



STATE OF MAINE  
 BOARD OF NURSING  
 158 STATE HOUSE STATION  
 AUGUSTA, MAINE  
 04333-0158

PAUL R. LePAGE  
 GOVERNOR

MYRA A. BROADWAY, J.D., M.S., R.N.  
 EXECUTIVE DIRECTOR

**IN RE: DAVID J. HORNER** ) **CONSENT AGREEMENT**  
 of Bangor, ME ) **FOR VOLUNTARY**  
 License #R036877 ) **SURRENDER OF LICENSE**

**INTRODUCTION**

This document is a Consent Agreement (“Agreement”) regarding David J. Horner’s license as a registered professional nurse in the State of Maine. The parties to this Agreement are David J. Horner (“Licensee” or “Mr. Horner”), Maine State Board of Nursing (“Board”) and the Office of the Attorney General, State of Maine. The parties enter into this Agreement pursuant to 32 M.R.S. § 2105-A (1-A) (C), 10 M.R.S. §§ 8003 (A-1) (4), 8003 (5) (B) and 8003 (5) (D). The parties reached this Agreement on the basis of a Board Notice of Complaint dated February 23, 2011, with: 1) a LabCorp Report dated November 19, 2010; 2) correspondence from Medical Professionals Health Program dated November 29, 2010 and January 28, 2011; and 3) a provider report from Dorothea Dix Psychiatric Center dated February 14, 2011.

**FACTS**

1. David J. Horner has been licensed as a registered professional nurse to practice in Maine since November 1993.
2. David J. Horner was employed as a registered professional nurse at Dorothea Dix Psychiatric Center from November 22, 1993 until his resignation, effective February 22, 2011, because of alcohol related job performance issues [Exhibit 1].
3. David J. Horner entered a five-year monitoring contract with the Medical Professionals Health Program (“MPHP”) on March 15, 2010 because of his history of alcohol dependence. He remained compliant until November 16, 2010 when he tested positive for metabolites of alcohol on a random urine screening test. This incident resulted in closer monitoring between MPHP and the Licensee’s treatment team, with an increase of forensic toxicology screens.
4. David J. Horner reported to work in an impaired state on January 13, 2011; he was sent home and placed on administrative leave while he sought formal in-patient residential treatment as recommended by MPHP. Despite making arrangements for in-patient treatment, Mr. Horner notified MPHP on January 28, 2011 that he was not going to pursue treatment and no longer wished to submit to random urine drug screens. The Board was subsequently notified by MPHP that Mr. Horner prematurely terminated his voluntary monitoring contract.
5. At its June 1-2, 2011 meeting, the Board voted to summarily suspend Mr. Horner’s nursing license because of the immediate jeopardy his continued practice of nursing posed to the health and physical safety of the public.
6. David J. Horner has resigned from Dorothea Dix Psychiatric Center, is no longer employed in the nursing field, and did not renew his license when it expired on April 26, 2011. He has offered to surrender his registered professional nursing license based upon the above-stated facts and thereby waives his right to an adjudicatory hearing.



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### AGREEMENT

7. The Maine State Board of Nursing will accept David J. Horner's offer to voluntarily surrender his registered professional nursing license. Mr. Horner understands and agrees that should this matter go to hearing before the Board on the above-stated facts and the underlying information to support those facts, it is more likely than not they would support the Board's findings in this Agreement. Further, he understands and agrees that this document imposes discipline regarding his nursing practice in the State of Maine. The grounds for discipline are found under Title 32 M.R.S. § 2105-A(2)(A), (2)(B), (2)(E), (2)(F) and (2)(H) and Chapter 4, Sections 1(A)(1), 1(A)(2), 1(A)(5), 1(A)(6), 1(A)(8) and Chapter 4, Sections 3(F) of the Rules and Regulations of the Maine State Board of Nursing. Specifically, the violations are:

Title 32 M.R.S. §§:

- a. 2105-A (2) (A). Mr. Horner engaged in the practice of fraud or deceit in connection with a service rendered within the scope of his license. (See also Chapter 4, Section 1.A.1.)
  - b. 2105-A (2) (B). Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients. (See also Rule Chapter 4, Section 1.A.2.)
  - c. 2105-A (2) (E). Incompetence. A licensee is considered incompetent in the practice for which s/he is licensed if the licensee has:
    1. Engaged in conduct which evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public. (See also Rule Chapter 4, Section 4.1.A.5.a.)
    2. Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed. (See also Rule Chapter 4, Section 4.1.A.5.b)
  - d. 2105-A (2) (F). Unprofessional Conduct. Mr. Horner has engaged in unprofessional conduct by violating standards of professional behavior that have been established in the practice for which he is licensed. (See also Rule Chapter 4, Section 1.A.6.)
  - e. 2105-A (2) (H). A violation of this chapter or a rule adopted by the Board. (See also Rule Chapter 4, Section 1.A.8.)
  - f. Chapter 4, Section 3. *Unprofessional Conduct* as defined by the Rules and Regulations of the Maine State Board of Nursing states that *Nursing behavior which fails to conform to legal standards of the nursing profession, and which could reflect adversely on the health and welfare of the public shall constitute unprofessional conduct and shall include, but shall not be limited to, the following:*
    - F. Failure to take appropriate action or follow policies and procedures in the practice situation designed to safeguard the patient.
8. David J. Horner understands and agrees that his nursing license will remain on surrender status and subject to the terms of this Agreement indefinitely until and unless the Board, at his written request, votes to reinstate his license. Mr. Horner understands and agrees that if the Board reinstates his license, it will be for a probationary period.
9. The State of Maine is a "Party state" that has adopted the Nurse Licensure Compact ("Compact"), which is set out in Chapter 11 of the Rules and Regulations of the Maine State Board of Nursing. The State of Maine is Mr. Horner's "Home state" of licensure and primary state of residence, which means that he has declared the State of Maine as his fixed permanent and principle home for legal purposes; his domicile. Other Party

states in the Compact are referred to as "Remote states," which means Party states other than the Home state that have adopted the Compact. Mr. Horner understands this Agreement is subject to the Compact.

10. David J. Horner understands that he does not have to execute this Consent Agreement and has the right to consult with an attorney before entering into the Agreement.
11. David J. Horner shall not work or volunteer in any capacity for a health care provider as defined by Title 24 M.R.S. § 2502 (2) or in any position holding himself out as a registered professional nurse or with the designation "RN" while his nursing license is surrendered.
12. This 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. Modification of this Agreement must be in writing and signed by all parties.
14. This Agreement is not subject to review or appeal by the Licensee, but may be enforced by an action in the Superior Court.
15. David J. Horner affirms that he executes this Agreement of his own free will.
16. This Agreement becomes effective upon the date of the last necessary signature below.


**I, DAVID J. HORNER, HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY AND AGREE TO BE BOUND BY THIS AGREEMENT. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND.**

DATED: 7/11/2011

  
\_\_\_\_\_  
DAVID J. HORNER

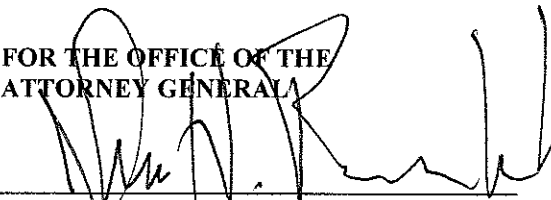
FOR THE MAINE STATE  
BOARD OF NURSING

DATED: 7/17/11

  
\_\_\_\_\_  
MYRA A. BROADWAY, J.D., M.S., R.N.  
Executive Director

FOR THE OFFICE OF THE  
ATTORNEY GENERAL

DATED: 7/19/11

  
\_\_\_\_\_  
JOHN H. RICHARDS  
Assistant Attorney General

STATE'S EXHIBIT  
1  
RECEIVED 800-631-6899



**Adult Mental Health Services**  
An Office of the  
Department of Health and Human Services

John E. Baldacci, Governor      Brenda M. Harvey, Commissioner

Department of Health and Human Services  
Dorothea Dix Psychiatric Center  
656 State Street  
P.O. Box 926  
Bangor, Maine 04402-0926  
Tel: (207) 941-4000; Fax: (207) 941-4062  
TTY: 1-888-774-5290

Monday, February 14, 2011

RECEIVED

FEB 15 2011

MAINE STATE BOARD OF NURSING

Dorothea Dix Psychiatric Center  
656 State Street  
Bangor, ME 04401

Dear: Ms. Winters,

**As per §2506. Provider, entity and carrier reports**

A health care provider or health care entity shall, within 60 days, report in writing to the disciplined practitioner's board or authority the name of any licensed, certified or registered employee or person privileged by the provider or entity whose employment or privileges have been revoked, suspended, limited or terminated or who resigned while under investigation or to avoid investigation for reasons related to clinical competence or unprofessional conduct, together with pertinent information relating to that action. Pertinent information includes: a description of the adverse action; the name of the practitioner involved; the date, the location and a description of the event or events giving rise to the adverse action; and identification of the complainant giving rise to the adverse action.

It is our understanding that your facility recently suspended/terminated a nursing employee. Please be advised that §2506 of the Maine Health Security Act (Chapter 21, Title 24 MRSA) requires the following:

In accordance with the above mentioned Maine Health Security Act the following timeline of events is being reported to the MSBON in regards to Mr. David Horner, RN

- On 6/5 2009 former ADON, Joni Crossman documents a strong smell of alcohol and referred Mr. Horner to EAP.
- On 6/12/2009 Mr. Horner entered an outpatient alcohol and drug program at Acadia hospital from 6/12/2009-6/17/2009.
- Friday 11/6 2009 DON & ADON received a phone call from hospital RN house supervisor that Mr. Horner was suspected of being impaired. DON & ADON interviewed Mr. Horner and determined he was impaired. Mr. Horner was suspended on administrative paid leave and encouraged to seek treatment. Mr. Horner did not admit to being impaired.
- Monday 11/9/2009 Mr. Horner was given vacation time till the 18<sup>th</sup> and then medical leave to attend drug and alcohol program at Acadia hospital for 30 days.
- Mr. Horner returned to work 11/23/2009.
- Friday 2/26/2010 10:30 PM DON & ADON received call from Nursing House Supervisor that Mr. Horner appeared impaired. DON & ADON came to hospital, interviewed Mr. Horner and determined that he seemed impaired, ordered a taxi to take him home-he left without using the taxi. Mr. Horner was suspended on administrative paid leave and referred to EAP and encouraged self referral to counselor at Acadia.

3/15/2010 DON referred Mr. Horner to Medical Professionals Health Program. Mr. Horner entered voluntary MPHP program.

6/2/2010 returned to work.

6/30/2010 ADON sent first report to MPHP. At this point Mr. Horner was working and no complaints were pending.

11/29/2010 DDPC informed that Mr. Horner had a positive urine alcohol screen test. DON & ADON assessed Mr. Horner and he did not appear to be impaired. Relapse did not obviously effect work performance.

1/12/2011 Impaired upon arrival at work as assessed by 2 RN House Supervisors. Supervisors sent Mr. Horner home and then called ADON & DON. ADON & DON did not have opportunity to assess Mr. Horner.

1/12 2011 Mr. Horner placed on administrative paid leave.

1/18/2011 Mr. Horner in to meet with DON & ADON and HR director.

1/18/2011 Mr. Horner placed on unpaid disciplinary administrative leave for 30 days.

1/19/2010 Mr. Horner scheduled to enter into an inpatient treatment program in Pennsylvania.

1/19/2011 Mr. Horner decides not to enter inpatient program and informs MPHP that he is withdrawing from the MPHP. MPHP informs DDPC of these events.

1/24/2011 Mr. Horner enters into a last chance agreement with DDPC. Agreement is for Mr. Horner to comply with DDPC P&P on impairment and maintain sobriety.

1/27/2011 Mr. Horner given an opportunity to explain situation and reason for not entering program and for decision to remove himself from the MPHP program.

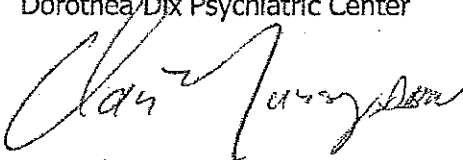
1/28/2011 Mr. Horner does not respond to request to explain situation. HR sent letter to request a meeting with Mr. Horner 2/1/2011.

2/1/2011 Mr. Horner did not respond to letter or attend requested meeting.

2/3/2011 Letter sent from HR Director to Mr. Horner. Letter states Mr. Horner's employment terminated, 2/3/2011, scheduled exit interview with HR on the 2/8/2011.

2/9/2011 Mr. Horner meets with HR director and requests the ability to resign effective 2/22/2011, Mr. Horner does not return to work or perform any duties of employment. HR director and department grants request.

Daniel Munsey  
Director of Nursing  
Dorothea Dix Psychiatric Center

 2/14/2011