

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

In re: ) CONSENT  
Bryan D. Smith, M.D. ) AGREEMENT  
Complaint No. CR08-448 )

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against the former emergency medical license to practice as a physician in the State of Maine held by Bryan D. Smith, M.D. The parties to the Consent Agreement are: Bryan D. Smith, M.D. ("Dr. Smith"), the State of Maine Board of Licensure in Medicine ("the Board"), and the State of Maine Office of the Attorney General ("the Attorney General"). This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. At all times relevant to the complaint, Dr. Smith was an applicant or licensee of the Board.
2. On or about July 11, 2008, the Board received an application from Dr. Smith for an emergency medical license. On that application, Dr. Smith executed an affidavit under oath and subject to penalties of perjury that all of his answers to questions of the application were "true and correct." In addition, as part of that affidavit Dr. Smith certified that he "met the requirements for Maine licensure as stated on page 3 of this application."
3. Page 3 of the application contains the following language:

**TO BE CONSIDERED FOR LICENSURE TO PRACTICE  
MEDICINE IN THE STATE OF MAINE, AN APPLICANT**

**MUST SATISFY EACH OF THE FOLLOWING  
REQUIREMENTS....**

**A. U.S.A. OR CANADIAN MEDICAL GRADUATES**

3. Obtain a passing score on one of the following examination sets:
- a) Each medical test of the United States Medical Licensing Examination (USMLE), Federation Licensing Examination (FLEX), or National Board of Medical Examiners (NBME), separately or in an approved combination. There is a limit of three attempts for Step 3 and all exams must be completed within 7 years.

4. On August 4, 2008, based upon Dr. Smith's representations on the application for a Maine emergency medical license, the Board issued Dr. Smith a Maine emergency medical license. Dr. Smith's Maine emergency medical license was effective from August 4, 2008 to November 12, 2008.

5. On November 5, 2008, the Board received an application from Dr. Smith for both a temporary Maine medical license and a permanent Maine medical license.

6. On or about November 14, 2008, the Board received a letter (unsigned) from Dr. Smith on the stationary of "Kennebec Behavioral Health," where Dr. Smith had been working under his emergency medical license. The letter dated November 14, 2008, stated:

I Bryan Smith, M.D. depose and state that I took and attained a passing score on the National Board of Medical Examiners set of tests. **I also state that I obtained a passing score for Step 3 in less than three attempts and completed all testing in less than seven years.**

7. The Board staff subsequently received information that Dr. Smith had a gap of more than seven years between completing NBME part I (taken 6/8/82) and part III (taken 3/6/91).

8. On December 9, 2008, the Board, pursuant to 32 M.R.S. § 3282-A, voted to issue a complaint against Dr. Smith for alleged fraud or deceit based upon: (a) his alleged misrepresentation on his application for an emergency medical license that he "met all of the requirements for licensure," which included a requirement that he complete all parts of the NBME within seven years; and (b) his letter dated November 14, 2008, in which he affirmatively asserted that he completed all NBME testing in less than seven years. The Board docketed that complaint as CR08-448.

9. On March 12, 2009, the Board received a written response from Dr. Smith to complaint CR08-448. In his response, Dr. Smith asserted that he was careless and not vigilant in answering the questions on the application for licensure, and denied any intent to deceive or defraud the Board. Dr. Smith apologized for his carelessness and the inconvenience to the Board.

10. On March 17, 2009, the Board's investigator contacted Dr. Smith regarding his letter dated November 14, 2008. Dr. Smith was very apologetic for his haste in answering the question on the application for licensure, and that he has always worked for a managed practice. According to Dr. Smith, he is "lousy with administrative stuff" and the administrative staff of the managed care practice helped him with his Maine license application. In addition, Dr. Smith acknowledged the importance of providing accurate information on

applications for licensure and asserted that he would never intentionally attempt to defraud the Board.

11. On April 14, 2009, reviewed complaint CR08-448, including Dr. Smith's response to the complaint, and voted to schedule complaint CR08-448 for an adjudicatory hearing. In addition, it authorized its legal counsel to negotiate a consent agreement with Dr. Smith in order to resolve complaint CR08-448 without an adjudicatory hearing.

12. This Consent Agreement has been negotiated by legal counsel for Dr. Smith and legal counsel for the Board in order to resolve this matter without an adjudicatory hearing. Absent Dr. Smith's acceptance of this Consent Agreement by signing it, dating it, having it notarized, 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 July 14, 2009, the Board will resolve this matter by holding an adjudicatory hearing.

13. By signing this Consent Agreement, Dr. Smith waives any and all objections to, and hereby consents to allow the Board's legal counsel to present this proposed Consent Agreement to the Board for possible ratification. Dr. Smith also forever waives any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

#### COVENANTS

In lieu of proceeding to an adjudicatory hearing in this matter, Dr. Smith

agrees to the following:

14. Dr. Smith neither admits nor denies the basis of complaint CR08-448. However, Dr. Smith concedes that the Board has evidence from which it could conclude by the preponderance of the evidence that the alleged conduct occurred and could constitute fraud or deceit in obtaining a license and grounds for discipline pursuant to 32 M.R.S. § 3282-A(2)(A).

15. As discipline for complaint CR08-448, Dr. Smith agrees to:

a. Accept a CENSURE. Henceforth, Dr. Smith shall ensure that he correctly and accurately completes all applications and documents that he files with the Board; and

b. Pay a civil penalty of one thousand dollars (\$1,000.00).

Payment of the fine shall be made by certified check or money order made payable to "Treasurer, State of Maine," and be remitted to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 0433-0137. Payment of the fine shall occur on or before July 31, 2009.

16. Dr. Smith's pending applications for a temporary and permanent Maine medical license are denied because he does not meet the statutory and rule requirements for licensure (i.e. he did not complete all medical examinations within seven (7) years). See 32 M.R.S. § 3271 and Board Rule, Chapter 1, §2(1).

17. Dr. Smith waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement.

Dr. Smith agrees that this Consent Agreement and Order is a final order resolving the complaint CR08-448. This Consent Agreement is not appealable and is effective until or unless modified or rescinded in writing by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General.

17. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Smith or any other matter relating to this Consent Agreement.

19. 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. This Consent Agreement is reportable to the Federation of State Medical Boards (FSMB), the National Practitioner Data Bank (NPDB), and the Healthcare Integrity and Protection Data Bank (HIPDB).

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

21. The Board and Dr. Smith agree that no further agency or legal action will be initiated against him by the Board based upon complaint CR08-448, except or unless he fails to comply with the terms and conditions of this Consent Agreement.

22. Dr. Smith acknowledges that, pursuant to Title 10 M.R.S. § 8003(5)(B), his failure to comply with any of the terms or conditions of this Consent Agreement shall constitute grounds for additional disciplinary action

against his Maine medical license, including but not limited to an order, after hearing, modifying, reprimanding, suspending, or revoking his license.

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

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

DATED: 7-8-9 *Bryan D. Smith*  
BRYAN D. SMITH, M.D.

STATE OF North Carolina  
Wake County, S.S.

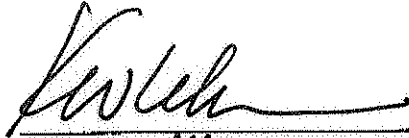
Personally appeared before me the above-named Bryan D. Smith, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: 7/8/09 *Cecile R. Herman*  
NOTARY PUBLIC/ATTORNEY  
*Cecile R. Herman*

MY COMMISSION ENDS:  
10/29/2011




DATED: 7-10-2009



KENNETH W. LEHMAN, ESQ.  
ATTORNEY FOR BRYAN D. SMITH, M.D.

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED: 7/14/09



GARY R. HATFIELD, M.D., Acting  
Chairman

STATE OF MAINE OFFICE  
OF THE ATTORNEY GENERAL

DATED: 7-14-09

for 

DENNIS E. SMITH  
Assistant Attorney General

Effective Date: