

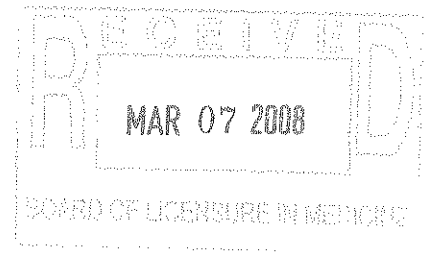
STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

IN RE: ) FIRST AMENDMENT TO  
David B. Gammon, M.D. ) CONSENT AGREEMENT  
Application for Licensure ) FOR  
 ) CONDITIONAL LICENSURE

This document is a First Amendment to a Consent Agreement effective February 12, 2008, regarding the issuance of a conditional active license to practice medicine in the State of Maine to David B. Gammon, M.D. The parties to this first amendment of that Consent Agreement are: David B. Gammon, M.D. (“Dr. Gammon”), the State of Maine Board of Licensure in Medicine (“the Board”), and the Office of the Attorney General (the “Attorney General”).

BACKGROUND

1. On February 12, 2008, the parties entered into a Consent Agreement For Conditional License.
2. March 4, 2008, the Board received a written request from Dr. Gammon to modify the Consent Agreement For Conditional Licensure in order to allow him to perform reviews of medical records without providing direct patient care outside of a hospital setting.
3. On March 11, 2008, the Board reviewed Dr. Gammon’s written request to modify the Consent Agreement For Conditional Licensure. Following its review, the Board voted to grant Dr. Gammon’s request.



AMENDMENT

4. Dr. Gammon, the Board, and the Office of Attorney General hereby agree to amend the Consent Agreement For Conditional License dated February 12, 2008, as follows:

Amendment 1: Paragraph 12(a) is amended to read:

a. Dr. Gammon shall limit his practice of medicine in Maine to being a “hospitalist” in a hospital duly licensed in the State of Maine, except that he is permitted to review and analyze medical records (and other records regarding patient care), and to provide opinions regarding such records. For example, this exception permits Dr. Gammon to perform chart reviews and provide opinions to disability benefits carriers. This exception does not permit Dr. Gammon to examine, diagnose, treat or prescribe any medications for any patients outside of a hospital setting.

Amendment 2: Paragraph 12(b) is amended to read:

b. Dr. Gammon shall not practice medicine in any other setting outside a duly licensed hospital, except as permitted in paragraph 12(a). More specifically, Dr. Gammon shall not practice medicine (*i.e.* examine or treat patients in any manner) in a private office or private practice setting.

5. Dr. Gammon acknowledges by his signature hereto that he has read this First Amendment to the Consent Agreement For Conditional License, 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, DAVID B. GAMMON, 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: 3-7-8

*David B. Gammon*  
DAVID B. GAMMON, M.D.

STATE OF MAINE  
Kennebec, SS.

Before me this 7<sup>th</sup> day of March, 2008, personally appeared David B. Gammon, 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.

*Pamela H. Hurdik*  
Notary Public/Attorney at Law  
My commission expires: 12/1/09



STATE OF MAINE  
BOARD OF LICENSURE IN  
MEDICINE

DATED: 3/26/08

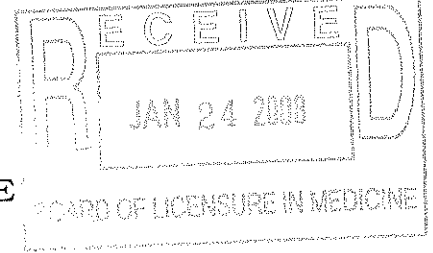
Sheridan R. Oldham, M.D.  
SHERIDAN R. OLDHAM, M.D.,  
Chairman

STATE OF MAINE OFFICE  
OF THE ATTORNEY GENERAL

DATED: 3/26/08

Dennis E. Smith  
DENNIS E. SMITH  
Assistant Attorney General

Effective Date:



STATE OF MAINE

BOARD OF LICENSURE IN MEDICINE

In re: ) CONSENT AGREEMENT

David B. Gammon, M.D. ) FOR CONDITIONAL LICENSURE

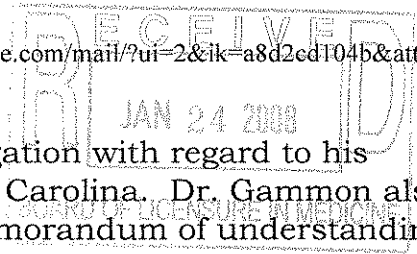
Application for Licensure )

