

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:) CONSENT AGREEMENT
MALATHY SUNDARAM, M.D.)
Complaint Nos. CR15-116,)
CR15-137, CR15-178, CR16-33)

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 Malathy Sundaram, M.D. The parties to the Consent Agreement are: Malathy Sundaram, M.D. ("Dr. Sundaram"), 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. Sundaram has held a license to practice medicine in the State of Maine since August 29, 2003 (license number MD16273), and reports that she is board certified in family medicine by the American Board of Family Medicine.

2. On August 6, 2015, the Board received a complaint from Patient 15-116 alleging that Dr. Sundaram treated her for Lyme disease from 2012 until April 2015. Patient 15-116 stated that her treatment included long term IV and oral antibiotics and vitamin B-12 shots. She told the Board that she was ill for years from all the medications that were prescribed by Dr. Sundaram. She also alleged that Dr. Sundaram wanted her to have a port placed in her chest and suggested that she receive magnet treatments which

the patient refused. The patient alleged that she changed providers to an infectious disease specialist, and her medical records were never sent by Dr. Sundaram as requested. Patient 15-116 stated that her new provider took blood work and told her that she never had Lyme disease. The Board docketed that complaint as CR15-116, and sent it to Dr. Sundaram for a response.

3. By letter dated November 2, 2015, Dr. Sundaram responded to complaint CR15-116. Dr. Sundaram explained that she provided treatment to patient 15-116 for about three years and initially saw her for a complaint of weakness and worsening fatigue. Dr. Sundaram noted that the patient also reported arthritis with back and joint pain. Dr. Sundaram explained her basis for diagnosing and treating chronic Lyme disease based on the patient's symptoms, report of a tick bite fifteen years earlier, and CD-57 lab results. Dr. Sundaram initially prescribed oral antibiotics. Dr. Sundaram acknowledged that she discussed with the patient trying IV antibiotics, and in November 2012, ordered the insertion of a PICC line for Patient 15-116 at a local hospital. Due to the closure of the hospital infusion center during Thanksgiving holidays, Dr. Sundaram ordered the administration of intramuscular injections of Rocephin on four days during the holiday period. Patient 15-116 was administered a four week course of IV antibiotics in November and December 2012. Dr. Sundaram reported to the Board that she stopped administering IV medications in her practice in December 2013. She indicated that she began to order weekly vitamin B-12 injections for Patient 15-116 from May 2013 through April 2015 to help with the patient's symptoms of "persistent Lyme

disease.” Dr. Sundaram stated that she believed, and the patient reported, that the B-12 injections were helpful. Dr. Sundaram provided a copy of the informed consent form for vitamin B-12 injections that she has utilized since 2013 that was signed by Patient 15-116. The informed consent form included an initial statement that “most physicians do not believe in monthly or bi-weekly Vitamin B-12 injections as there is no scientific proof that it helps” and also lists several potential side effects. Dr. Sundaram stated that the patient picked up a copy of her entire medical record.

4. Patient 15-116 submitted a rebuttal to Dr. Sundaram’s response, which was received by the Board on November 12, 2015. In her rebuttal, Patient 15-116 stated that she initially saw Dr. Sundaram for blood pressure issues, she had to request her records more than once, and her new provider told her that she never had Lyme disease. Patient 15-116 reiterated how the treatment prescribed by Dr. Sundaram made her sick for more than two years.

5. On or about September 12, 2015, the Board received a complaint from Patient 15-137 alleging that Dr. Sundaram diagnosed her in February 2012 with chronic Lyme disease and that she underwent insertion of a PICC line at a local hospital, was administered IV antibiotics for three and one half months, and took oral antibiotics for an extended period which caused severe diarrhea and dehydration. She reported that she went to Dr. Sundaram for weight management and complained of chronic fatigue. Patient 15-137 stated that she had previously been treated by another provider for hypothyroidism and that Dr. Sundaram told her that she no longer needed her thyroid

medication. Patient 15-137 stated that Dr. Sundaram started treating her with vitamin B-12 shots twice a week. Patient 15-137 indicated that subsequent providers told her that she did not have Lyme disease. Patient 15-137 also indicated that Dr. Sundaram failed to provide her medical records as requested to another provider, but acknowledged that she was provided a copy directly by Dr. Sundaram's office. The Board docketed that complaint as CR15-137, and sent it to Dr. Sundaram for a response.

6. Dr. Sundaram responded to complaint CR15-137 by letter dated November 24, 2015. Dr. Sundaram started treating Patient 15-137 in November 2010 after a referral from her primary care provider for weight loss treatment. Patient 15-137 was suffering from low back pain. She was not Patient 15-137's primary care provider. Dr. Sundaram diagnosed Patient 15-137 with chronic Lyme disease in December 2012 based upon her complaints of significant fatigue, joint pain, tingling and numbness in her upper extremities, and her CD-57 test results. She acknowledged that there was no history of a tick bite for Patient 15-137. Dr. Sundaram described her treatment for Patient 15-137 in her response, which included initial treatment of oral antibiotics for six months, followed by two and one half months of IV antibiotics, and vitamin B-12 injections. Dr. Sundaram reported that she engaged Patient 15-137 in a discussion in May 2013 that treatment for chronic Lyme disease is not an FDA approved treatment and that the patient expressed understanding. Dr. Sundaram denied that she advised Patient 15-137 to

discontinue her thyroid medication. She treated Patient 15-137 until June 2013.

7. On December 8, 2015, the Board received a complaint from a Certified Residential Medication Aide ("CRMA") stating that on December 1, 2015, she had contacted Dr. Sundaram about Patient 15-178 needing "medication for anxiety." The CRMA stated that Patient 15-178 was new to the facility, had dementia and was very confused. She stated that Patient 15-178 was scratching herself and causing open sores on her body. The CRMA stated that Dr. Sundaram faxed an order for amitriptyline 10 mg. [antidepressant] but the pharmacy indicated that the medication would interact with the medication Zoloft that Patient 15-178 was already taking. The CRMA stated that Dr. Sundaram was contacted about the communication from the pharmacy and she then discontinued the order and wrote that the patient "can suffer from itching." In a subsequent contact, Dr. Sundaram indicated that she would order Benadryl but nothing for anxiety. The Board docketed that complaint as CR15-178, and sent it to Dr. Sundaram for a response.

8. On April 7, 2016, the Board received Dr. Sundaram's response to complaint CR15-178. Dr. Sundaram reported that Patient 15-178 has been her patient since May 2013. She acknowledged that she received a request from Patient 15-178's assisted living facility on December 1, 2015, reporting that the patient was "digging at herself" and inquiring whether Dr. Sundaram wanted "to give her something for nerves." Dr. Sundaram prescribed amitriptyline 10 mg. She stated that she was aware that the patient was also

prescribed Zoloft 100 mg once a day, which is why she prescribed a very low dose of amitriptyline. She stated that there is no absolute contraindication with Zoloft and that her understanding is that the risks of QT prolongation and serotonin syndrome occur with the addition of a much higher dose of amitriptyline. Dr. Sundaram stated she did not expect that the patient would suffer any side effects from taking such a low dose of amitriptyline, but since the patient was in assisted living “any side effect would be recognized immediately by trained staff at the facility.” Dr. Sundaram acknowledged that her fax did contain a notation about the patient dealing with the itching and realizes that her “word choice should have been different.” Dr. Sundaram suggested that Benadryl might help with the itching. Dr. Sundaram stated that she was not comfortable prescribing an anxiolytic benzodiazepine over the phone without evaluating the patient, which was her impression of what the facility staff was seeking.

9. On January 21, 2016, the Board received a complaint from Patient 16-33 who told the Board that she first saw Dr. Sundaram in connection with her weight loss program. Dr. Sundaram later became her primary care physician. In January 2016, Patient 16-33 needed to cancel an appointment with Dr. Sundaram the day before it was scheduled. As a result, she was told that she would be charged a fee because 24 hour advance notice was not provided. Patient 16-33 stated that she had signed the cancellation fee policy and understands why it exists but wanted to speak with Dr. Sundaram about it hoping that she would waive the fee because she had been a “loyal,

respectful, flexible and understanding patient for several years.” At her next appointment on January 21, 2016, Patient 16-33 reported that she told the receptionist that she would like to speak with Dr. Sundaram about the fee and that she had an ongoing concern about Dr. Sundaram’s punctuality. Patient 16-33 indicated that she was frequently scheduled for the first appointment of the day and that Dr. Sundaram was habitually late. The patient reported that Dr. Sundaram was “hostile, irrational and extremely unprofessional” when she attempted to discuss the late fee and Dr. Sundaram’s punctuality. Dr. Sundaram told Patient 16-33 that she no longer wished to be her physician.

On February 12, 2016, Patient 16-33 additionally reported to the Board that she saw Dr. Sundaram’s record of their last appointment and was “shocked to find an inflammatory and completely false recap of our final appointment.” As an example, Patient 16-33 stated that Dr. Sundaram noted that she allegedly “referred to her late fee policy as ‘retarded,’” and indicated that as a teacher working on her second master’s degree in administration, she would never “refer to anyone or anything as retarded.” The Board docketed the complaint as CR16-33, and sent it to Dr. Sundaram for a response.

10. On April 28, 2016, Dr. Sundaram responded to complaint CR16-33. She reported that Patient 16-33 became her patient starting in February 2011. Dr. Sundaram agreed that until the January 2016 appointment they had a good physician-patient relationship and that she was “stunned when [she] walked into the exam room ... and was immediately and aggressively confronted by [Patient 16-33] demanding that if [Dr. Sundaram] was going to

ask her to sign her office policies, she must be seen at exactly 7:00 a.m. for all future appointments.” Dr. Sundaram told the Board that she would have agreed to waive the cancellation fee had Patient 16-33 asked her to do so. Dr. Sundaram stated that Patient 16-33 was aggressive and extremely agitated and that she responded to Patient 16-33 in a calm and professional manner. Regarding the termination of the physician-patient relationship, Dr. Sundaram felt that it was a mutual decision. Dr. Sundaram told the Board that the use of the term “retarded” in her note was based upon what Patient 16-33 “told staff at the front desk” and she cannot recall specifically whether Patient 16-33 used that word but that is what she understood her to have said at the time she wrote the note in the medical record.

11. Patient 16-33 submitted a rebuttal to Dr. Sundaram’s response that was received on May 13, 2016, and she took issue with Dr. Sundaram’s entire response, stating that she was not confrontational and that it was Dr. Sundaram who became extremely upset.

12. On January 12, 2016, the Board reviewed complaints CR15-116, 15-137, and 15-178, and voted to obtain an independent outside review of twenty of Dr. Sundaram’s patient charts. Following receipt of Complaint CR 16-33, the Board staff included those records in the independent outside review.

13. On August 12, 2016, the Board received the independent outside review from a Maine licensed physician who is board certified in family practice and geriatric medicine by the American Board of Medical Specialties (“ABMS”).

Based upon a review of the patient charts, the independent outside reviewer identified several issues related to medical decision-making, medical knowledge, and prescribing practices/ordering of tests, and medical record documentation.

14. On June 9, 2015, the Board issued a Letter of Guidance to Dr. Sundaram discussing the importance of maintaining clear communication of prescribing policies, treatment plans, and documentation in the medical record.

15. On October 13, 2015, the Board issued a Letter of Guidance to Dr. Sundaram following a complaint revealing areas of concern related to her informed consent process, medical record documentation, and prescribing practices. The Board recommended that she continue with implemented practice changes regarding pharmacology and prescribing practices.

16. Pursuant to 32 M.R.S. § 3282-A(2)(E), the Board may impose discipline if the licensee has engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public, or that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed.

17. Pursuant to 32 M.R.S. § 3282-A(2)(F), the Board may impose discipline if the licensee has engaged in conduct that violates a standard of professional behavior that has been established for the practice of medicine.

18. On September 13, 2016, the Board reviewed complaints CR15-116, 15-137, 15-178, and 16-33, and voted to set these matters for an adjudicatory hearing.

19. Legal counsel for Dr. Sundaram and the Board have negotiated this Consent Agreement in order to resolve these matters without completing an adjudicatory hearing.

COVENANTS

20. Dr. Sundaram does not admit the facts above, but agrees that if the Board were to conclude an adjudicatory hearing in these matters, the Board would have sufficient evidence by a preponderance of the evidence by which it could find that grounds for discipline exist pursuant to 32 M.R.S. §§ 3282-A(2)(E),(F). The Board hereby finds that grounds for discipline exist pursuant to 32 M.R.S. §§ 3282-A(2)(E),(F).

21. Dr. Sundaram agrees to accept the following discipline:

a) A LICENSE REQUIREMENT that:

1) Dr. Sundaram shall obtain a Clinical Competence Assessment (“the CPEP Assessment”) from The Center for Personalized Education for Physicians (“CPEP”). Within thirty (30) days of the effective date of this Consent Agreement Dr. Sundaram shall complete the intake form and provide all requested information necessary to enroll in and obtain the CPEP Assessment. Dr. Sundaram shall complete the CPEP Assessment on the first available dates provided by CPEP. Dr. Sundaram shall sign all necessary releases prior to enrollment so that CPEP may communicate directly with the

Board or Board staff regarding the CPEP Assessment and ensure that the Board receives the CPEP Assessment report. Dr. Sundaram SHALL COMPLY with all recommendations contained in the CPEP Assessment report, unless the Board approves, in its sole discretion, a comparable alternative recommendation.

2) Should the CPEP Assessment report identify areas for performance improvement that could be remediated through the development and implementation of an educational plan or educational intervention program by CPEP (“the CPEP Education Plan”), Dr. Sundaram shall promptly engage CPEP to develop and implement a CPEP Education Plan. Dr. Sundaram SHALL COMPLY with all provisions of a CPEP Education Plan, unless the Board approves, in its sole discretion, comparable alternative provision(s) for the CPEP Education Plan. Dr. Sundaram shall sign all necessary releases so that CPEP may communicate directly with the Board or Board staff regarding the CPEP Education Plan and ensure that the Board receives the CPEP Education Plan and all associated progress reports or communications.

3) Should Dr. Sundaram be required pursuant to this Consent Agreement to develop and implement the CPEP Education Plan, Dr. Sundaram shall upon completion of the CPEP Education Plan enroll in the CPEP Practice Monitoring Program, unless Dr. Sundaram requests and the Board approves, in its sole discretion, an alternative monitoring program (“the Practice Monitoring Program”). Dr. Sundaram shall participate in the Practice

Monitoring Program for at least two (2) years or until the Board is satisfied that Dr. Sundaram's practice of medicine consistently meets applicable standards of care. In the event that the Board preliminarily decides that Dr. Sundaram shall continue in the Practice Monitoring Program for any period beyond two (2) years, the Board shall provide written notice to Dr. Sundaram regarding the basis for the determination and specify the anticipated duration of any continued monitoring. Dr. Sundaram shall have an opportunity to respond to such written notice prior to the Board's determination. Such determination that Dr. Sundaram shall continue in the Practice Monitoring Program by the Board is not subject to appeal. Dr. Sundaram SHALL COMPLY with all provisions of the Practice Monitoring Program. Dr. Sundaram shall sign all necessary releases so that CPEP or an approved alternative monitoring program may communicate directly with the Board or Board staff regarding the Practice Monitoring Program and ensure that the Board receives all monitoring reports or correspondence.

4) Upon a Board determination that Dr. Sundaram is in material noncompliance of any requirement related to the CPEP Assessment, CPEP Education Plan, or Practice Monitoring Program as set forth in this Paragraph 21(a), without having sought and received prior approval for the noncompliance by the Board, the Board Executive Director, or the Board Assistant Executive Director, Dr. Sundaram's license to practice medicine may be suspended, effective immediately, which license suspension shall continue until

compliance has been achieved as determined by the Board or Board staff, if delegated.

b) Dr. Sundaram shall reimburse the Board for PAYMENT OF COSTS related to the investigation and hearing in these matters in the amount of Eight Thousand Four Hundred Seventy Nine Dollars (\$8,479.00), payment of which shall be made within four (4) years of the effective date of this Consent Agreement.

22. Dr. Sundaram acknowledges that while this Consent Agreement is in effect she must directly communicate with the Board or Board staff and has the obligation to respond to any request for information or documentation within the timeframe specified or requested. Failure to comply with or respond to any request will be considered a violation of this Consent Agreement.

23. Any conduct of Dr. Sundaram described herein may be considered in future Board action(s) as evidence of a pattern of misconduct.

24. Violation by Dr. Sundaram 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.

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

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

27. 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-A.

28. This Consent Agreement constitutes discipline and is an adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB), the Federation of State Medical Boards (FSMB), and other licensing jurisdictions.

29. 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.

30. Dr. Sundaram acknowledges by her signature hereto that she has read this Consent Agreement, that she has had an opportunity to consult with an attorney before executing this Consent Agreement, that she executed this Consent Agreement of her own free will and that she agrees to abide by all terms and conditions set forth herein.

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

32. 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, MALATHY SUNDARAM, 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: 8/4/17 Malathy Sundaram
MALATHY SUNDARAM, M.D.

STATE OF Maine
Cumberland, S.S.

Personally appeared before me the above-named Malathy Sundaram, 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.

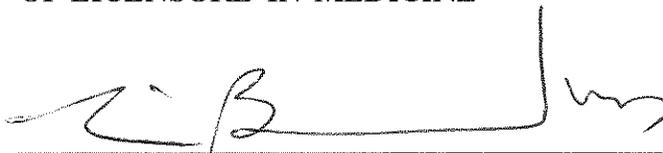
DATED: 8/4/2017 [Signature]
NOTARY PUBLIC/ATTORNEY
Maine Bar # 3283

MY COMMISSION ENDS: _____

DATED: 8/4/2017 [Signature]
KENNETH W. LEHMAN, Esq.
Counsel for Malathy Sundaram, M.D.

STATE OF MAINE BOARD
OF LICENSURE IN MEDICINE

DATED: 8/8/17



LOUISA BARNHART, M.D., Acting
Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: August 8, 2017



MICHAEL MILLER
Assistant Attorney General

Effective Date: