

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:) CONSENT AGREEMENT
Lowell I. Gerber, M.D.) FOR DISCIPLINE
Complaint No. CR15-12)

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to practice medicine in the State of Maine held by Lowell I. Gerber, M.D. The parties to the Consent Agreement are: Lowell I. Gerber, M.D. (“Dr. Gerber”), 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. Gerber has held a license to practice medicine in the State of Maine since August 12, 2007 (license number MD17412), and specializes in Internal Medicine and Cardiovascular Disease.
2. On or about February 3, 2015, the Board received a complaint from Patient A who alleged that in late January 2014, she contacted Dr. Gerber to discuss treatment regarding Patient A’s daughter who has type 1 diabetes. Patient A alleged that following a few subsequent contacts, she entered into a patient relationship with Dr. Gerber and that Dr. Gerber offered a discounted fee to her for health care treatment to be provided to her, her daughter, and her son in exchange for Patient A’s assistance with the organization and publication of a book or how-to manual. Patient A alleged that Dr. Gerber saw patients, including her, in an office located in his home and that he had no

employees during the period that she was his patient. Patient A further alleged that her interactions with Dr. Gerber culminated in a sexual relationship, including three instances of sexual relations during September 2014 that occurred at his home. The Board docketed that complaint as CR15-12, and sent it to Dr. Gerber for a response.

3. On or about April 14, 2015, the Board received a written response from Dr. Gerber to the complaint. In his response, Dr. Gerber admitted that he dealt with Patient A “as a patient, as the mother of a diabetic daughter, and as a business associate who he collaborated with for the writing and marketing of a ‘how to do it’ manual for the ketoGAPS diet.” Dr. Gerber admitted that he had a brief sexual relationship with Patient A, and that it ended shortly after it started. In his response, Dr. Gerber acknowledged that the sexual relationship with Patient A was wrong and stated that he immediately wanted to self-report his conduct to the Board but was advised not to do so by a prior attorney, two counselors, and another physician. He denied many other allegations in the complaint, including other allegations of sexual impropriety.

4. On June 9, 2015, the Board reviewed all the information received regarding complaint CR15-12, and voted to issue an Order of Immediate Partial License Suspension for a period of thirty (30) days due preliminarily finding immediate jeopardy to the health and safety of the public who might receive his services that limited Dr. Gerber’s ability to practice medicine by providing that: 1) he may not practice medicine on female patients without the presence of a female chaperone; and 2) he may not practice medicine out of his home. The

Board also set the matter for an adjudicatory hearing to be held on July 7, 2015.

5. This Consent Agreement has been negotiated by legal counsel for Dr. Gerber and legal counsel for the Board in order to resolve complaint CR15-12 without an adjudicatory hearing. Absent Dr. Gerber's acceptance of this Consent Agreement by signing and dating it in front of a notary and mailing it to Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before July 1, 2015, the matter will be scheduled for an adjudicatory hearing. In addition, absent the Board's acceptance of this Consent Agreement by ratifying it on July 7, 2015, the matter will be scheduled for an adjudicatory hearing.

6. By signing this Consent Agreement, Dr. Gerber consents to the presentation of this proposed Consent Agreement for ratification to the Board. Dr. Gerber waives any arguments of bias or prejudice against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

COVENANTS

7. Dr. Gerber admits the facts stated above and that such conduct constitutes grounds for discipline pursuant to 32 M.R.S. §§ 3282-A(2)(E)(1), (F), (H), and Board Rules Chapter 10, §1(3), for engaging in sexual misconduct.

8. As discipline for the conduct described above, Dr. Gerber agrees to accept the following discipline:

a. A REPRIMAND. Dr. Gerber is hereby reprimanded by the Board for engaging in sexual misconduct with Patient A.

b. A LICENSE SUSPENSION of thirty (30) days commencing upon the execution of this Consent Agreement.

c. A CIVIL PENALTY in the amount of One Thousand Five Hundred Dollars (\$1,500.00), payment of which shall be made by certified check or money order made payable to "Treasurer, State of Maine," and remitted to Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137, within six (6) months of the execution of this Consent Agreement.

d. A LICENSE PROBATION for five (5) years following the execution of this Consent Agreement. The following specific conditions of probation are imposed:

(1) Requirement of a Chaperone: Dr. Gerber shall not treat or examine any female patient unless there is an adult chaperone present at all times during the treatment or examination. The chaperone may be a medical assistant, but may not be a member of Dr. Gerber's family or household. Dr. Gerber shall cause the chaperone to sign the corresponding patient record at the time of the treatment or examination attesting to their attendance during the patient examination or interaction. Upon request by the Board, Dr. Gerber shall immediately identify the chaperone utilized with regard to any patient and provide the chaperone's contact information. Dr. Gerber shall provide a copy of this Consent Agreement, together with any amendments

hereto, to any chaperone utilized in his medical practice and maintain a written record available for inspection signed by the chaperone that he/she has received and read the Consent Agreement.

(2) Notification of Practice Location: Dr. Gerber shall notify the Board in writing of any and all locations where he practices medicine. In complying with this condition, Dr. Gerber shall notify the Board in writing of any change(s) in the location(s) of his practice of medicine within seven (7) calendar days of any such change(s).

(3) Board Access: Dr. Gerber shall permit the Board or its agent(s) complete access to his medical practice, including but not limited to all patient records, and he shall permit the Board or its agent(s) to conduct random and/or announced inspections.

(4) Psychological Evaluation: Dr. Gerber shall obtain a comprehensive psychological evaluation from a licensed health care practitioner acceptable to the Board for the purpose of assessing and identifying any contributing illness or underlying conditions that may have predisposed Dr. Gerber to engage in sexual misconduct and that might put patients at risk. The evaluation required by this subparagraph shall be completed within thirty (30) days of the execution of this Consent Agreement. Dr. Gerber shall provide the Board with a copy of the evaluation and agrees to comply with any and all treatment or monitoring that is recommended as a result of the evaluation. In the event that the evaluation identifies recommended treatment or monitoring, Dr. Gerber shall have thirty (30) days

from the date the evaluation is received to provide the Board with a written plan for his compliance with those recommendations. The Board, in its sole discretion, may accept, modify, or reject Dr. Gerber's plan for compliance, and impose an alternative plan for compliance during term of the license probation imposed in this Consent Agreement.

(5) Medical Ethics and Boundaries Course: Dr. Gerber shall 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. Gerber 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.

(6) Requirement for Practice Monitor: Within thirty (30) days following the execution of this Consent Agreement, Dr. Gerber must have a Board-approved physician practice monitor who shall monitor his medical practice. In complying with this requirement, Dr. Gerber 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. Gerber and observe him within his medical practice at least once a week for an initial period to be determined at the sole discretion of the Board, and inform the Board if Dr. Gerber demonstrates any issues with regard to isolation, inappropriate boundaries or decision-making,

incompetence, unprofessionalism, or in the event that the monitoring physician has any other concerns related to Dr. Gerber's medical practice. The monitoring physician shall report any issues to the Board by telephone and in writing within 24 hours or as soon thereafter as possible. Dr. Gerber understands that the monitoring physician will be an agent of the Board pursuant to 24 M.R.S. § 2511. Dr. Gerber shall permit the monitoring physician full access to his medical practice, including but not limited to all patient information. The Board-approved monitor shall provide the Board with reports regarding Dr. Gerber's medical practice on or before November 7th, February 7th, May 7th, and August 7th of each year following the execution of this Consent Agreement, which reports shall include a statement identifying his personal observations and review of patient records, if any. Dr. Gerber shall promptly provide a copy of this Consent Agreement, together with any amendments hereto, to his monitoring physician.

(7) Within thirty (30) days of the execution of this Consent Agreement, Dr. Gerber shall reimburse the Board Six Hundred Twenty Two Dollars and Thirty Cents (\$622.30) as the actual costs incurred by the Board for the investigation of this matter. Payment shall be made by certified check or money order made payable to "Maine Board of Licensure in Medicine" and be remitted to Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137.

9. Violation by Dr. Gerber 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.

10. This Consent Agreement is not appealable and is effective until modified or rescinded in writing by the parties hereto.

11. The Board and the Department of the Attorney General may communicate and cooperate regarding Dr. Gerber or any other matter relating to this Consent Agreement.

12. 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.

13. 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).

14. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto. If any clause of this Consent Agreement is deemed illegal or invalid, then that clause shall be deemed severed from this Consent Agreement.

15. Dr. Gerber 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.

16. Dr. Gerber has been represented by James F. Martemucci, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

17. For the purposes of this Consent Agreement, the term "execution" means the date on which the final signature is affixed to this Consent Agreement.

I, LOWELL I. GERBER, 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: 7-2-15 
LOWELL I. GERBER, M.D.

STATE OF MAINE
CUMBERLAND, S.S.

Personally appeared before me the above-named Lowell I. Gerber, 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: 7-2-15 
NOTARY PUBLIC/ATTORNEY STATE OF MAINE

MY COMMISSION ENDS: _____

DATED: 7-2-15 
JAMES F. MARTEMUCCI, ESQ.
Attorney for Lowell I. Gerber, M.D.


STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 7/7/15


MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: July 7, 2015


MICHAEL MILLER
Assistant Attorney General

Effective Date: July 7, 2015