CR 07-367 )

This document is a Consent Agreement, effective when signed by all parties, that grants David B. Gammon, M.D. a conditional<sup>1</sup> license to practice medicine in the State of Maine. The parties to the Consent Agreement are: David B. Gammon, M.D. ("Dr. Gammon"), 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. On June 7, 2007, the Board received an application for a permanent Maine medical license from Dr. Gammon. The Board could not immediately grant his application for permanent licensure because it did not have the required verifying documentation.
2. On August 7, 2007, the Board received an application for a temporary<sup>2</sup> Maine medical license from Dr. Gammon. On August 10, 2007, the Board issued Dr. Gammon a temporary Maine medical license for six months based upon a letter of need from Maine General Medical Center and Dr. Gammon's full and unrestricted licensure in South Carolina. Dr. Gammon specializes in internal medicine.
3. During the course of gathering information regarding Dr. Gammon's application for a permanent Maine medical license, the Board received information from the Drug Enforcement Administration (DEA). The information from the DEA indicated that on or about February 1, 2001, Dr. Gammon had entered into a memorandum of understanding with the DEA following its investigation of his prescribing practices in South Carolina.
4. On November 13, 2007, the Board reviewed the information received from the DEA and voted to initiate a complaint against Dr. Gammon's temporary Maine medical license. The Board docketed that complaint as CR 07-367.
5. On November 30, 2007, the Board received a response from Dr. Gammon to the Board-initiated complaint. In his response, Dr. Gammon admitted that in



November of 2000 he was the subject of a DEA investigation with regard to his prescribing practices while in private practice in South Carolina. Dr. Gammon also admitted that in January of 2001 he entered into a memorandum of understanding with the DEA, which provided guidelines for his future prescribing of controlled substances. Dr. Gammon also described the measures that he had implemented in his private medical practice to comply with the memorandum of understanding. In addition, Dr. Gammon indicated that in late June of 2007<sup>3</sup>, he met with the DEA in South Carolina regarding his narcotic prescribing practices in general, and his narcotic prescribing practices specifically regarding a patient who experienced a drug overdose. Finally, Dr. Gammon indicated that, since obtaining his temporary Maine medical license, he had been working as a “hospitalist” at Maine General Medical Center in Augusta, Maine, a structured setting within which he would not be managing chronic pain patients.

6. On January 8, 2008, the Board reviewed complaint CR 07-367, and a DEA report of investigation. According to the DEA report of investigation, Dr. Gammon admitted that while in private practice in South Carolina, he permitted his nursing staff to renew patient prescriptions for controlled substances in his absence. According to the DEA report of investigation, Dr. Gammon admitted that this conduct was improper but that he did not want his patients to be without their medication. In addition, Dr. Gammon stated that he only permitted his nursing staff to renew prescriptions for controlled substances for existing patients whom he had previously seen.<sup>4</sup>

7. On January 8, 2008, following its review of this matter, the Board voted to schedule complaint 07-367 for an adjudicatory hearing, and authorized the Board’s legal counsel to offer Dr. Gammon a consent agreement in order to resolve complaint CR 07-367 without hearing.

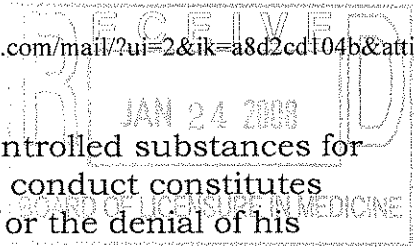
8. This Consent Agreement has been negotiated between legal counsel for Dr. Gammon and the Board’s legal counsel in order to resolve complaint CR 07-367 without further proceedings.

9. By signing this Consent Agreement, Dr. Gammon waives, in his personal capacity and through legal counsel, any and all objections to, and hereby consents to allow the Board’s legal counsel to present this Consent Agreement to the Board for possible ratification. Dr. Gammon 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 Consent Agreement.

10. Absent ratification of this Consent Agreement by a majority vote of the Board, the matter will proceed to an adjudicatory hearing.

### **COVENANTS**

11. Dr. Gammon admits that the Board has sufficient evidence from which it could reasonably conclude that, while in private practice in South Carolina, he had



permitted his nursing staff to renew prescriptions for controlled substances for patients in his absence. Dr. Gammon admits that such conduct constitutes unprofessional conduct and grounds for discipline and/or the denial of his application for a permanent Maine medical license pursuant to 32 M.R.S.A. § 3282-A(2)(F).

12. In light of Dr. Gammon's admission in paragraph 11 above, the Board agrees to issue, and Dr. Gammon agrees to accept, a conditioned/restricted active license to practice medicine in this State following the execution<sup>5</sup> of this Consent Agreement. Dr. Gammon's restricted medical license shall be subject to the following conditions:

a. Dr. Gammon shall limit his practice of medicine in Maine to being a "hospitalist" in a hospital duly licensed in the State of Maine;

b. Dr. Gammon shall not practice medicine in any other setting outside of a duly licensed hospital. More specifically, Dr. Gammon shall not practice medicine (*i.e.* examine or treat patients in any manner) in a private office or private practice setting.

c. Dr. Gammon shall not issue any prescription(s) for any medication(s) for any patient(s) who is/are not in-patient(s) of the hospital where he practices medicine as a "hospitalist."

d. Dr. Gammon may issue one-time-only prescriptions (no re-fills permitted) to a patient upon the patient's discharge from the hospital and for the sole purpose of transitioning the patient back to his/her primary care provider.

e. Dr. Gammon shall provide a copy of this Consent Agreement to the Chief Executive Officer (CEO) of any hospital with whom he seeks or obtains employment.

13. Dr. Gammon acknowledges and agrees that 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, suspending, or revoking his license.

14. Dr. Gammon waives his right to a hearing before the Board or any court regarding all facts, terms and conditions of this Consent Agreement. Dr. Gammon agrees that this Consent Agreement is a final order resolving complaint CR 07-367. This Consent Agreement is not appealable and is effective until modified or rescinded by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General.

15. The term of this Consent Agreement is indefinite from the date of execution, and remains in full force and effect so long as Dr. Gammon is licensed with the Board, complies with the terms and conditions of this Consent Agreement, and

does not otherwise pose a risk to the public.

16. Two (2) years following the execution of this Consent Agreement, Dr. Gammon may request that the Board amend the terms and conditions of this Consent Agreement. Any requests for amendments by Dr. Gammon shall be made in writing and submitted to the Board. Upon making such a request, Dr. Gammon shall bear the burden of demonstrating that the Board should amend the Consent Agreement. The Board shall have the discretion to: (a) deny Dr. Gammon's; (b) grant Dr. Gammon's request; and/or (c) grant Dr. Gammon's request in part as it deems appropriate to ensure the protection of the public. Any decision by the Board as a result of Dr. Gammon's request to modify this Consent Agreement need not be made pursuant to a hearing and is not appealable to any court.

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

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

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

20. The Board and Dr. Gammon 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.

21. Dr. Gammon 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.

22. Dr. Gammon has been represented by Kenneth W. Lehman, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

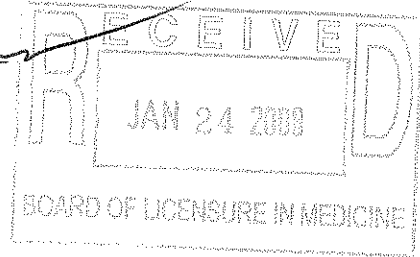
**I, DAVID B. GAMMON, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT 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: 1-24-08 David B. Gammon

DAVID B. GAMMON, M.D.

STATE OF Maine

Kennebec, S.S.



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

DATED: 1/24/08 Pamela S. Duvalek

NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: 1/24/09

STATE OF MAINE

BOARD OF LICENSURE IN MEDICINE

DATED: 2/12/08 Sheridan R. Oldham, MD

SHERIDAN R. OLDHAM, M.D., Chairman

STATE OF MAINE DEPARTMENT

OF THE ATTORNEY GENERAL

DATED: 2/12/08 [Signature]

DENNIS E. SMITH

Assistant Attorney General

Effective Date: