

**CONSENT AGREEMENT  
BETWEEN  
MARVIN MERCADO BAULA, M.D.  
AND  
THE STATE MEDICAL BOARD OF OHIO  
CASE NO. 18-CRF-0001**

This Consent Agreement is entered into by and between Marvin Mercado Baula, M.D., [Dr. Baula], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Baula enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

**BASIS FOR ACTION**

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(2), Ohio Revised Code, for "failure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;" Section 4731.22(B)(6), Ohio Revised Code, for conduct that constitutes, "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;" and/or Section 4731.22(B)(20), Ohio Revised Code, for, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board."
- B. The Board enters into this Consent Agreement in lieu of further formal proceedings based upon the allegations set forth in the Notice of Opportunity for Hearing issued on January 10, 2018, attached hereto as Exhibit A and incorporated herein by this reference. The Board expressly reserves the right to institute additional formal proceedings based upon any other violations of Chapter 4731., Ohio Revised Code, whether occurring before or after the effective date of this Consent Agreement.
- C. Dr. Baula is licensed to practice medicine and surgery in the State of Ohio, License number 35.099925.
- D. Dr. Baula states that he is not licensed to practice medicine and surgery in any other state.
- E. Dr. Baula admits to the factual and legal allegations contained in the January 10, 2018 Notice of Opportunity for Hearing.

### **AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Baula knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

#### **SUSPENSION OF CERTIFICATE**

1. The certificate of Dr. Baula to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 180 days. This indefinite suspension shall begin sixty (60) days from the effective date of this Consent Agreement. Further, during the sixty-day interim, Dr. Baula shall not undertake the care of any patient not already under his care.

#### **GENERAL PROBATIONARY REQUIREMENTS:**

##### Obey all Laws

2. Dr. Baula shall obey all federal, state, and local laws.

##### Absences from Ohio

3. In the event that Dr. Baula does not reside or practice in Ohio while subject to the requirements of this Consent Agreement, the Secretary and Supervising Member of the Board, in their sole discretion, may allow this Board's monitoring of Dr. Baula to be coordinated with an entity or board from another jurisdiction provided the Secretary and Supervising Member determine that such coordination ensures substantial compliance with the requirements of this Consent Agreement.

##### Releases; Quarterly Declarations and Appearances

4. Dr. Baula shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
5. Dr. Baula shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

## CONDITIONS FOR REINSTATEMENT/RESTORATION

6. The Board shall not consider reinstatement or restoration of Dr. Baula's certificate to practice medicine and surgery until all of the following conditions are met:
  - a. Dr. Baula shall submit an application for reinstatement or restoration, as appropriate, accompanied by appropriate fees, if any.
  - b. Dr. Baula shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
    - i. **Controlled Substances Prescribing Course:** Dr. Baula shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed, and must have been completed within the immediately preceding six month period prior to Dr. Baula's application for reinstatement or restoration.

In addition, at the time Dr. Baula submits the documentation of successful completion of the course dealing with the prescribing of controlled substances, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

- ii. **Medical Records Course:** Dr. Baula shall provide acceptable documentation of successful completion of a course in proper medical records documentation. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed, and must have been completed within the immediately preceding six month period prior to Dr. Baula's application for reinstatement or restoration.

In addition, at the time Dr. Baula submits the documentation of successful completion of the course or courses on maintaining adequate and appropriate medical records, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

- iii. Evidence of continuing full compliance with this Consent Agreement.
  - iv. Dr. Baula shall fully cooperate in providing the Board with any and all information requested by the Board.
  - v. In the event that the Board initiates future formal proceedings against Dr. Baula, including but not limited to issuance of a Notice of Opportunity for Hearing, Dr. Baula shall be ineligible for reinstatement/restoration until such proceedings are fully resolved by ratification by the Board of a subsequent Consent Agreement or a final Board Order taking effect.
- c. Dr. Baula shall enter into a written consent agreement including probationary terms (including but not limited to a minimum period of probation of at least three years, a practice plan, and a monitoring physician approved by the Board), as well as conditions and limitations as determined by the Board within 180 days of the date upon which all the above-specified conditions for reinstatement or restoration have been completed or, if the Board and Dr. Baula are unable to agree on the terms of a written Consent Agreement, then Dr. Baula further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code. The Board shall provide notice to Dr. Baula that said hearing has been scheduled, advising Dr. Baula of his hearing rights, and stating the date, time, and location of the hearing at which the Board will present its evidence, after which the Board will make a determination of the matter by Board Order.

Further, upon reinstatement/restoration of Dr. Baula's certificate to practice medicine and surgery in this state, the Board shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement/restoration or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code.

7. In the event that Dr. Baula has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement/restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Baula's fitness to resume practice.

#### **REQUIRED REPORTING BY LICENSEE**

8. Within thirty days of the effective date of this Consent Agreement, Dr. Baula shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Baula shall promptly provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. In the event that Dr. Baula provides any health care services or health care direction or medical

oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Baula shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, within thirty days of the date of each such notification, Dr. Baula shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

9. Within thirty days of the effective date of this Consent Agreement, Dr. Baula shall provide a copy of this Consent Agreement by certified mail to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Baula further agrees to provide a copy of this Consent Agreement by certified mail at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Additionally, within thirty days of the effective date of this Consent Agreement, Dr. Baula shall provide a copy of this Consent Agreement to any specialty or subspecialty board of the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists under which he currently holds or has previously held certification. Further, within thirty days of the date of each such notification, Dr. Baula shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.
10. Dr. Baula shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

**MONETARY FINE:**

11. Within ninety days of the effective date of this Consent Agreement, Dr. Baula shall remit payment in full of a monetary fine of ten thousand dollars (\$10,000.00). Such payment shall be made in full via credit card in the manner specified by the Board through its online portal, or by other manner as specified by the Board. Further, Dr. Baula acknowledges and agrees that his failure to timely remit full payment shall constitute a violation of this agreement and agrees to pay all reasonable costs associated with the collection of any payment.

**DURATION/MODIFICATION OF TERMS**

The above-described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties. In the event that the Board initiates future formal proceedings against Dr. Baula, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or upon this Consent Agreement being superseded by a subsequent final Board Order taking effect.

Further, in the event that Dr. Baula's certificate to practice is not reinstated/restored within five years of the effective date of this Consent Agreement, this agreement shall remain in effect but the

provisions set forth within the "General Probationary Requirements" and the "Required Reporting by Licensee" sections, above, shall automatically terminate at that time.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Dr. Baula and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

#### **FAILURE TO COMPLY**

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Baula appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

#### **ACKNOWLEDGMENTS/LIABILITY RELEASE**

By executing his signature on this Consent Agreement, Dr. Baula agrees that in the event the Board, in its discretion, does not ratify this Consent Agreement, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Dr. Baula and the Board further agree that if this Consent Agreement is not approved, it shall not constitute an admission against interest in this proceeding and shall not prejudice the ability of the Board to adjudicate this matter.

This Consent Agreement represents the sole and entire agreement of the parties hereto and supersedes all prior written or oral negotiations, agreements, or understandings between the parties. No party to this agreement has been induced to enter into the Consent Agreement by any representations or inducements except those expressly set forth in this written agreement. Further, all parties agree that to the extent any language in the agreement will be interpreted in a subsequent dispute, no ambiguous language shall be construed against the party drafting this Consent Agreement.

Dr. Baula acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

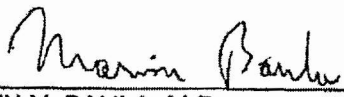
Dr. Baula hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Baula acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

CONSENT-AGREEMENT  
Marvin M. BAULA, M.D.  
PAGE 7

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below. Further, Dr. Baula specifically acknowledges that the electronic transmission of a scanned or photostatic copy of any executed signature to this Consent Agreement, upon being received by the Board, shall be deemed to have the full legal force and effect as the original.

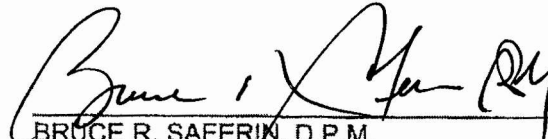
  
MARVIN M. BAULA, M.D.

  
KIM G. ROTHERMEL, M.D.  
Secretary

8/2/18  
DATE

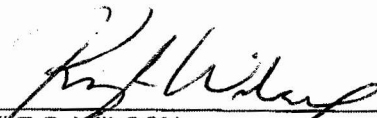
8/8/18  
DATE

  
TODD NEWKIRK, ESQ.  
Attorney for Dr. Baula

  
BRUCE R. SAFERIN, D.P.M.  
Supervising Member

8/2/18  
DATE

8-8-18  
DATE

  
KYLE C. WILCOX  
Assistant Attorney General

8-6-2018  
DATE



State Medical Board of

**Ohio**

Exhibit A

January 10, 2018

Case number: 18-CRF- 0001

Marvin Mercado Baula, M.D.  
220 Fryer Ct.  
Fairborn, OH 45324

Dear Doctor Baula:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to grant or register or renew or reinstate your license or certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) In the routine course of your medical practice, you undertook the care of Patients 1 through 10, as identified on the attached Patient Key. The Patient Key is confidential and not subject to public disclosure.
- (2) During the time period of in or around September 2012 to in or around December 2016, you failed to adequately assess, examine and/or treat Patients 1 through 10 related to a constellation of medical conditions and/or failed to document the same, including but not limited to failing to obtain adequate patient histories; failing to conduct appropriate diagnostic testing; failing to assess prescribed medication for risk/benefits; failing to perform appropriate diagnostic assessments; failing to appropriately consider alternative forms of treatment to the prescribing of controlled substances; inappropriately engaging in polypharmacy; failing to obtain adequate patient consent for treatment; failing to adequately respond to "red flags" indicating potential chemical abuse/misuse by the patients; failing to adequately monitor patient compliance with prescribed medication; and/or failing to check the Ohio Automated Rx Reporting System as required by law; and failing to conform to the administrative rules for prescribing controlled substances.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (2) above, individually and/or collectively, constitute "[f]ailure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as that clause is used in Section 4731.22(B)(2), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (2) above, individually and/or collectively, constitute a "departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

*Mailed 1-11-18*

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (2) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: General Provisions, Rule 4731-11-02, Ohio Administrative Code, as in effect from September 30, 2008 through December 30, 2015, and as in effect from December 31, 2015 through August 30, 2017.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (2) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Standards and Procedures for Reviews of "Ohio Automated Rx Reporting System" (OARRS), Rule 4731-11-11, Ohio Administrative Code, as in effect from November 30, 2011 through December 30, 2015, and as currently effective commencing on December 31, 2015.

Furthermore, for any violations that occurred on or after September 29, 2015, the board may impose a civil penalty in an amount that shall not exceed twenty thousand dollars, pursuant to Section 4731.225, Ohio Revised Code. The civil penalty may be in addition to any other action the board may take under section 4731.22, Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to grant or register or renew or reinstate your certificate or license to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant or issue a license or certificate to practice to an applicant, revokes an individual's license or certificate to practice, refuses to renew an individual's license or certificate to practice, or refuses to reinstate an individual's license or certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a license or certificate to practice and the board shall not accept an application for reinstatement of the license or certificate or for issuance of a new license or certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kim G. Rothermel".

Kim G. Rothermel, M.D.  
Secretary

KGR/JBR/bjr  
Enclosures

CERTIFIED MAIL #91 7199 9991 7036 6911 4971  
RETURN RECEIPT REQUESTED



State Medical Board of

**Ohio**

112 E. 15th St.  
13th Fl.  
Columbus, OH 43260-1315  
(614) 464-1315  
www.smb.state.oh.us

January 10, 2018

Case number: 18-CRF- 0001

Marvin Mercado Baula, M.D.  
220 Fryer Ct.  
Fairborn, OH 45324

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You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to grant or register or renew or reinstate your certificate or license to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant or issue a license or certificate to practice to an applicant, revokes an individual's license or certificate to practice, refuses to renew an individual's license or certificate to practice, or refuses to reinstate an individual's license or certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a license or certificate to practice and the board shall not accept an application for reinstatement of the license or certificate or for issuance of a new license or certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in cursive script, reading "Kim G. Rothermel" followed by a small mark that appears to be "AD".

Kim G. Rothermel, M.D.  
Secretary

KGR/JBR/bjr  
Enclosures

CERTIFIED MAIL #91 7199 9991 7036 6911 4971  
RETURN RECEIPT REQUESTED

**IN THE MATTER OF  
MARVIN MERCADO BAULA, M.D.**

**18-CRF-0001**

**JANUARY 10, 2018, NOTICE OF  
OPPORTUNITY FOR HEARING -  
PATIENT KEY**

**SEALED TO  
PROTECT PATIENT  
CONFIDENTIALITY AND  
MAINTAINED IN CASE  
RECORD FILE.**