

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF MEDICINE

PROTHONOTARY

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Department of State

Commonwealth of Pennsylvania, :  
Bureau of Professional and : File No. 10-49-00081  
Occupational Affairs :  
v. : Docket No. 0296-49-10  
Gino Grosso, M.D., :  
Respondent :

FINAL ORDER

COPY

AND NOW, this 20<sup>th</sup> day of August, 2010, noting that neither party filed an application for review and that the State Board of Medicine (Board) did not issue a Notice of Intent to Review, in accordance with 1 Pa. Code § 35.226(a)(3) and 49 Pa. Code § 16.57, the hearing examiner's adjudication and order dated July 26, 2010, appended to this order as Annex A, is now the **FINAL ORDER** of the Board in this proceeding.

This order is retroactive to August 16, 2010, twenty days from the date of mailing of the Hearing Examiner's Adjudication and Order.

BUREAU OF PROFESSIONAL &  
OCCUPATIONAL AFFAIRS

STATE BOARD OF MEDICINE

*Basil L. Merenda*

*Carol E. Rose*

BASIL L. MERENDA  
COMMISSIONER

CAROL E. ROSE, M.D.  
CHAIRMAN

Respondent's Address:

Gino Grosso, M.D.  
325 Green Lane  
Philadelphia, PA 19128

Gino Grosso, M.D.  
604 Washington Lane  
Jenkintown, PA 19046

Gino Grosso, M.D.  
P.O. Box 35100  
Philadelphia, PA 19128

Joyce Ullman, Esquire  
900 Stephen Girard Building  
21 South 12<sup>th</sup> St.  
Philadelphia, PA 19107

Prosecuting Attorney:

Andrew E. Demarest, Esquire

Board counsel:

Steven R. Dade, Esquire

Date of mailing:

August 20, 2010

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF MEDICINE

RECEIVED  
JUL 26 2010  
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Prothonotary

Commonwealth of Pennsylvania,  
Bureau of Professional and  
Occupational Affairs

v.

Gino Grosso, M.D.,  
Respondent

Docket No. 0296-49-10  
File No. 10-49-00081

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ADJUDICATION AND ORDER

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John T. Henderson, Jr.  
Hearing Examiner

Commonwealth of Pennsylvania  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
Department of State  
P.O. Box 2649  
Harrisburg, PA 17105-2649  
(717) 772-2686

DATE DISTRIBUTED 7-26-10  
PROSECUTION \_\_\_\_\_  
SEL \_\_\_\_\_  
VG EXAMINER \_\_\_\_\_  
\_\_\_\_\_

ANNEX A

## HISTORY

This matter comes before the hearing examiner for the State Board of Medicine (Board) on an order to show cause (OSC) filed on February 16, 2010, alleging that Gino Grosso, M.D., License No. MD018198E (Respondent) is subject to disciplinary action under section 41(4) of the Medical Practice Act of 1985 (Act), Act of December 20, 1985, P.L. 457, No. 112, *as amended*, at 63 P.S. § 422.41(4), as a result of disciplinary action taken against Respondent's license to practice medicine by the proper licensing authority of another state (New Jersey); and under 40 P.S. § 1303.903(2) in that Respondent failed to report information regarding disciplinary action taken against Respondent by the health care licensing authority of another state within sixty (60) days after its occurrence.

On February 16, 2010, the OSC was sent via certified mail, return receipt requested and first class mail, postage prepaid, to Respondent's address of record with the Board, 604 Washington Lane, Jenkintown, PA 19056. The OSC was also sent to the address the Prosecuting Attorney had reason to believe was the current address of the Respondent, 325 Green Lane, Philadelphia, PA 19128-4751. Respondent received the OSC at the Philadelphia address on March 8, 2010, as evidenced by the Respondent's signature on Postal Form 3811, Article # 7009 1300 2250 0003 8494 1002. Service of the OSC upon Respondent was in accordance with the requirements of §33.31 of the General Rules of Administrative Practice and Procedure (GRAPP), 1 Pa. Code §33.31. Respondent failed to file an answer or otherwise respond to the OSC.

On June 22, 2010, the Commonwealth filed a Motion to Enter Default and Deem Facts Admitted (MDFA), which was mailed by first class mail, postage prepaid, to the

Respondent at the two addresses to which the OSC had been sent, and also P.O. Box 35100, Philadelphia, PA 19128 and also the Respondent's purported attorney, Joyce Ullman, Esquire. Neither the Respondent nor his attorney responded to the MDFA.

## FINDINGS OF FACT

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, License No. MD018198E, which was originally issued on July 23, 1976. (Board Records; OSC at ¶ 1)

2. Respondent's license with the Board expired on December 31, 2006, but may be renewed upon filing of the appropriate documentation and payment of the necessary fees. (Board records; OSC at ¶ 2)

3. At all times pertinent to the factual allegations, Respondent held a license to practice medicine and surgery in the Commonwealth of Pennsylvania. (Board records; OSC at ¶ 3)

4. Respondent's address on file with the Board is 604 Washington Lane, Jenkintown, PA 19046, but the Prosecuting Attorney has reason to believe that the Respondent resides at 325 Green Lane, Philadelphia, PA 19128-4751, the address at which the Respondent received the OSC. (Board records; OSC at ¶ 4; MDFA at ¶ 2)

5. On November 4, 2009, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners issued an Interim Consent Order accepting Respondent's voluntary surrender of Respondent's license after he was charged with unlawfully prescribing controlled dangerous substances in violation of applicable state and federal laws and regulations in Pennsylvania. (OSC at ¶¶ 6-7)

6. Respondent failed to report the November 4, 2009 disciplinary action of the State of New Jersey, Department of Law & Public Safety, Division of Consumer

Affairs, State Board of Medical Examiners to the Pennsylvania State Board of Medicine with 60 days after its occurrence. (OSC at ¶ 11)

7. On February 16, 2010, the Commonwealth filed an Order to Show Cause (OSC) setting forth allegations that Respondent violated the Medical Practice Act (Act) at 63 P.S. § 422.41(4) in that the Respondent's license to practice medicine was revoked or suspended or had other disciplinary action taken by a proper licensing authority of another state (New Jersey); and that Respondent violated the Act at 40 P.S. 1303.903(2) in that Respondent failed to report information regarding disciplinary action taken against Respondent by a health care licensing authority of another state within sixty (60) days after its occurrence. (OSC at ¶¶ 9-12; MDFA at ¶ 1)

8. On February 16, 2010, the Commonwealth mailed the OSC to Respondent by certified mail, return receipt requested and first class mail, postage prepaid, to the Respondent's address of record with the Board, 604 Washington Lane, Jenkintown, PA 19056. The OSC was also sent to the address the Prosecuting Attorney had reason to believe was the current address of the Respondent, 325 Green Lane, Philadelphia, PA 19128-4751. (MDFA at ¶ 2 and attached Exhibit 1)

9. On March 8, 2010, Respondent received the OSC at the Philadelphia address as evidenced by the Respondent's signature on Postal Form 3811, Article # 7009 1300 2250 0003 8494 1002. (MDFA at ¶ 3 and attached Exhibit 2)

10. Respondent did not file an answer or otherwise respond to the OSC within thirty (30) days of the filing date. (Docket No. 0296-49-10; MDFA at ¶ 4)

11. On June 22, 2010, the Commonwealth filed a Motion to Deem Facts Admitted (MDFA) in this matter which was mailed by first class mail, postage prepaid, to

the Respondent at the two addresses to which the OSC had been sent, and also P.O. Box 35100, Philadelphia, PA 19128 and also to the Respondent's purported attorney, Joyce Ullman, Esquire. (Docket No. 0296-49-10)

12. Respondent did not respond to the Commonwealth's MDFA. (Docket No. 0296-49-10)

13. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket No. 0296-49-10)



## CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact, Nos. 1-3)
2. Respondent has been afforded reasonable notice of the charges and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. (Findings of Fact, Nos. 7-13)
3. Respondent is subject to disciplinary action pursuant to section 41(4) of the Act, 63 P.S. § 422.41(4), in that disciplinary action was taken against Respondent's license to practice medicine by the proper licensing authority of another state (New Jersey). (Findings of Fact, No. 5)
4. Respondent is subject to disciplinary action pursuant to section 903(2) of the Mcare Act, 40 P.S. § 1303.903(2), because Respondent failed to notify the Board within sixty (60) days of the occurrence of the disciplinary action. (Findings of Fact, No. 6)
5. The Board is authorized to impose disciplinary or corrective measures or a civil penalty pursuant to section 42 of the Act, 63 P.S. § 422.42.

## DISCUSSION

### Motion for Default

On February 16, 2010, the Commonwealth mailed the OSC to Respondent by certified mail, return receipt requested and first class mail, postage prepaid, to the Respondent's address of record with the Board, 604 Washington Lane, Jenkintown, PA 19056. The OSC was also sent to the address the Prosecuting Attorney had reason to believe was the current address of the Respondent, 325 Green Lane, Philadelphia, PA 19128-4751. (MDFA at ¶ 2 and attached Exhibit 1)

On March 8, 2010, Respondent received the OSC at the Philadelphia address as evidenced by the Respondent's signature on Postal Form 3811, Article # 7009 1300 2250 0003 8494 1002. (MDFA at ¶ 3 and attached Exhibit 2)

In the Notice attached to the OSC, Respondent was notified that the Commonwealth instituted formal disciplinary action against Respondent, and that failure to respond to the OSC could result in disciplinary action being taken against Respondent, without a hearing. Under a section captioned "Penalties" in the OSC, Respondent was notified that suspension or revocation of Respondent's license to practice medicine and surgery were among the penalties that could be imposed. Under a section captioned "Procedures" in the OSC, Respondent was ordered to file a written answer to the OSC within thirty (30) days, and was advised that failure to do so could result in the factual allegations being deemed admitted and the issuance of an Order, without a hearing, imposing a penalty against Respondent's license to practice medicine and surgery. The Respondent did not file an answer or otherwise respond to the OSC within thirty (30) days.

On June 22, 1010, the Commonwealth filed a MDFA due to Respondent's failure to file an answer in the time specified. The MDFA was mailed by first class mail, postage prepaid, to the Respondent at the two addresses to which the OSC had been sent, and also P.O. Box 35100, Philadelphia, PA 19128 and also to the Respondent's purported attorney, Joyce Ullman, Esquire. (Docket No. 0296-49-10)

As of the date of this adjudication, Respondent has filed neither an answer to the OSC nor a response to the MDFA. Respondent is therefore in default in accordance with 1 Pa. Code § 35.37, which provides in pertinent part as follows:

**§ 35.37. Answers to orders to show cause.**

Any person upon whom an order to show cause has been served . . . shall, if directed to do so, respond to the same by filing within the time specified in the order an answer in writing . . . A respondent failing to file an answer within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted.

Accordingly, under 1 Pa. Code § 35.37, the Commonwealth's MDFA is granted and the allegations in the OSC are deemed admitted.

**Violation**

This action is brought under section 41(4) of the Act, 63 P.S. § 422.41(4), which provides as follows:

**§ 422.41 Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder**

The Board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

\* \* \*

(4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken, . . . by a proper licensing authority of another state, territory, possession or country, or a branch of the Federal Government.

This action is also brought under section 903(2) of the Mcare Act, 40 P.S. §1303.903(2), which provides as follows:

**§1303.903. Reporting**

A physician shall report to the State Board of Medicine or the State Board of Osteopathic Medicine, as appropriate, within 60 days of the occurrence of any of the following:

\* \* \*

(2) Information regarding disciplinary action taken against the physician by a health care licensing authority of another state.

The Commonwealth charged in the first count of its OSC that Respondent is subject to disciplinary action because Respondent had disciplinary action taken against his license by the proper licensing authority of New Jersey. On November 4, 2009, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners issued an Interim Consent Order accepting Respondent's voluntary surrender of Respondent's license after he was charged with unlawfully prescribing controlled dangerous substances in violation of applicable state and federal laws and regulations in Pennsylvania.

The Commonwealth's evidence in this matter consisted of records from the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners. The Commonwealth has therefore proven by a preponderance of the evidence that disciplinary action was taken against Respondent's

license to practice medicine by the proper licensing authority of another state, and that his license is therefore subject to disciplinary action in Pennsylvania pursuant to the Act at 63 P.S. §422.41(4).

The Commonwealth charged in the second count of its OSC that Respondent is subject to disciplinary action for failing to notify the Board within sixty (60) days of the occurrence of the disciplinary action. The factual allegations in the OSC have been deemed admitted. Accordingly, Respondent is also subject to disciplinary action under section 903(2) of the Mcare Act, 40 P.S. §1303.903(2).

The Commonwealth has proven the two counts of its OSC and the only question remaining is the appropriate sanction to be imposed by the Board. The Board has the duty to protect the health and safety of the public. Respondent in this case has not defended against the claims of the OSC, despite having ample opportunity to do so. Where Respondent has not presented any mitigation, the Board's duty is best carried out by recognizing the seriousness of the voluntary surrender of Respondent's license to practice medicine in New Jersey.

The Commonwealth Court of Pennsylvania has held that because the Pennsylvania Board has no real independent ability to monitor the performance of Pennsylvania licensed physicians who conduct their practices out-of-state, the authority of the Pennsylvania Board to act swiftly upon official verification of disciplinary action in another state is most salutary. *Johnston v. State Board of Medical Education and Licensure*, 410 A.2d 103, 105 (Pa. Cmwlth. 1980). Based upon the New Jersey disciplinary action, therefore, reciprocal action is warranted in Pennsylvania. Given the evidence of sufficient service of the OSC, Respondent's failure to respond to the OSC,

and the lack of mitigating evidence, the hearing examiner finds that an indefinite suspension of Respondent's license to practice medicine in the Commonwealth is appropriate in this case. Lesser discipline would permit the Respondent to practice in Pennsylvania without adequate monitoring or restrictions and fail to fully protect Pennsylvania citizens.

Accordingly, based upon the above findings of fact, conclusions of law and discussion, the following order will issue:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,  
Bureau of Professional and  
Occupational Affairs

v.

Gino Grosso, M.D.,  
Respondent

Docket No. 0296-49-10  
File No. 10-49-00081

ORDER

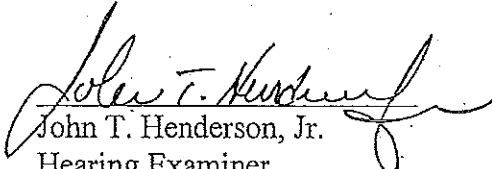
AND NOW, this 26<sup>th</sup> day of July 2010, upon consideration of the foregoing findings of fact, conclusions of law and discussion, Respondent, **Gino Grosso, M.D.**, License No. MD018198E, is subject to disciplinary action under section 41(4) of the Act 63 P.S. § 422.41(4), section 903(2) of the Mcare Act, 40 P.S. §1303.903(2), and it is hereby **ORDERED** that Respondent's license is **INDEFINITELY SUSPENDED** until Respondent's New Jersey medical license has been reinstated to unrestricted, non-disciplinary status.

Respondent is to cease practicing medicine and surgery in the Commonwealth of Pennsylvania and return all licensure documents, including wall certificates and wallet card, to the following address:

Board Counsel  
State Board of Medicine  
P.O. Box 2649  
Harrisburg, PA 17105-2649.

This Order shall be effective twenty (20) days from the date of mailing unless otherwise ordered by the State Board of Medicine.

BY ORDER:

  
John T. Henderson, Jr.  
Hearing Examiner

*Respondent:*

Gino Grosso, M.D.  
325 Green Lane  
Philadelphia, PA, 19128

604 Washington Lane  
Jenkintown, PA 19046

Post Office Box 35100  
Philadelphia, PA 19128

Joyce Ullman, Esquire  
900 Stephen Girard Building  
21 South 12<sup>th</sup> St.  
Philadelphia, PA 19107

*Prosecuting Attorney:*

Andrew E. Demarest, Esquire  
Prosecuting Attorney  
Commonwealth of Pennsylvania  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
Department of State  
P.O. Box 2649  
Harrisburg, PA 17105-2649

*Date of Mailing:* July 26, 2010



## NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel  
P.O. Box 2649  
Harrisburg, PA 17105-2649

The name of the individual Board Counsel is identified on the Final Order.