BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **PATRICK J. DEAN, M.D.** Applicant For the Practice of Allopathic Medicine In the State of Arizona.	Case No. MD-07-L015A **CONSENT AGREEMENT TO ISSUE MEDICAL LICENSE AND FOR LETTER OF REPRIMAND WITH PROBATION**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Patrick J. Dean, M.D. ("Applicant"), the parties agreed to the following disposition of this matter.

1. Applicant has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Applicant acknowledges he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Applicant voluntarily relinquishes any rights to a further hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement or any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Applicant.

5. This Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any

waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending or future investigation, action or proceeding. The acceptance of this Consent Agreement does not preclude any other agency, subdivision or officer of this State from instituting other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

6. All admissions made by Applicant are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Applicant. Therefore, said admissions by Applicant are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.

7. Upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Applicant may not revoke the acceptance of the Consent Agreement. Applicant may not make any modifications to the document. Any modifications to this original document are ineffective and void unless mutually approved by the parties.

8. If the Board does not adopt this Consent Agreement, Applicant will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defense.

9. This Consent Agreement, once approved and signed, is a public record that will be publicly disseminated as a formal action of the Board and will be reported to the National Practitioner Data Bank and to the Arizona Medical Board's website.

10. If any part of the Consent Agreement is later declared void or otherwise unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force and effect.

11. Any violation of this Consent Agreement constitutes unprofessional conduct and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter") and 32-1451.

12. Applicant has read and understands the condition(s) of probation.

PATRICK J. DEAN, M.D. DATED: 02/04/08

APPROVED AS TO FORM

PAUL GIANCOLA, Esq. DATED: 02/04/08

FINDINGS OF FACT

1. The Arizona Medical Board ("Board") is the authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.

2. On or about January 19, 2006, Patrick J. Dean, M.D. ("Applicant") submitted an application for licensure with the Board.

3. Applicant is a pathologist who is the president and an employee of GI Pathology, PLLC, which is a nation-wide gastrointestinal pathology practice operated from Memphis, Tennessee. He is board certified in anatomic and clinical pathology.

4. Because of the nation-wide practice of GI Pathology, PLLC, the pathologists it employs hold multiple medical licenses issued by various states' licensing boards.

5. Paragraph 3 of the application requested that Applicant disclose all licenses held by him and any pending license application(s). Applicant failed to disclose that he also had a pending application for licensure in North Carolina.

6. By letter dated September 15, 2006, Applicant disclosed to the Board that he had entered into a Consent Order with the North Carolina Medical Board. The Consent Order provided that the North Carolina Medical Board would issue Applicant a medical license and would reprimand that license due to Applicant's unlicensed practice of medicine in North Carolina.

7. The Board's investigation of Applicant's application revealed that between July 2004 and November 2005, Applicant had reviewed over 600 North Carolina patient specimens prior to becoming licensed in North Carolina. Applicant was financially compensated for that work.

8. By letter dated October 8, 2004, Applicant wrote to one of his company's North Carolina clients, Ms. Phyllis Wade of Salem Gastroenterology Associates, P.A.,

regarding the issue of North Carolina medical licensure. Applicant stated that his company had obtained a legal opinion from counsel "that, from a 'letter of the law' reading, physicians of GI Pathology Partners require medical licensure in the State of North Carolina." Applicant further advised Ms. Wade that his company's physicians were in the process of applying for licensure in North Carolina.

9. Applicant informed Ms. Wade that he would "personally accept the risk to continue to work with you, if you on your end accept the risk to continue to work with us." Applicant stated the following reasons for his willingness to continue to do business with the client prior to obtaining North Carolina licensure:

> a. I currently hold medical licensure in four states and my application for North Carolina licensure is being/has been submitted. To suggest that I am arbitrarily ignoring North Carolina law carries no weight. Once we became aware of the specific licensure requirements, we filed for medical licensure immediately.
> b. The risk, in my estimation, is weak. As researched by [counsel], there has never been an example of "prosecution or termination of license for the proposed activities."
> c. Finally, it would appear that the legalistic concern regarding licensure has not been raised out of a high-minded concern for ethics and the law. Since GI Pathology Partners delivers the finest quality and service to gastroenterologists (fellowship-educated gastrointestinal pathologists only diagnosis [*sic*] and next day turnaround time nationwide). I will not kowtow to venal arguments designed to scare little children in the dark. I will not abandon my gastroenterologist colleagues.

10. On or about September 14, 2006, Applicant was issued a medical license in North Carolina after executing the Consent Order.

11. By letter dated September 29, 2006, the Medical Board of California disclosed to Applicant that it had conducted an investigation of his unlicensed practice of medicine in North Carolina. The Medical Board of California offered Applicant the choice of accepting a Public Letter of Reprimand, which is a public disciplinary action, in lieu of formal disciplinary proceedings. On October 18, 2006, Applicant agreed in writing to a Public Letter of Reprimand.

12. By letter dated October 12, 2006, the Connecticut Medical Examining Board informed Applicant that it would not pursue any action against Applicant's Connecticut medical license as a result of his unlicensed medical practice in North Carolina. Applicant had voluntarily disclosed the North Carolina matter to the Connecticut Medical Examining Board.

13. By letter dated October 18, 2006, the Office of Chief Counsel for the Commonwealth of Pennsylvania Department of State informed Applicant that it decided not to file formal charges against Applicant's Pennsylvania medical license due to his unlicensed practice of medicine in North Carolina.

14. By letter dated October 18, 2006, the State of New York Department of Health informed Applicant that the issue of his unlicensed medical practice in North Carolina and subsequent discipline imposed by the North Carolina Medical Board would be investigated by the Office of Professional Medical Conduct.

15. By letter dated October 19, 2006, the Board's license investigative coordinator, Anita Shepherd, informed Applicant that the Board would be investigating the North Carolina Consent Order. Ms. Shepherd requested that Applicant provide further information for the investigation.

16. By letter dated October 24, 2006, Applicant responded to Ms. Shepherd's October 19, 2006 letter.

17. On or about October 25, 2006, the Medical Board of California issued a Public Letter of Reprimand to Applicant's Physician's and Surgeon's California Certificate # G-87759 based upon his "repeated and continual diagnosing of specimens of North Carolina patients without a North Carolina license to practice medicine."

18. By letter dated November 3, 2006, Ms. Shepherd requested documentation concerning the North Carolina Consent Order from the North Carolina Medical Board.

19. By letter dated November 6, 2006, the North Carolina Medical Board's investigator, Don Pittman, responded to Ms. Shepherd's November 3, 2006 letter. Mr. Pittman transmitted the requested documentation to her. Mr. Pittman advised that Applicant had met with the North Carolina Medical Board during its July 2006 meeting. As a result of that meeting, the North Carolina Medical Board "voted to issue [Applicant] a NC medical license via a consent order with a reprimand for his flagrant disregard of North Carolina law."

20. By letter dated November 21, 2006, Ms. Shepherd requested that Applicant have his company verify that he had not reviewed any Arizona patient records.

21. By letter dated November 28, 2006, Applicant responded to Ms. Shepherd's November 21, 2006 letter. He stated that an investigation revealed that he did review five cases from Arizona on November 17, 2006. Applicant stated that upon discovering that he had reviewed the Arizona cases, he had them reassigned and re-evaluated by an Arizona licensed pathologist employed by his company. Applicant further stated that "it was an isolated event and not reflective of a pattern of unprofessional conduct."

22. By letter dated December 12, 2006, the Georgia Composite State Board of Medical Examiners informed Applicant that the Board had reviewed the North Carolina events, which were self reported by Applicant, and voted to close its investigation and to take no disciplinary action. That letter did state that "the Board does wish to express to [Applicant] its concern regarding unlicensed practice."

23. By letter dated December 18, 2006, the Colorado State Board of Medical Examiners informed Applicant that no disciplinary action would be imposed upon his Colorado medical license.

24. By letter dated January 22, 2007, the Illinois Department of Financial and Professional Regulation informed Applicant that his conduct in North Carolina did not violate the Illinois Medical Practice Act of 1987 and, therefore, no disciplinary action would be imposed upon his Illinois medical license.

25. On or about January 23, 2007, the Tennessee Board of Medical Examiners issued a Consent Order reprimanding Applicant's Tennessee medical license due to his unlicensed medical practice and subsequent reprimand in North Carolina.

26. By letter dated January 25, 2007, the State Medical Board of Ohio informed Applicant that the matter of his North Carolina activities was closed and that no disciplinary action would be imposed upon his Ohio medical license.

27. By letter dated January 29, 2007, the Iowa Board of Medical Examiners issued Applicant a non-disciplinary Letter of Warning for his conduct in North Carolina. In the Letter of Warning, the Iowa Board of Medical Examiners stated the following concerns:

> The Board has very serious concerns that you were disciplined for practicing medicine in North Carolina without a medical license in violation of the laws and rules governing the practice of medicine. The Board advises that you carefully review your pathology practice and take whatever steps are necessary to ensure that you are properly licensed in all locations where you provide services. While the Board has chosen not to initiate formal disciplinary action in this matter at this time, please note that failure to fully comply with laws and rules governing the practice of medicine may be grounds for formal disciplinary action against your Iowa medical license in the future.

28. By letter dated February 13, 2007, Ms. Shepherd informed Applicant that the Board had opened an investigation due to his answers on his application. She identified the following allegations: "Action taken by another state licensing board" and "Practicing medicine without holding an active medical license."

29. By letter dated February 15, 2007, Applicant submitted to Ms. Shepherd the original and amended reports on the five Arizona patients. He stated that Dr. Makapugay, who holds an Arizona medical license, independently reviewed all five cases.

30. By letter dated February 20, 2007, the Iowa Board of Medical Examiners informed Applicant that it had received information that the State of Tennessee had reprimanded his Tennessee medical license due to the North Carolina reprimand. The Iowa Board of Medical Examiners stated that it would not pursue disciplinary action against Applicant's Iowa medical license.

31. On or about March 21, 2007, the Michigan Board of Medicine issued a Consent Order and Stipulation against Applicant's Michigan medical license due to the reprimand of his North Carolina medical license. Applicant was found to have violated of section 1622(b)(x) of the Michigan Public Health Code. Applicant was ordered to pay a fine of $100.00.

32. On or about April 12, 2007, Ms. Shepherd authored an Applicant Investigative Report concerning Applicant.

33. By letter dated April 17, 2007, the Kansas Board of Healing Arts advised Applicant that it would not take disciplinary action against his Kansas medical license as a result of the action taken against his medical licenses in North Carolina and California.

34. By letter dated June 13, 2007, the Board's executive director, Timothy C. Miller, JD, informed Applicant that his application for licensure was denied for the following reason:

> You do not have a professional record that indicates that you have not committed any act or engaged in any conduct that would constitute grounds for disciplinary action against you under Arizona law. A.R.S. § 32-1422(A) (4). Specifically, the Board's investigation revealed that you practiced medicine in North Carolina without a license and as a result you were formally reprimanded by the North Carolina Medical Board. A.R.S. § 32-1401(27) (o). Additionally, the investigation revealed that you also practiced medicine in Arizona without a license. A.R.S. §§ 32-1401(27) (a) and 32-1455. This conduct has not been corrected, monitored and resolved and there are no mitigating circumstances that prevent the resolution of this conduct. A.R.S. § 32-1422(C).

35. By letter dated July 10, 2007, Applicant filed his appeal of the denial of his application for licensure.

36. By letter dated July 23, 2007, the Board's coordinator, Mary Bober, informed Applicant that the Board would consider his appeal at its meeting on August 8-9, 2007.

37. By letter dated August 13, 2007, the Florida Department of Health advised Applicant that he had been issued medical license number ME 99761 to practice medicine in Florida.

38. By letter dated August 15, 2007, Ms. Bober informed Applicant that the Board had denied his application for licensure. She explained the appeal process to Applicant.

39. On August 17, 2007, Applicant signed a proposed Administrative Agreed Order with the Texas Medical Board. That order proposes to issue a Public Reprimand against Applicant's Texas Medical Board due to the North Carolina

Consent Agreement. The Administrative Agreed Order admitted into evidence has not been signed by the president of the Texas Medical Board.

40. By letter dated September 11, 2007, Applicant, through counsel, requested an administrative hearing to appeal the Board's denial of his application for licensure.

41. The Board referred Applicant's appeal to the Office of Administrative Hearings, an independent agency, for formal hearing.

42. Applicant intentionally and knowingly practiced medicine in North Carolina without a North Carolina medical license. He also encouraged at least one client in North Carolina to continue to conduct business with his company notwithstanding that he and his colleagues were not properly licensed to practice medicine in that state.

43. Applicant and his company profited financially by practicing medicine in North Carolina without a license.

44. After receiving his North Carolina medical license and reprimand for the unlicensed practice of medicine in that state, Applicant was on notice that he could not practice in a state without proper licensure. That point has been reinforced by the above described states that issued Applicant reprimands and a letter of warning against his medical licenses in those states.

45. Applicant's prior conduct of practicing in a state without a proper medical license reoccurred with Arizona patients when he reviewed the five Arizona cases.

46. Applicant's conduct with the five Arizona patients was not an "actual single or infrequent consultation" as claimed by Applicant. He and his company were conducting business in Arizona.

47. Applicant contends that his company has now implemented technology to ensure that only pathologists who are licensed in a patient's state of residence would be assigned such cases.

48. Except for the disciplinary actions imposed by the various medical boards described in the above Findings due to Applicant's unlicensed medical practice in North Carolina and the North Carolina Consent Order, Applicant has not been disciplined for any other conduct by any of the other states' licensing boards.

49. There is no evidence that Applicant has self reported his unlicensed practice of medicine in Arizona to any of the medical boards who issued him medical licenses.

50. Applicant submitted letters of reference as to the quality of his medical practice and skills. It is unclear if those references knew of Applicant's unlicensed practice of medicine in Arizona and whether that fact would have changed their recommendations.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject matter in this appeal.

2. Pursuant to A.R.S. § 41-1092.07(G) (1), Applicant has the burden of proof in this matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A).

3. The North Carolina Medical Board's reprimand in the Consent Order of Applicant's North Carolina medical license, based on his unlicensed medical practice prior to receiving that license, constitutes unprofessional conduct pursuant to A.R.S.§ 32-1401(27) (o).

4. Applicant's unlicensed practice of medicine in Arizona constitutes unprofessional conduct pursuant to A.R.S. § 32-1401(27) (a).

5. Applicant's unlicensed practice of medicine in Arizona constitutes a violation of A.R.S. § 32-1455.

6. The evidence of record supports the conclusion that Applicant failed to meet the basic requirement of A.R.S. § 32-1422(A) (4). Applicant's professional record does indicate that he has engaged in the unlicensed practice of medicine in North Carolina and Arizona, which acts are adequate grounds for disciplinary action against Applicant in Arizona.

7. Applicant's review of the five Arizona patient cases did not exempt him from Arizona medical licensing requirements pursuant to A.R.S. § 32-1421(B). Applicant was practicing medicine in Arizona during his licensing process as he did during the North Carolina medical licensing process.

8. Despite being reprimanded for the unlicensed practice of medicine in North Carolina, Applicant is later discovered to have practiced in Arizona without a medical license. In both cases, Applicant's unlicensed medical practice occurred while awaiting the issuance of a local medical license. The monitoring system used by Applicant after his reprimand in North Carolina did not prevent Applicant from reviewing Arizona patient cases. Subsequently, Applicant's company has installed new technology in an attempt to prevent its pathologists from reviewing patient cases in states where they are not licensed. The installation of this new technology demonstrates that Applicant's pattern of unlicensed medical practice has been "corrected, monitored and resolved" as provided by A.R.S. § 32-1422(C).

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1 **ORDER**

2 IT IS HEREBY ORDERED THAT:

3 1.Applicant is issued a Letter of Reprimand for the unlicensed practice of medicine.

4 2.Applicant is placed on probation for FIVE year(s) with the following terms and

5 conditions:

6 A. Obey All Laws

7 Applicant shall obey all state, federal and local laws, all rules governing the

8 practice of medicine in Arizona, and remain in full compliance with any court

9 order criminal probation, payments and other orders.

10 B. Automatic Revocation of License for Violation

11 If, following a Board adjudication, the Board determines, or if the Board

12 receives evidence that any state's medical board enters an order containing

13 a finding that Applicant has committed the unlicensed practice of medicine

14 after today's date, Applicant's license will be automatically revoked without

15 any hearing and without any judicial review.

16 C. Applicant is issued a fine of $5,000 as a penalty for his conduct,

17 specifically, the unlicensed practice of medicine.

18 5. Notwithstanding the Findings of Fact and Conclusions of Law, *supra*, and

19 pursuant to A.R.S. §32-1422(C), Applicant shall be issued a license to practice allopathic

20 medicine in Arizona upon his payment of the $5,000 fine.

21 5. This Order is the final disposition of case number MD-07-L015A

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DATED AND EFFECTIVE this 7TH day of FEB, 2008.

ARIZONA MEDICAL BOARD
(SEAL)

By _____
Lisa S. Wynn
Executive Director

Executive Director
ORIGINAL of the foregoing filed
this 7th day of February 2008 with:

Arizona Medical Board
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

EXECUTED COPY of the foregoing mailed
this 7th day of February 2008 to:

Paul Giancola
Snell & Wilmer, LLP
400 E. Van Buren
Phoenix, AZ 85004-2202

EXECUTED COPY of the foregoing mailed
this 7th day of February 2008 to:

Patrick J. Dean, M.D.
Address of Record

_____
Investigational Review