

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

<u>In re:</u>	)	CONSENT AGREEMENT
Application of	)	FOR
Richard A. Giustra, M.D.	)	CONDITIONAL LICENSURE

INTRODUCTION

This document is a Consent Agreement regarding a licensing action that issues Richard A. Giustra, M.D., a conditional license to practice medicine in the State of Maine. The parties to this Consent Agreement are: Richard A. Giustra, M.D. ("Dr. Giustra"), the State of Maine Board of Licensure in Medicine ("the Board"), and the Office of the Attorney General ("the Attorney General"). This Consent Agreement is entered into pursuant to 32 M.R.S. § 3282-A and 10 M.R.S. § 8003(5).

FACTS

1. The Board first issued Dr. Giustra a medical license on July 10, 1973. Dr. Giustra specialized in Orthopedic Surgery, and is Board-Certified in Orthopedic Surgery.
2. On June 12, 2001, the Board renewed Dr. Giustra's Maine medical license in "inactive" status. Prior to that time, in 1999 Dr. Giustra had discontinued his practice of medicine due to personal medical issues. Dr. Giustra has not practiced clinical medicine since 1999.
3. On October 13, 2004, Dr. Giustra allowed his inactive Maine medical license to lapse.
4. Pursuant to 32 M.R.S. § 3280-A(4), entitled "Reinstatement after lapse," Dr. Giustra is required to "pay all fees in arrears at the time of lapse

plus the current license renewal application fee and a nonrefundable... fee of \$100.” In addition, 32 M.R.S. § 3208-A(4)(C) prohibits the Board from reinstating “a lapsed license if the Board finds any cause that may be considered a ground for discipline” or if the “physician... has not provided evidence... of having actively engaged in the practice of medicine continuously for at least the past 12 months under the license of another jurisdiction...”

5. Pursuant to 32 M.R.S. § 3282-A(1) the Board may enter into a consent agreement with a licensee that contains terms “best adapted to protect the public health and safety.” Pursuant to 32 M.R.S. § 3282-A(2)(H) the Board may “refuse to issue, modify, [or] restrict” a license for failure to comply with the Board’s statute or rules. In addition, pursuant to Title 10 M.R.S. § 8003(5) the Board may impose “conditions of probation upon an applicant” and “may execute a consent agreement [with an applicant] that resolves a complaint or investigation without further proceedings...” that includes “any remedy... available by law... including permanent revocation.”

6. On March 24, 2008, the Board received an application from Dr. Giustra to reinstate his Maine medical license. In his application for reinstatement, Dr. Giustra indicated that he had allowed his inactive Maine medical license to lapse due to his personal medical issues. In addition, Dr. Giustra indicated that he was currently under appropriate medical care, and was seeking reinstatement “as a nonoperating [sic] physician” and was considering performing voluntary humanitarian work in Latin America.

7. On September 9, 2008, the Board conducted a license interview with Dr. Giustra. During that interview, Dr. Giustra represented to the Board that he was seeking to reinstate his Maine medical license in an “inactive” status in order to secure continuing medical education (CME). In addition, Dr. Giustra represented to the Board that he did not intend to practice clinical medicine and was considering teaching and/or mentoring physicians and student physicians regarding orthopedics. During the interview with Dr. Giustra, the Board discussed with him the possibility of issuing him restricted “active” medical license limited solely to teaching and with no ability to practice clinical medicine directly or indirectly. Dr. Giustra acknowledged the concern expressed by the Board regarding his lack of recent clinical practice, and indicated that he would accept an “active” Maine medical license that restricted his medical practice solely to didactic teaching which does not include the clinical examination or treatment of patients.

8. Following the interview with Dr. Giustra, the Board voted to offer Dr. Giustra a restricted Maine medical license that limited his practice of medicine solely to didactic teaching which does not include the clinical examination or treatment of patients. In reaching this decision, the Board interprets 32 M.R.S. § 3280-A(4)(C) to prohibit it from reinstating Dr. Giustra’s Maine medical license in a full and unrestricted manner due to not “having actively engaged in the practice of medicine continuously for at least the past 12 months under the license of another jurisdiction...”

9. Absent acceptance of this Consent Agreement by Dr. Giustra by signing and dating it in front of a notary and returning it to Vickie Plummer, Licensure Specialist, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before October 24, 2008, the Board will revisit Dr. Giustra's application for the reinstatement of his Maine medical license.

#### COVENANTS

10. In light of the foregoing facts, the Board agrees to issue and Dr. Giustra agrees to accept a restricted Maine medical license that limits his ability to practice medicine solely to didactic teaching which does not include the clinical examination or treatment of patients. In complying with this restriction, Dr. Giustra agrees not to perform or provide directly or indirectly any clinical or operative/surgical medical care or treatment to anyone in the State of Maine.

11. Violation by Dr. Giustra of any of the restrictions on his Maine medical license or any of the terms or conditions of this Consent Agreement shall constitute grounds for discipline, including modification, suspension, or revocation of licensure or the denial of re-licensure.

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

13. This Consent Agreement is not appealable and is effective until modified or rescinded in writing by the parties hereto. Dr. Giustra waives his right to a hearing before the Board or any court regarding all facts, terms and conditions of this Consent Agreement. Dr. Giustra agrees that this Consent Agreement is a final order resolving his application for reinstatement of his Maine medical license. 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. Any decision by the Board as a result of Dr. Giustra's request to modify this Consent Agreement need not be made pursuant to a hearing and is not appealable to any court.

14. The Board and the Attorney General may communicate and cooperate regarding Dr. Giustra's practice or any other matter relating to this Consent Agreement.

15. 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.

16. This Consent Agreement is reportable to the National Practitioner Data Bank and the Healthcare Integrity Protection Data Bank because it places restrictions upon Dr. Giustra's Maine medical license. This particular Consent Agreement is not intended to be punitive in nature, or constitute any sanction

to Dr. Giustra. It constitutes the sole mechanism by which the Board can issue a restricted Maine medical license to Dr. Giustra.

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

18. Dr. Giustra 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, RICHARD A. GIUSTRA, 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: Oct. 20, 2008

Richard A. Giustra, M.D.  
RICHARD A. GIUSTRA, M.D.

STATE OF Maine  
Cumberland, S.S.

Personally appeared before me the above-named Richard A. Giustra, 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: 10/20/2008

Heidi Ballard

HEIDI BALLARD  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES JULY 10, 2009  
NOTARY PUBLIC/ATTORNEY  
MY COMMISSION ENDS: \_\_\_\_\_

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED: 10/26/2008

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

STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED: 10/29/08

[Signature]  
DENNIS E. SMITH  
Assistant Attorney General

Effective Date: