, he disclosed his prior consent agreement with the Board as well as an alcohol dependency that resulted in his entering in-patient treatment in 2010. Dr. Kendall also disclosed that he had entered into the Maine Medical Professionals Health Program for assistance with and monitoring of his sobriety.<sup>1</sup> On May 10, 2011, the Board granted Dr. Kendall's application for the renewal of his Maine medical license.

3. On or about August 6, 2012, the Board received information from the Maine Medical Professionals Health Program (MMPHP) that Dr. Kendall was removed from his Emergency Department shift at Bridgton Hospital due to concerns that Dr. Kendall was not himself and appeared to be impaired. Following an evaluation of his impairment, Dr. Kendall was sent home from the hospital and was arrested for Operating Under the Influence after hitting a mail box. According to the MMPHP, Dr. Kendall was placed on leave from the

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<sup>1</sup> The Maine Medical Professionals Health Program also provided the Board with a letter indicating Dr. Kendall's enrollment with and active successful participation in that program.

hospital, was being evaluated, and would not be allowed to return to work until he completed recommended treatment.

4. This Interim Consent Agreement has been negotiated by legal counsel for Dr. Kendall and legal counsel for the Board. Absent acceptance of this Interim Consent Agreement by Dr. Kendall by signing it 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 August 17, 2012, the Board may take any action permitted by law regarding Dr. Kendall's Maine medical license.

5. By signing this Consent Agreement, Dr. Kendall waives, in his personal capacity and through legal counsel, any and all objections to, and hereby consents to the presentation of this proposed Interim Consent Agreement to the Board for possible ratification. Dr. Kendall 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 Interim Consent Agreement.

#### COVENANTS

6. The Board and Dr. Kendall agree that it would be in Dr. Kendall's and the public's best interest for him to temporarily suspend his ability to practice medicine in the State of Maine prior to the Board's ultimate disposition of this new information regarding Dr. Kendall.

7. Dr. Kendall agrees to the temporary suspension of his license to practice medicine in the State of Maine until such time as the Board takes final

action – either by hearing and decision and order or by Consent Agreement – regarding these matters. Dr. Kendall understands and agrees that he will not practice medicine or render any professional health care services to any person in the State of Maine or in any other location under his Maine medical license. In the meantime, Dr. Kendall shall return his Maine medical license to the Board pending the Board’s final resolution of these new allegations.

8. Violation of any of the terms or conditions of this Interim Consent Agreement by Dr. Kendall shall constitute unprofessional conduct and grounds for additional discipline of his Maine medical license by the Board, including but not limited to possible fines, additional period(s) of suspension, and revocation. Dr. Kendall agrees that the Board has the authority pursuant to 32 M.R.S. § 3282-A and 10 M.R.S. § 8003(5) to suspend or revoke his Maine medical license.

9. Dr. Kendall has been represented by legal counsel, Michael A. Duddy, Esq. with respect to the terms of this Interim Consent Agreement.

10. This Interim Consent Agreement is not appealable, constitutes interim disciplinary action, is reportable to the National Practitioner Data Bank, the Federation of State Medical Boards, and other licensing jurisdictions, and is effective until the Board holds an adjudicatory hearing and/or fully and finally resolves this matter with a final Consent Agreement or by other lawful means.

11. This Interim Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S.A. § 408.

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

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

DATED: 8/17/12 Kevin M. Kendall  
KEVIN M. KENDALL, M.D.

STATE OF Maine  
Cumberland, S.S.

Personally appeared before me the above-named Kevin M. Kendall, M.D., and swore to the truth of the foregoing based upon ~~her~~<sup>his</sup> own personal knowledge, or upon information and belief, and so far as upon information and belief, ~~she~~ believes it to be true.

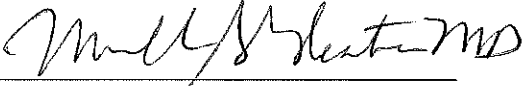
DATED: 8/17/2012 Kelly Anne Jarvis  
NOTARY PUBLIC  
KELLY ANNE JARVIS  
Notary Public, Maine  
My Commission Expires March 9, 2014

DATED: 8-17-2012 Michael A. Duddy  
MICHAEL A. DUDDY, ESQ.  
Attorney for Dr. Kendall

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

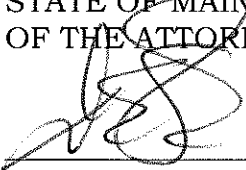


DATED: 8/22/12

  
MAROULLA S. GLEATON, M.D., Acting  
Chairman

STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED: 8/22/12

  
DENNIS E. SMITH  
Assistant Attorney General

APPROVED  
EFFECTIVE: 8/22/12



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

JOHN ELIAS BALDACCI  
GOVERNOR

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

RANDAL C. MANNING  
EXECUTIVE DIRECTOR

January 29, 2003

Kevin M. Kendall, M.D.  
82 Desert Road  
Freeport, ME 04032

Dear Dr. Kendall:

This is to advise you that, effective January 14, 2003, you are released from the terms of your 1998 Consent Agreement with the Maine Board of Licensure in Medicine, and that your Maine medical license is now restored to full, unrestricted, unconditioned status.

Very truly yours,

A handwritten signature in cursive script that reads "Dan Sprague".

Dan Sprague  
Assistant Executive Director

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: FINAL DENIAL OF LICENSE )  
          KEVIN KENDALL, M.D.        )        DECISION AND ORDER  
  )  
FINAL ORDER                            )

Pursuant to the authority found in 32 M.R.S.A. §3263 *et seq.*, 5 M.R.S.A. §9051, *et seq.* and 10 M.R.S.A. §8001, *et seq.*, the Maine Board of Licensure in Medicine (Board) met in public session at Maine Technical College, Conference Room, 323 State Street, Augusta, Maine on November 10, 1998 at 3:21 p.m. The purpose of the hearing was to decide whether Dr. Kendall violated conditions of his Consent Agreement with the Board, which should lead to disciplinary action.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board Members were Judy A. Burk, M.D., D. Joshua Cutler, M.D., Harry Bennert, Jr., M.D., Ulrich B. Jacobsohn, M.D., Kimberly K. Gooch, M.D., Sandra E. Tuttle, Harold Jones, and Bettsanne Holmes. Edward David, M.D., J.D., served as Hearing Officer. Ruth McNiff, Assistant Attorney General, represented the State. Barbara Shaw, Esq. represented Kevin Kendall, M.D.

According to the terms of their Consent Agreement, Dr. Kendall bore the burden of proof and persuasion and presented his case first. Witnesses were cross-examined by Ms. McNiff and questioned by Board Members.

Witnesses called by Dr. Kendall: Kevin Kendall, M.D., George Higgins, M.D., Mike Fouree, M.D. Eric Hedberg, M.D., John Dalco, M.D., Anthony Tomassoni, M.D.

Seventeen exhibits were admitted into evidence on behalf of Dr. Kendall. These are listed on Attachment A.

Ruth McNiff, Assistant Attorney General, presented the State's case.

Witness for the State: Kevin Cookson.

The State entered four exhibits, which are listed on Attachment B.

After opening statements by both parties, presentation of evidence and closing statements by both parties, the Board met for Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On August 27, 1998, Dr. Kendall submitted a urine specimen, which tested positive for Morphine and Codeine. A confirmatory test performed by a different laboratory also tested positive for Morphine and Codeine. Dr. Kendall denied the use of any prohibited drugs, including Morphine and Codeine, and testified that he had eaten a poppy seed bagel. Testimony was offered to explain why Dr. Kendall might be ignorant of the effect of ingestion of poppy seed products. It was explained that poppy seeds do not appear on the list of prohibited substances which the Farley Center provides to its clients. It was testified to that the nature of educational programs at Farley is such that the doctor might well have missed any discussion regarding the ingestion of poppy seed products. It was testified to that despite knowledge of the effects of poppy seeds by many persons, a physician, even one with a substance abuse problem might be personally ignorant of this effect.

There was testimonial evidence from Dr. Tomassoni and documentary evidence from Smith-Kline Beecham and Bendiner and Schlesinger Medical Laboratories that the positive findings were consistent with poppy seed ingestion and that no evidence for heroin use had been found.

There was testimonial evidence that substance abusers tend to abuse the same substance and do not change to a different substance. Dr. Kendall had previously abused Stadol.

There was testimony, particularly from Doctors. Dalco, Higgins, Fourre and Hedberg, that in their opinion, Dr. Kendall demonstrated no signs of an individual who had failed his recovery. The Board found that the documentary and testimonial evidence met Dr. Kendall's burden to show that it was more likely than not that the positive urine drug testing for Morphine and Codeine was caused by his ingestion of poppy seed bagels.

The Board voted unanimously to reinstate Dr. Kendall's license, which had been suspended pursuant to his Consent Agreement. The Board further voted to modify that Consent Agreement to include the following:

1. Dr. Kendall would undergo random urine testing on a weekly basis for the next two years; and,
2. the Consent Agreement would contain a specific clause stating that the claimed ingestion of poppy seed containing foods would not be considered a valid defense to a positive urine screen.

This Order represents the final Decision of the Board in this matter.

#### APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S.A. §1100 *et. seq.*, any party deciding to appeal this Decision and Order must file a Petition for Review in the Superior Court within 30 days of the receipt of this Order.

Dated: 11-27-08

  
\_\_\_\_\_  
Edward David, M.D., J.D., Hearing Officer

## ATTACHMENT A

State Of Maine vs. Kevin Kendall, M.D.  
List of exhibits presented by Dr. Kendall

- 1) Farley post treatment form
- 2) Farley Center Drug Information Related to Medical Aftercare document
- 3) Maine Medical Center Semi-Annual Evaluation of Dr. Kendall 1/1/98 - 6/30/98
- 4) CV Eric B. Hedberg, M.D.
- 5) Letter dated November 4, 1998 to Barbara Shaw from Dr. Richard K. White, treating psychologist for Dr. Kendall
- 6) Letter dated September 15, 1998 to Dan Sprague, Assistant Executive Director of the Board from Dr. John Dalco reporting positive urine sample
- 7) Results of Drug Screen from Bendiner & Schlesinger Medical Laboratories, report date 9/8/98
- 8) Results of Drug Screen from SmithKline Beecham Clinical Laboratories, log-in date 10/2/98 time 2:46 p.m.
- 9) Results of Drug Screen from SmithKline Beecham Clinical Laboratories, log-in date 10/2/98 time 12:38 p.m.
- 10) Results of Drug Screen from SmithKline Beecham Clinical Laboratories, log-in date 10/2/98 time 12:38 p.m.
- 11) Publication of American College of Occupational and Environmental Medicine, Medical Review Officer, July/August 1998
- 12) Article from Military Medicine, 153, 9:468, 1988 - "Excretion of Morphine in Urine Following the Ingestion of Poppy Seeds"
- 13) Article from Central Police University Press - "Morphine and Codeine in Biological Fluids: Approaches to Source Differentiation"
- 14) Article from Tietz Textbook of Clinical Toxicology, 2nd edition regarding "opiates"
- 15) Article from the Federal Register / Vol. 62, No 189 / Tuesday, September 30, 1998 / Notices; DHHS Substance Abuse and Mental Health Services Administration "Mandatory Guidelines for Federal Workplace Drug Testing Programs"
- 16) Article - Marinus G. Pelders, B.Sc and Johannes J. W. Ros, Pharm.D. "Poppy Seeds: Differences in Morphine and Codeine Content and Variation in Inter- and Intra-Individual Excretion"
- 17) Article by Carl M. Selavka, Ph.D. "Poppy Seed Ingestion as a contributing Factor to Opiate-Positive Urinalysis Results: The Pacific Perspective"

ATTACHMENT B

State Of Maine vs. Kevin Kendall, M.D.

List of exhibits presented by the State

- 1) Bendiner & Schlesinger, Inc. Medical Laboratory Professional Health Requisition regarding Kevin Kendall, date of collection 8/27/98
- 2) Undated letter from John C. Dalco, M.D. to Dan Sprague at the Board of Licensure in Medicine Dr. Kendall's drug screen test
- 3) Consent Agreement for Discipline and Modification of License in re: Kevin Kendall, M.D.
- 4) Memorandum from Kevin Cookson, dated 11/9/98 to Ruth McNiff, Esq. regarding Poppy Seed Test

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

IN RE: KEVIN KENDALL, M.D.            )     **CONSENT AGREEMENT**  
  )     **FOR DISCIPLINE AND**  
  )     **MODIFICATION OF LICENSE**

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

FACTUAL BACKGROUND

Dr. Kendall has been licensed to practice medicine in the State of Maine since 1997 when he moved from Alaska to begin a residency in emergency medicine at Maine Medical Center. Dr. Kendall had been taking Stadol for headaches since it was prescribed for him in 1994. Shortly after that time, Dr. Kendall became addicted to Stadol and began forging prescriptions to obtain it.

In the fall of 1996, the Residency Director at Maine Medical Center referred Dr. Kendall to the Physicians Health Program for evaluation of a possible drug problem. Dr. Kendall was treated at Portsmouth Pavilion for three days in January, 1997 for detoxification from Stadol. However, Dr. Kendall continued to use Stadol and to forge prescriptions to obtain the drug. In August, 1997, the Maine Drug Enforcement Agency investigated Dr. Kendall and found that he had been forging prescriptions in his wife's name and using the names of other physicians at Maine Medical Center. Dr. Kendall was charged with several counts of acquiring drugs by deception. Dr. Kendall agreed to a disposition of these charges by pleading guilty and participating in the court mandated program, Project Exodus. Under the terms of his agreement with the Court and upon successful completion of the 10-12 month program, Dr. Kendall will be allowed to withdraw his guilty plea. Dr. Kendall also received intensive inpatient treatment at the Farley Center in Williamsburg, Virginia, from August 23, 1997 until November 14, 1997. He returned to the residency program at Maine Medical Center in November, 1997.

With respect to his recovery from substance abuse, Dr. Kendall has been an active participant in many programs. He is in compliance with his contract with the Physicians Health Program. He participates in substance abuse therapy with Day One and Project Exodus, both Court drug programs.

## DISCIPLINE.

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

1. Dr. Kendall is hereby **reprimanded**.

2. Dr. Kendall will pay \$1,500 in costs to the Board of Licensure in Medicine. This payment may be made in installments of \$125 per month for one year beginning on October 1, 1998 or the payment may be made in one lump sum at the completion of his residency in October, 1999.

3. **License Modifications:**

The Licensee's license to practice medicine in Maine shall be modified to the following extent:

A. **No Ordering, Storing or Dispensing of Schedule Or Sample Drugs.** The Licensee shall not be permitted to order, receive, store, handle, administer or dispense any schedule or sample 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 run consecutively thereafter (e.g., 1 through 999).

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. which report shall be filed in the appropriate place in the file that contains the consecutively numbered prescriptions.



b. Notice. Every six months, Dr. Kendall shall send copies of all the above-referenced reports written since the last notice to the Board.

2. Telephone Prescription Orders for Controlled Substances. Prescriptions for controlled substances telephoned by Dr. Kendall to a pharmacy shall be followed-up as required by law, with duplicate 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 substances 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. 's patient records and the required drug prescription files to insure 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. decides to seek amendment of these conditions, 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.

## CONDITIONS OF LICENSURE

The Licensee and the Board agree and understand that maintenance of his license shall be conditioned upon the Licensee's compliance with the following conditions of licensure. Except as may be specified below, failure to comply with any of the following conditions 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; fentanyl; mood, consciousness or mind-altering substances, whether illicit or not; and all drugs which are dispensed to or prescribed for the Licensee by anyone other

than a treating physician knowledgeable of the Licensee's history of substance abuse, unless the circumstances constitute a genuine medical or surgical emergency.

**A. Prescription Medication.** If any controlled drug is dispensed or prescribed for Dr. Kendall for a personal medical condition, Dr. Kendall or the Supervising Physician shall notify the Board by telephone and in writing within 48 hours or as soon thereafter as possible. This notice shall be followed by a written summary of all pertinent circumstances. The Supervising Physician shall be apprised every five days of all continuing pertinent circumstances regarding continued use of the controlled drug, and a written report thereof shall be submitted to the Board for every five days that the use of the controlled drug continues after the initial 48-hour report.

**B. Future Use of Prohibited Substances Shall Result in Loss of Licensure.** The Licensee agrees and understands that any 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 is appropriate.

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

Dr. Kendall irrevocably agrees that the Board and the Maine Department of 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. Kendall or the board and changes shall be made in the Board's discretion, with or without a hearing. It is Dr. Kendall's obligation to ensure that the plan for testing, as stated herein, is complied with in full.

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

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

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

C. **Frequency of Urine Testing.** It is the Licensee's obligation to ensure that all the samples are given and test occur as specified and that the random

samples are in fact random and that they are provided within 2 hours after notice to the Licensee (without any foreknowledge by the Licensee) and are of at least the frequency required. Failure to maintain this schedule or the random nature of the tests shall be cause for suspension, non-renewal or revocation of Dr. Kendall's license, unless proof of genuine emergent medical circumstances (for Dr. or a patient of his) exist which warrants less serious disciplinary actions being taken by the Board.

1. For a period of one (1) year from January 1, 1998, urine samples shall be provided 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 January 1, 1998, and for a period of four (4) years thereafter, urine samples shall be provided at least once each month. Further, the board or the Supervising Physician may request random samples drawn at any time.

3. Following the period of five (5) years from January 1, 1998, the Board or the Supervising Physician may request random samples provided at any time.

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.

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

1. Process. If the blood testing is done locally, the Licensee shall remain present while the results of the samples are tested to ensure the Licensee's availability if it tests positive and a blood sample is then needed as specified in this Consent Agreement or in the plan. This will only apply when the testing is done at the location where the blood sample is given.

2. Frequency of Blood Samples and Testing.

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

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

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

H. **Reporting Test Results.**

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

2. **Reporting Negative Test Results.** Written reports of all tests shall be sent to the Board monthly by the Supervising Physician, together with an

explanation of the dates and times samples were provided and tests made, the type(s) of tests made, and the substances tested for (together with detectable levels tested for), and the test results. Dr. Kendall 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 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 or blood test is positive (i.e., in any manner evidences any use of any Prohibited Substance), then the result shall be the immediate, indefinite, automatic suspension of the Licensee's license, which shall continue until the Board holds a hearing on the matter, unless the Board, or the Board Secretary and the Department of Attorney General, earlier determine that the report is without merit. The suspension shall begin the moment the Licensee first learns of a positive test or report of a positive test to the Board, whether from the Supervising Physician or his/her designee, from the Board or from any other source in writing, orally or by any other means. This shall include non-confirmed, positive tests.

K. Board Hearing to Determine if Licensee Used Any Prohibited Substance. After receiving a positive report evidencing use by the Licensee of any Prohibited Substance, the Board shall investigate the situation, including demanding a response from the Licensee. The Board shall attempt to hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both the Licensee and the Board agree to hold the hearing later) and it shall be held pursuant to the Maine Administrative Procedure Act. By this Consent Agreement, the Licensee expressly accords the Board jurisdiction, concurrent with the Courts, to revoke his license if it determines he used any Prohibited Substance.

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

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

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

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

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

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

2. Failure to Appear.

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

at the subsequent regularly scheduled Board meeting.

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

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

3. Failure to Provide Sample.

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

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

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



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

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

#### 4. PROFESSIONAL MANAGEMENT.

A. Aftercare Treatment Sessions. The Licensee agrees to submit for Board approval the name of a licensed individual who shall treat the licensee with insight oriented psychotherapy. This therapy shall continue for as long as the therapist feels it is necessary for Dr. Kendall. The Specialist shall report to the Board if the specialist observes, has reason to believe or is told by Dr. Kendall that Dr. Kendall has violated any of the terms of this agreement or seeks to leave treatment without the approval of the Specialist.

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

#### 5. SELF-HELP GROUP MEETINGS.

A. Attendance at AA and NA. The Licensee agrees to attend Alcoholics Anonymous ("AA") and Narcotic Anonymous ("NA") a minimum of three times

each week through one year from January 1, 1998, 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 for the term of this agreement which is 5 years beginning on January 1, 1998. Meetings of the impaired professional self-help groups may be substituted on a one-for-one basis with meetings of AA or NA.

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

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

**6. MAINTENANCE OF OBLIGATIONS WHEN AWAY FROM MAINE OR HOME.** It is the intention of the parties that the Licensee's obligations regarding substance monitoring and self-help group meetings shall be maintained regardless of whether the Licensee is in Maine. For instance, if the Licensee is going on a business trip or a vacation, it shall be the Licensee's and the Supervising Physician's obligation to ensure that arrangements are made consistent with this Consent Agreement in such other location(s) to ensure the continuation and satisfaction of his obligations under this Consent Agreement. Any such occurrences shall be noted in 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. Kendall agrees that his behavior will be monitored by a physician, approved by the Board, who is in contact with Dr. Kendall on an average of four or five times a week. This physician will agree to inform the Board if Dr. Kendall demonstrates any signs of withdrawal or behavior change which could result from the use of a Prohibited Substance. The monitoring physician shall report such information by telephone and in writing within 24 hours or as soon thereafter as possible.

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

A. **The Hospital.** Notice to Maine Medical Center or to such other hospital at which Dr. Kendall shall practice 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. Kendall 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. Kendall 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. Kendall 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. applies for licensure in other jurisdictions during the pendency of this Agreement, Dr. Kendall shall notify said jurisdiction of the existence of this Agreement.

12. **REQUIREMENT REPORT.** The Licensee agrees and hereby irrevocably directs

that IF ANYONE HAS REASON TO SUSPECT THAT THE LICENSEE HAS USED A PROHIBITED SUBSTANCE OR HAS OTHERWISE VIOLATED THIS CONSENT AGREEMENT, SUCH PERSON MUST REPORT THE LICENSEE TO THE BOARD WITHIN 24 HOURS OR AS SOON THEREAFTER AS POSSIBLE, SUCH REPORT SHALL BE MADE BY TELEPHONE AND IN WRITING. ALL PERTINENT FACTS AND CIRCUMSTANCES 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. This waiver does not include records of Dr. Kendall's psychotherapy referred to in Section 4(A) of Conditions of Licensure.

14. BOARD'S JURISDICTION. The Licensee acknowledges that the Board has jurisdiction over his license. The Licensee understands that, at the time the Board is agreeing to issue him this Conditional, Probationary License, the Board does not have the statutory jurisdiction to revoke licenses. In consideration for the Board's issuing to the Licensee his license pursuant to this Consent Agreement, the Licensee agrees that, 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 prepaid.

1. Notice to the Board:

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

2. Notice to the Licensee:

B. Address Change. If the Licensee changes jobs, moves his residence, moves his office practice, changes telephone numbers at work or at home, or secures

privileges at a hospital, the Licensee shall provide notice to the Board within two weeks after such occurrence.

C. **Costs.** All costs incurred in performance of the Modifications and Conditions of this Consent Agreement shall be borne by the Licensee. If a violation of this Consent Agreement is proven to have occurred, regardless of the sanctions imposed, Dr. Kendall 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, KEVIN KENDALL, 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: Sept 14, 1998

Kevin Kendall MD  
KEVIN KENDALL, M.D.

STATE OF MAINE  
Cumberland, ss.

Dated: Sept. 14, 1998

Personally appeared before me the above named Kevin Kendall, 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.

Karen A. Stone  
Notary Public

Karen A. Stone  
Notary Public, Maine  
My Commission Expires December 10, 2004

APPROVED:

Bruce G. Shew

Counsel to Dr. Kendall

STATE OF MAINE BOARD OF  
REGISTRATION IN MEDICINE

By: Edward David  
Edward David, M.D., Chairman

APPROVED: Effective 9-30-98

STATE OF MAINE DEPARTMENT  
OF ATTORNEY GENERAL

Dated: 9/22/98

By:   
Ruth E. McNiff  
Assistant Attorney General