

**STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE**

IN RE:)	FIRST AMENDMENT TO
Benjamin M. Brown, M.D.)	CONSENT AGREEMENT
CRO8-287)	

This document is a First Amendment to a Consent Agreement effective April 14, 2009, regarding discipline imposed upon the license to practice medicine in the State of Maine issued to Benjamin M. Brown, M.D. The parties to this first amendment of that Consent Agreement are: Benjamin M. Brown, M.D. ("Dr. Brown"), the State of Maine Board of Licensure in Medicine ("the Board"), and the Office of the Attorney General (the "Attorney General").

BACKGROUND

1. On April 14, 2009, the parties entered into a Consent Agreement.
2. On or about May 15, 2010, the Board received a request from Dr. Brown to amend the Consent Agreement. The request was based upon recent correspondence that Dr. Brown received from the American Board of Family Medicine (ABFM), which rescinded his ABFM diplomat and eligibility status as a result of the restriction in paragraph 15(d)(1) of the Consent Agreement. That paragraph provides as follows: "Restrict his practice of medicine to a location approved by the Board." According to Dr. Brown, the removal of this restriction would allow him to retain his current status with ABFM.

3. On June 8, 2010, the Board reviewed Dr. Brown's request, and based upon Dr. Brown's compliance with the Consent Agreement and the positive reports from his monitor, the Board voted to offer him an amendment to the Consent Agreement that would allow Dr. Brown to maintain his current ABFM status.

AMENDMENT

4. Dr. Brown, the Board, and the Office of Attorney General hereby agree to amend the Consent Agreement entered into on April 4, 2009. Specifically, paragraph 15(d)(1) shall be amended¹ by deleting existing language and replacing it with the following language:

Clinical Setting/Inspections. During the period of probation, Dr. Brown shall notify the Board of all locations where he practices medicine. In addition, Dr. Brown is on notice that the Board or its agents may conduct announced and/or unannounced inspections of all locations where he practices medicine. Dr. Brown shall reimburse the Board for any actual costs incurred as a result of any inspection performed pursuant to this section.

5. Dr. Brown acknowledges by his signature hereto that all other terms and conditions of the Consent Agreement effective April 14, 2009, remain in full force and effect.

6. Dr. Brown 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.

¹ This First Amendment to Consent Agreement becomes effective on the date that the final signature is affixed to this document.

I, BENJAMIN M. BROWN, 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 FIRST AMENDMENT. I ALSO WAIVE THE RIGHT TO APPEAL TO THE COURT REGARDING THIS FIRST AMENDMENT. KNOWING THIS, I SIGN IT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS FIRST AMENDMENT, TOGETHER WITH THE CONSENT AGREEMENT, CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN, OR OTHERWISE. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THIS FIRST AMENDMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.

Dated: 8/13/10



BENJAMIN M. BROWN, M.D.

STATE OF MAINE
_____, SS.

Before me this 13th day of August, 2010, personally appeared Benjamin M. Brown, 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 his own.



Notary Public/Attorney at Law
My commission expires:

STATE OF MAINE
BOARD OF LICENSURE IN
MEDICINE

DATED: 8/19/10



SHERIDAN R. OLDHAM, M.D.,
Chairman

STATE OF MAINE OFFICE
OF THE ATTORNEY GENERAL

DATED: 8/24/10



DENNIS E. SMITH
Assistant Attorney General

Effective Date: 8/24/10

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT
Benjamin M. Brown, M.D.)	AGREEMENT
Complaint No. CR08-287)	

This document is a Consent Agreement, effective when signed by all parties, regarding a disciplinary action concerning and conditions imposed upon the license to practice medicine in the State of Maine held by Benjamin M. Brown, M.D. The parties to the Consent Agreement are: Benjamin M. Brown, M.D. ("Dr. Brown"), 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. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. Dr. Brown has held a license to practice medicine in the State of Maine since July 1, 2005, and specializes in Family Practice.
2. On or about July 29, 2008, the Board received a complaint against Dr. Brown's Maine medical license from former patient AM. The complaint alleged that Dr. Brown engaged in a sexual relationship with patient AM during the time that he was also AM's treating physician. In addition, the complaint alleged that Dr. Brown was having a sexual relationship with RR, a licensed physician assistant whom Dr. Brown had been supervising. The complaint also alleged that Dr. Brown suffered from alcoholism. The Board docketed the complaint as CR08-287.

3. On or about October 6, 2008, the Board received a response from Dr. Brown to complaint CR08-287. In his response, Dr. Brown admitted that he treated AM as a patient commencing in February or March of 2006, during which time he prescribed an antidepressant and anxiolytic to AM. Dr. Brown indicated that his first sexual encounter with patient AM occurred "on the weekend following the excision of her nevi."¹ According to Dr. Brown, he perceived AM as a coworker not a patient when he commenced a sexual relationship with AM in approximately July 2007. According to Dr. Brown, he personally last saw AM as a patient in approximately July 2007. Dr. Brown admitted that his sexual relationship with AM continued until March 2008. Dr. Brown also admitted that he developed a personal and sexual relationship with RR, but denied that his use of alcohol ever had a direct effect upon his practice of medicine.

4. The Board obtained copies of AM's medical records, which indicated that between March 31, 2006 and December 14, 2007, Dr. Brown saw and treated AM as a patient and/or was the supervising physician for RR, a physician assistant, who treated AM as a patient. According to the medical records:

a. On March 31, 2006, Dr. Brown saw AN for "increasing anxiety" related to work and home and prescribed Clonazepam and Fluoxetine to AM and noted "to return to clinic as needed."

¹ AM's medical records indicate that the excision of the nevi occurred on Friday, June 1, 2007, and that Dr. Brown removed the sutures on Friday, June 8, 2007.

b. On June 5, 2006, Dr. Brown saw AM as a patient, including a "review of systems," noted "Anxiety somewhat improved."

c. On December 7, 2006, Dr. Brown saw AM as a patient for "routine follow-up" and "pre-employment physical," and prescribed Doxycycline due to AM's lung exam.

d. On May 11, 2007, Dr. Brown saw AM as a patient for wart removal.

e. On May 18, 2007, RR, a physician assistant supervised by Dr. Brown, saw AM as a patient for a rash. During that visit, RR prescribed Lotrisone for AM. Dr. Brown reviewed and electronically signed this medical record on May 19, 2007.

f. On June 1, 2007, Dr. Brown saw AM as a patient, performed the surgical excision of lesions and placed five sutures, and noted "return to clinic in 1 week."

g. On June 8, 2007, Dr. Brown saw AM as a patient for suture removal, and noted "well-healing excision sites on back, no infection" and "return to clinic as needed."

h. On June 13, 2007, RR, a physician assistant supervised by Dr. Brown, saw AM as a patient for "1mo fu breast exam, pap" and a physical examination. Dr. Brown and RR state that RR was not aware of the relationship between Dr. Brown and AM at the time of this visit. RR's impressions for this visit included "normal gyn exam pap collected, continue

condoms for contraception.” Dr. Brown reviewed and electronically signed this medical record on June 15, 2007.

i. On December 14, 2007, RR, a physician assistant supervised by Dr. Brown, saw AM as a patient for “health maintenance” and “birth control.” Dr. Brown and RR state that RR was not aware of the relationship between Dr. Brown and AM at the time of this visit. During this visit, RR prescribed Levlen for AM. Dr. Brown reviewed and electronically signed this medical record on December 14, 2007.

5. The Board obtained information from the Prescription Monitoring Program that showed that on April 3, 2008, Dr. Brown prescribed Clonazepam to AM. The Board also obtained a copy of the prescription for Clonazepam written by Dr. Brown to AM on April 3, 2008. This information confirmed AM’s status as a patient of Dr. Brown and/or RR, a physician assistant supervised by Dr. Brown, up until that time.

6. Board investigation confirmed that Dr. Brown commenced a sexual relationship with RR, a physician assistant whom he supervised.

7. Following its review of the complaint, response, and investigative materials, the Board, pursuant to 32 M.R.S. § 3286, directed Dr. Brown to undergo a psychological and substance abuse evaluation.

8. The 2008-2009 Edition of the Code of Medical Ethics of the American Medical Association defines “sexual misconduct in the practice of medicine” as follows:

Sexual contact that occurs concurrent with the patient-physician relationship constitutes sexual misconduct. Sexual

or romantic interactions between physician and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.

If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.

9. Board Rule, Chapter 1 defines "sexual misconduct" to include:

"Sexual violation" is any conduct by a physician/physician assistant with a patient that is sexual or may reasonably be interpreted as sexual, even when initiated by or consented to by a patient, including but not limited to... sexual intercourse.

10. On or about December 11, 2008, the Board received the results of the psychological and substance abuse evaluation of Dr. Brown. The evaluation concluded that Dr. Brown committed an ethical violation by engaging in sexual boundary violations with patient AM. In addition, the report indicated that Dr. Brown's relationship with RR, for whom he was the supervising physician, demonstrated that Dr. Brown was having difficulty maintaining appropriate levels of boundaries. However, the evaluation also concluded that "Dr. Brown's boundary violation is not part of any larger pattern." The evaluation also concluded that Dr. Brown's consumption of alcohol during that time contributed to his poor judgment, and that collateral contacts "support the idea that [he] apparently did not manifest any signs of such impairment in his *clinical* skills." Finally, according to the evaluation, Dr.

Brown self-reported that he had stopped consuming alcohol in January 2008, and that he voluntarily entered psychological counseling in April 2008.

11. On or about December 9, 2008, the Board reviewed the complaint materials, including Dr. Brown's response, and voted to schedule the matter for an adjudicatory hearing. In addition, the Board authorized its legal counsel to offer Dr. Brown a Consent Agreement to resolve complaint CR08-287.

12. This Consent Agreement has been negotiated by legal counsel for Dr. Brown and legal counsel for the Board in order to resolve complaint CR08-287 without an adjudicatory hearing. Absent Dr. Brown's acceptance of this Consent Agreement by signing and dating it in front of a notary and mailing it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before April 6, 2009, the matter will be scheduled for an adjudicatory hearing. In addition, absent the Board's acceptance of this Consent Agreement by ratifying it on April 14, 2009, the matter will be scheduled for an adjudicatory hearing.

13. By signing this Consent Agreement, Dr. Brown and his legal counsel waive any and all objections to, and hereby consent to the presentation of this Consent Agreement to the Board for possible ratification. Dr. Brown and his legal counsel also forever waive any arguments of bias or otherwise against any of the Board members in the event that the Board fail to ratify this proposed Consent Agreement.

COVENANTS

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

agrees to the following :

14. Dr. Brown admits that with regard to complaint CR08-287 the Board has sufficient evidence from which it could reasonably conclude that: (a) he engaged in unprofessional conduct by engaging in a sexual relationship with AM, who was a patient; and (b) he engaged in a sexual relationship with RR, a physician assistant whom he was supervising. Dr. Brown admits that the Board has sufficient evidence from which it could conclude that the conduct with patient AM constitutes sexual misconduct pursuant to Board Rule, Chapter 10, and unprofessional conduct and grounds for discipline of his Maine medical license pursuant to 32 M.R.S. § 3282-A(2)(F). Dr. Brown admits that the conduct with RR could constitute unprofessional conduct and grounds to discipline his Maine medical license pursuant to 32 M.R.S. § 3282-A(2)(F).

15. As discipline for the conduct described in paragraph 14 above, Dr. Brown agrees to accept, and the Board agrees to issue, the following discipline:

- a. a REPRIMAND. Dr. Brown agrees never to engage in this type of conduct again.
- b. a MONETARY FINE of One Thousand Dollars and Zero Cents (\$1,000.00). Dr. Brown shall ensure that he pays the monetary penalty within thirty (30) days following the execution² of this Consent Agreement. Payment shall be made by certified check or money order made payable to "Treasurer, State of Maine," and be remitted to Maria MacDonald, Investigator, Maine

² For the purposes of this Consent Agreement, "execution" shall mean the date on which the final signature is affixed to this Consent Agreement.

Board of Licensure in Medicine, 137 State House Station, Augusta, Maine
04333-0137.

c. a LICENSE SUSPENSION of sixty (60) days commencing
April 15, 2009.

d. a LICENSE PROBATION for five (5) years following the
execution of this Consent Agreement. As specific conditions of probation, Dr.
Brown shall:

(i) Restrict his practice of medicine to a location approved
by the Board.

(ii) Enroll in, attend, and successfully complete a Board-
approved substantive course in medical ethics and boundaries within six (6)
months following the execution of this Consent Agreement. The ethics and
boundaries course must cover the topic of appropriate patient-physician
boundaries. Dr. Brown shall provide the Board with documentation of the
successful completion of this course in medical ethics and boundaries within
six (6) months following the execution of this Consent Agreement.

(iii) Within thirty (30) days following the execution of this
Consent Agreement, Dr. Brown must have a Board-approved practice monitor
who shall monitor his medical practice. In complying with this requirement,
Dr. Brown shall submit to the Board for its approval the name of a proposed
practice monitor, whom the Board has the sole discretion to approve or deny.
The monitoring physician must be in direct contact with Dr. Brown and
observe him within his medical practice at least once a week, and inform the

Board if Dr. Brown demonstrates any issues with regard to isolation, inappropriate boundaries or decision-making, incompetence, unprofessionalism or any other concerns. The monitoring physician shall report such information to the Board by telephone and in writing within 24 hours or as soon thereafter as possible. Dr. Brown understands that the monitoring physician will be an agent of the Board pursuant to Title 24 M.R.S. § 2511. Dr. Brown shall permit the monitoring physician full access to his medical practice, including but not limited to all patient information, and shall execute any and all releases necessary for the Board or its agents to directly contact the monitoring physician about Dr. Brown. The Board-approved monitor shall provide the Board with reports regarding Dr. Brown's medical practice on or before April 9th, and July 9th, October 9th, and January 9th of each year following the execution of this Consent Agreement.

(iv) Within thirty (30) days following the execution of this Consent Agreement, Dr. Brown shall enroll in and actively and fully participate in the Maine Medical Association's Medical Professionals Health Program (MPHP), and meet all of the conditions and requirements of that program, including but not limited to urine testing and monitoring for the presence of alcohol. Any credible report received by the Board that Dr. Brown has failed to fully cooperate with the MPHP shall result in the immediate summary suspension of his Maine medical license in accordance with paragraph 16 below. In complying with this provision, Dr. Brown shall:

(a) Abstain completely from the use or ingestion of

alcohol. Any report received by the Board that Dr. Brown has failed to abstain for the use of alcohol shall result in the immediate summary suspension of his Maine medical license in accordance with paragraph 16 below. Dr. Brown understands and agrees that a test evidencing the presence of alcohol or alcohol marker, when confirmed, shall raise a rebuttable presumption that alcohol was in fact used by Dr. Brown. Such a positive test result shall alone be sufficient to prove the use of alcohol by Dr. Brown. Dr. Brown further agrees that the result(s) of the test(s) referred to in this paragraph are admissible into evidence in any proceeding regarding his Maine medical license, whether before the Board or before a Court of competent jurisdiction.

(b) Submit to random urine testing for the presence of alcohol or its chemical markers.

(c) Ensure that the MPHP provides the Board with quarterly reports regarding his compliance with that program, including his abstention from the use of alcohol, and the frequency and results of urine monitoring.

(d) Continue treatment with Dr. Holcomb, Ph.D. or another psychologist pre-approved by the Board.

(e) Engage in substance abuse counseling and any evaluation(s) as recommended by the MPHP.

(f) Execute any and all releases necessary to permit the Board or its agent(s) complete access to his counseling and medical records.

16. Any report received by the Board that Dr. Brown has failed to comply with any of the conditions of his probation as set out in paragraph 15(d)(iv) above, shall result in the immediate summary suspension of Dr. Brown's Maine medical license. Such suspension shall be effective upon oral or written notification from the Board to Dr. Brown that it has received a report of non-compliance. In the event that the Board summarily suspends Dr. Brown's Maine medical license pursuant to this paragraph, the Board shall hold an adjudicatory hearing within sixty (60) days of the suspension.

17. Violation by Dr. Brown of any of the terms or conditions of this Consent Agreement shall constitute grounds for discipline, including but not limited to modification, suspension, or revocation of licensure or the denial of re-licensure.

18. Pursuant to 10 M.R.S.A. § 8003(5) the Board and Dr. Brown agree that the Board has the authority to issue an order, following notice and hearing, modifying, suspending, revoking his license in the event that he fails to comply with any of the terms or conditions of this Consent Agreement.

19. Dr. Brown waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Brown agrees that this Consent Agreement and Order is a final order resolving complaint CR08-287. This Consent Agreement is not appealable and

is effect until modified or rescinded by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General. Requests for amendments by Dr. Brown shall be made in writing and submitted to the Board. Dr. Brown may, at reasonable intervals, petition the Board for amendment of the terms and conditions of this Consent Agreement. Upon making such a petition, Dr. Brown shall bear the burden of demonstrating that the Board should amend the Consent Agreement. The Board shall have the discretion to: (a) deny Dr. Brown's petition; (b) grant Dr. Brown's petition; and/or (c) grant Dr. Brown's petition in part as it deems appropriate to ensure the protection of the public. Any decision by the Board on this issue need not be made pursuant to a hearing and is not appealable.

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

21. Dr. Brown shall provide a copy of this Consent Agreement to: (i) his monitoring physician; (ii) any employer; (iii) the Chief Executive Officer (CEO) of any hospital where he holds or seeks privileges to practice medicine; and (iv) the licensing authority of any jurisdiction where he holds or seeks a medical license.

22. 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.

23. This Consent Agreement constitutes discipline and is an adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB), the Healthcare Integrity and Protection Data Bank (HIPDB), and the Federation of State Medical Boards (FSMB).

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

25. The Board and Dr. Brown agree that no further agency or legal action will be initiated against him by the Board based upon the facts described herein, except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Board may however consider the conduct described above as evidence of a pattern of misconduct in the event that similar true allegations are brought against Dr. Brown in the future. The Board may also consider the fact that discipline was imposed by this Consent Agreement in determining appropriate discipline in any further complaints against Dr. Brown's license.

26. Dr. Brown 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, BENJAMIN M. BROWN, 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: 4/6/09


BENJAMIN M. BROWN, M.D.

STATE OF MAINE
Kennebec, S.S.

Personally appeared before me the above-named Benjamin Brown, 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: 4/6/09


NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: _____

DATED: 4/6/09


JAY P. MCCLOSKEY, ESQ.
Attorney for Benjamin Brown, M.D.

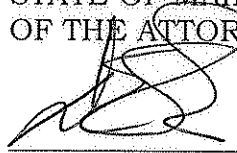
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 4/14/09


SHERIDAN R. OLDHAM, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 4/14/09



DENNIS E. SMITH
Assistant Attorney General

Effective Date: