

BOARD OF LICENSURE IN MEDICINE

IN RE:)	
THOMAS D. HAYWARD, M.D.)	CONSENT AGREEMENT
Complaint No. CR12-174)	
)	

This document is a Consent Agreement, effective when signed by all parties, regarding discipline and restrictions imposed upon the license to practice medicine in the State of Maine issued to Thomas D. Hayward, M.D. The parties to this Consent Agreement are: Thomas D. Hayward, M.D. ("Dr. Hayward"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Office of the Attorney General.

STATEMENT OF FACTS

1. The Board first issued Dr. Hayward a medical license on July 12, 1983. Dr. Hayward specializes in Family Practice and Geriatrics.
2. On May 24, 2012, the Board received information from a pharmacist regarding patient CP. According to the pharmacist, patient CP was being prescribed: 480 mg of Oxycontin per day; 150 mcg in a fentanyl patch per day; and 60 mg of Hydrocodone per day. The pharmacist was concerned that the amount of opiates being prescribed to patient CP was excessive, and that the patient's wife slurred speech and behavior raised red flags for possible diversion. As a result of receiving this information, the Board staff obtained a copy of patient CP's prescription information from the Prescription Monitoring

Program (PMP) and a copy of patient CP's medical records for review.

3. On September 11, 2012, the Board reviewed the foregoing information and voted to initiate a complaint against Dr. Hayward's Maine medical license pursuant to 32 M.R.S. § 3282(A)(2) alleging inappropriate prescribing practices regarding patient CP. The Board docketed the complaint as Complaint No. CR12-174 and sent it to Dr. Hayward for a response.

4. On October 24, 2012, the Board received a response from Dr. Hayward to Complaint No. CR12-174. Dr. Hayward described the care and treatment of patient CP, including the medical rationale for prescribing such large quantities of opiates.

5. On December 12, 2012, the Board reviewed Complaint No. CR12-174, including Dr. Hayward's response and all investigative records. Following its review and discussion the Board voted to schedule an informal conference with Dr. Hayward regarding Complaint No. CR12-174 concerning the following issues: (1) opiate prescribing to patient CP; (2) issuing pre-signed blank prescriptions for schedule II to physician assistants to issue to patients; and (3) the level of his supervision of physician assistants, and in particular the supervision of the physician assistant who provided medical care and treatment to patient CP.

6. On March 12, 2013, the Board held an informal conference with Dr. Hayward regarding Complaint No. CR12-174. Following the informal conference, the Board voted to schedule the matters for an adjudicatory

hearing and offer Dr. Hayward this Consent Agreement to resolve Complaint No. CR12-174 without further proceedings.

7. This Consent Agreement has been negotiated by and between legal counsel for Dr. Hayward and the Maine Office of the Attorney General in order to resolve Complaint No. CR12-174 without an adjudicatory hearing. Absent Dr. Hayward's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before June 7, 2013, the Board will resolve this matter by holding an adjudicatory hearing at a later date.

8. By signing this Consent Agreement, Dr. Hayward 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. Hayward 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 the Board and Dr. Hayward agree to the following disposition.

9. With regard to Complaint No. CR12-174 Dr. Hayward neither admits nor denies the allegations, but concedes that should the matter proceed to an adjudicatory hearing the Board would have sufficient evidence from

which it could conclude by the preponderance of the evidence that he:

- a. Failed to provide the appropriate level of supervision of the physician assistant who provided care and treatment to patient CP by failing to ensure that the physician assistant adhered to Board Rule Chapter 21 "Use of Controlled Substances For Treatment of Pain" and to current "Universal Precautions" for the treatment of patients for chronic, non-cancer pain;
- b. Issued pre-signed blank prescriptions for schedule II medications to physician assistants to issue to patients; and
- c. Allowed a physician assistant who did not have schedule II prescribing privileges from the Board to in effect issue prescriptions for schedule II medications to patients.

Dr. Hayward concedes that such conduct constitutes grounds for discipline of his Maine medical license for unprofessional conduct pursuant to 32 M.R.S. § 3282-A(2)(F).

10. As discipline for the conduct described above, Dr. Hayward agrees to:

- a. Accept a REPRIMAND. As a medical professional, Dr. Hayward was responsible for being aware of and complying with:

- (1) The accepted standards of supervision of physician assistants who provide care for the treatment of chronic pain with opiates by ensuring that they are creating and maintaining

appropriate medical records and adhering to Board Rule Chapter 21 "Use of Controlled Substances For Treatment of Pain" and to current "Universal Precautions" for the treatment of patients for chronic, non-cancer pain;

(2) The federal laws regarding issuing pre-signed blank prescriptions for schedule II drugs; and

(3) The laws and rules of the Board and the requirement that any physician assistant whom he supervises obtains authority from the Board to issue prescriptions for schedule II medication to patients.

Dr. Hayward agrees to henceforth comply with all applicable standards, laws and rules regarding the prescribing of all controlled substances and the supervision of physician assistants.

b. Effective upon the execution of this Consent Agreement, accept the following license restrictions, which shall remain in effect unless or until this Consent Agreement is rescinded or amended by all of the parties hereto:

(1) Dr. Hayward may not act as a supervising physician for more than one (1) physician assistant at any one time.

(2) Dr. Hayward shall ensure that any physician assistant under his supervision does not prescribe or issue prescriptions for any schedule II controlled substances until and unless the physician

assistant obtains authorization from the Board to prescribe schedule II controlled substances.

(3) Dr. Hayward shall ensure that any physician assistant acting under his supervision shall immediately cease prescribing any controlled medications, including all opiates and benzodiazepines, for the treatment of chronic pain except for:

- (a) Patients in skilled nursing facilities or long-term care facilities;
- (b) Patients in hospice care; or
- (c) Patients with metastatic cancer.

In complying with this restriction, Dr. Hayward shall ensure that:

- (a) Any and all prescriptions that are issued by the physician assistant under his supervision for the three excepted categories of patients identified above are annotated with the words “skilled nursing facility/long-term care” or “hospice care” or “metastatic cancer” as applicable to each patient; and
- (b) Any physician assistant under his supervision may prescribe controlled substances for no more than ten (10) consecutive days to treat acute conditions; and

(c) Any physician assistant under his supervision complies with Board Rule, Chapter 21, "Use of Controlled Substances For Treatment of Pain" to the extent that he prescribes any controlled drugs for the treatment of acute pain.

11. In order to ensure his compliance with the restriction on the ability of the physician assistant under his supervision to prescribe controlled drugs for the treatment of chronic pain, Dr. Hayward agrees to fully cooperate with the Board and to permit the Board or its agent(s) to inspect his medical practice, including allowing the Board or its agents full access to and copying of the patient medical records of his medical practice as allowed by law.

12. Dr. Hayward waives his right to a hearing before the Board or any court regarding all findings, terms, restrictions and conditions of this Consent Agreement. Dr. Hayward agrees that this Consent Agreement is a final order resolving Complaint No. CR12-174. 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.

13. After one year of compliance with the terms and conditions of this Consent Agreement, Dr. Hayward may request amendments to this Consent Agreement. The Board retains the sole discretion to grant or deny a request to

amend the terms and conditions of this Consent Agreement. Any decision made by the Board pursuant to this paragraph does not require an adjudicatory hearing and is not appealable.

14. The Board and the Maine Office of the Attorney General may communicate and cooperate regarding Dr. Hayward 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. This Consent Agreement constitutes disciplinary and adverse licensing action that 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).

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

17. The Board and Dr. Hayward agree that no further agency or legal action will be initiated against him by the Board based upon Complaint No. CR12-174, except or unless he fails to comply with the terms and conditions of this Consent Agreement.

18. Dr. Hayward 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, suspending or revoking his license.

19. Dr. Hayward acknowledges and agrees that, pursuant to Title 10 M.R.S. § 8003(5), the Board has the authority to suspend or revoke his medical license in the event that he fails to comply with any terms or conditions of this Consent Agreement.

20. Dr. Hayward has been represented by Michael A. Duddy, Esq., who has participated in the negotiation of this Consent Agreement.

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

I, THOMAS D. HAYWARD, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING IT, 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.

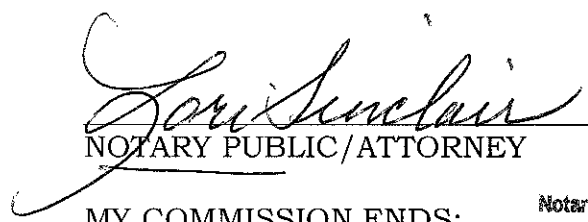
Dated: 6/10/17


THOMAS D. HAYWARD, M.D.

STATE OF Maine
Penobscot, S.S.

Personally appeared before me the above-named, Thomas D. Hayward, 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: 6/10/13


NOTARY PUBLIC/ATTORNEY

LORI A. SINCLAIR
Notary Public • State of Maine
My Commission Expires October 6, 2013


MY COMMISSION ENDS:

Dated: June 17, 2013


MICHAEL A. DUDDY, ESQ.
Attorney for Thomas D. Hayward, M.D.

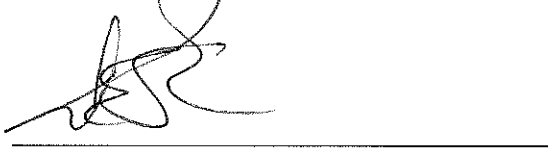
STATE OF MAINE BOARD OF
LICENSURE IN MEDICINE

Dated: 6/17/13


GARY R. HATFIELD, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF ATTORNEY GENERAL

Dated: 6/19/13


DENNIS E. SMITH
Assistant Attorney General

Effective Date: 6/19/13