

COPY

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

Commonwealth of Pennsylvania
Bureau of Professional and
Occupational Affairs

vs.

Tushar Sarker, M.D.,
Respondent

File No.: 14-49-00406

Docket No: 0477-49-16

Department of State

2016 JUN 22 AM 9:43

PROTHONOTARY

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and **Tushar Sarker, M.D.** ("Respondent") stipulate as follows in settlement of the above-captioned case.

APPLICABLE LAW

1. This matter is before the State Board of Medicine ("Board") pursuant to the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, ("Act"), *as amended*, 63 P.S. §§ 422.1-422.53; the Medical Care Availability and Reduction of Error ("Mcare") Act, Act of March 20, 2002, P.L. 154, No. 13, *as amended*, 40 P.S. §§ 1303.101-1303.910; and/or the Act of July 2, 1993, P.L. 345, No. 48 ("ACT 48"), *as amended*, 63 P.S. §§ 2201-2207.

LICENSURE STATUS

2. At all relevant and material times, Respondent held the following license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania: license no. MD433378, which was originally issued on January 2, 2008, and which is current through December 31, 2016.

STIPULATED FACTS

3. The Respondent admits that the following allegations are true:

a. Absent further Board action, Respondent's license may be continually reactivated, renewed, or reinstated upon the filing of the appropriate documentation and payment of the necessary fees.

b. Respondent's last known address, as on file with the Board is: 1143 Golden Pond Ct, Voorhees, NJ 08043.

c. Prior to April 28, 2010, Patient E.M.¹ (hereinafter, "Patient") had a documented history of suicide attempts and opioid abuse and was previously treated at Mercy Fitzgerald Hospital located in Darby, Pennsylvania for depression and pain.

d. On or about April 28, 2010, Patient was brought by paramedics to the emergency room at Mercy Fitzgerald Hospital after intentionally overdosing on Ativan (lorazepam) and Ambien (zolpidem).

e. Per the medical records, Patient was signed into the emergency room at Mercy Fitzgerald Hospital at 3:45 p.m. and was evaluated by Anthony Mazzeo, M.D.

f. Dr. Mazzeo made notations in the Patient's chart relevant to the Patient's psychological status at that time, which indicated, among other things, that Patient was expressing suicidal thoughts and that Patient admitted to intentionally overdosing on Ativan and Ambien in an effort to escape.

g. Dr. Mazzeo subsequently completed a 302 Petition for Patient.

h. Patient was then transferred from the emergency room at Mercy Fitzgerald Hospital to the Crisis Center at Mercy Fitzgerald Hospital.

¹ Patient's name is well-known to Respondent and the patient's initials are used to protect her family's privacy.

i. The chart from the emergency room evaluation on April 28, 2010, was transferred to the Crisis Center with Patient.

j. Also available to the Crisis Center staff were the records of Patient's previous evaluation and inpatient admission at Mercy Fitzgerald from January 5, 2010 through January 10, 2010, which documented prior suicide attempts, past episodes of family stress, and drug use.

k. In the Crisis Center, Patient was initially evaluated by the mental health technician on duty who noted that Patient denied suicidal/ homicidal ideation.

l. Respondent met with Patient from 7:17 p.m. until 7:30 p.m. on April 28, 2010, for a total of thirteen (13) minutes.

m. Patient was then discharged at 7:35 p.m. on April 28, 2010.

n. On or about April 29, 2010, at 4:38 a.m., EMTs were called to a railroad track intersection in Glenolden Borough, PA, where it was discovered that Patient had laid down on the railroad tracks and was killed when she was run over by a train.

o. Patient's death was determined to be a suicide.

p. Respondent's treatment of Patient failed to conform with the standards of acceptable and prevailing medical practice and/or was performed in a negligent manner in that:

(1) Respondent failed to obtain an adequate history and/or failed to take into account data available to him which should have led Respondent to conclude that Patient was an acute risk for suicide.

(2) Respondent failed to properly document Patient's history to reflect the information available to Respondent in the Patient's medical records and/or readily available collateral sources.

(3) Respondent failed to adequately review or consider all relevant and available medical history and/or available collateral information prior to making the determination to discharge Patient.

(4) Respondent failed to appropriately evaluate the patient, in that Respondent's evaluation of the Patient and her history took only thirteen (13) minutes.

(5) Respondent failed to reconcile and/or confirm conflicting information prior to making the determination to discharge Patient.

ALLEGED VIOLATIONS

4. The Commonwealth alleges that the Board is authorized to:

a. Suspend, revoke, or otherwise restrict Respondent's license under Sections 41 and 42 of the Act, 63 P.S. §§ 422.41 & 422.42; and/or impose a civil penalty upon Respondent under Sections 39 through 42 of the Act, 63 P.S. §§ 422.39-422.42, and /or Section 5(b)(4) of ACT 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent's treatment and care of Patient constituted unprofessional conduct in that Respondent departed from, or failed to conform to, a quality standard of the profession by providing a medical service at a

level beneath the accepted standard of care, in violation of Section 422.41(8) of the Act, 63 P.S. § 422.41(8);

b. Take disciplinary action, corrective action, or levy a civil penalty of up to \$10,000.00 against Respondent under the Act or under the MCARE Act at Sections 40 P.S. § 1303.905 and 1303.908, because Respondent practiced negligently in his treatment and care of Patient.

PROPOSED ORDER

5. The parties, intending to be legally bound, consent to the issuance of the following Order in settlement of this matter:

a. The Board finds that it is authorized to:

(1) Suspend, revoke, or otherwise restrict Respondent's license under Sections 41 and 42 of the Act, 63 P.S. §§ 422.41 & 422.42; and/or impose a civil penalty upon Respondent under Sections 39 through 42 of the Act, 63 P.S. §§ 422.39-422.42, and/or Section 5(b)(4) of ACT 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent's treatment and care of Patient constituted unprofessional conduct in that Respondent departed from, or failed to conform to, a quality standard of the profession by providing a medical service at a level beneath the accepted standard of care, in violation of Section 422.41(8) of the Act, 63 P.S. § 422.41(8);

(2) Take disciplinary action, corrective action, or levy a civil penalty of up to \$10,000.00 against Respondent under the Act or under the MCARE Act at Sections 40 P.S. § 1303.905 and 1303.908, because Respondent practiced negligently in his treatment and care of Patient.

CIVIL PENALTY

b. A **CIVIL PENALTY** of five thousand dollars (\$5,000.00) is levied upon Respondent. Respondent shall tender the full sum of five thousand dollars (\$5,000.00) with this executed Consent Agreement and shall be paid by certified check, cashier's check, attorney's check, or money order issued by a usual, customary, and reputable issuer (e.g. U.S. Postal Money Order, Western Union Money Order, etc.). Payment shall be made payable to the "Commonwealth of Pennsylvania," and shall be valid for a period of at least one hundred eighty (180) days. Respondent agrees that payment shall only be made by one of the methods indicated above and shall not be made by uncertified personal or corporate check.

COSTS OF INVESTIGATION

c. An assessment for the **COSTS OF INVESTIGATION** of seven thousand two hundred dollars (\$7,200.00) is levied upon Respondent. Respondent shall tender the full sum of seven thousand two hundred dollars (\$7,200.00) with this executed Consent Agreement and shall be paid by certified check, cashier's check, attorney's check, or money order issued by a usual, customary, and reputable issuer (e.g. U.S. Postal Money Order, Western Union Money Order, etc.). Payment shall be valid for a period of at least 180 days and shall be made payable to the "Commonwealth of Pennsylvania." Respondent agrees that payment shall only be

made by one of the methods indicated above and shall not be made by uncertified personal or corporate check. Payment of the costs of investigation and payment of the civil penalty may be combined into a single payment instrument.

REMEDIAL EDUCATION

d. Respondent shall attend and successfully complete at least twelve (12) AMA PRA Category 1 hours of remedial education related to the topic of *Suicide Risk Assessment*.

e. Respondent shall submit acceptable proof of successful completion of the remedial medical education course(s) to the Board Administrator **no later than ONE YEAR** from the date of the Board's Order adopting this Consent Agreement. Respondent shall note the file number and docket number of this matter on any documentation submitted to the Board Administrator. The address for the Board's Board Administrator is:

Suzanne Zerbe, Board Administrator State Board of Medicine 2601 N. 3rd Street P.O. Box 2649 Harrisburg, PA 17105-2649

f. Respondent shall also comply with all the following terms and conditions pertaining to completion of the remedial education hours:

(1) The additional hours of remedial education required by this Order shall consist of hours attended or completed after March 7, 2016 (the date of filing of the Order to Show Cause in this matter);

(2) Credits specified in this Order shall be in compliance with either the initial education or the continuing education regulations of the Board;

(3) To the extent that the remedial education course(s) require Respondent to pass an examination in order for Respondent to be eligible for initial or continuing education credits, Respondent must take and successfully pass such examination in order for the remedial education course(s) to satisfy the requirement of this Order.

(4) Acceptable proof of completion of the twelve (12) additional hours of remedial education shall consist of an official school transcript, a certificate or letter of completion prepared by the sponsor of the remedial education course or a printout prepared by the sponsor indicating the completed courses. Proof shall contain course titles, completion dates, final grade (if course is graded), and number of class hours or continuing medical education (CME) credits awarded. Acceptable proof shall not consist of receipts, course outlines or agendas, cancelled checks, payment acknowledgments, or self-prepared records, among other documents;

(5) Respondent shall authorize the course provider to send a course assessment to the Board Administrator;

(6) The additional hours of remedial education in this Order shall be completed in addition to the hours that Respondent shall take in this or subsequent reporting periods for the renewal of his license. Credit hours required in this Order may not be used from any previous reporting period, nor may they be used in any subsequent biennial period for the renewal of Respondent's license to practice as a Medical Physician and Surgeon. Respondent may not utilize the credit hours required in this Order for purposes of satisfying any initial or continuing education requirement of any other authorization to practice the profession issued by the Board. For a period of twenty-four (24) months after Respondent submits acceptable proof of completion of the remedial education required by this Consent Agreement, Respondent shall be subject to non-random audit of his continuing or initial education when/if Respondent files any application for the renewal or issuance of a new of authorization to practice the profession issued by the Board;

g. Failure to successfully complete remedial education as required by this Consent Agreement and Order may result in the filing of additional disciplinary action;

h. Respondent shall bear the responsibility of all costs incurred by Respondent in complying with the terms of this Order, including production of records.

i. This Order constitutes disciplinary action by the Board and shall be reported to other licensing authorities and any applicable national licensing databank as a disciplinary action by the Board.

j. This case shall be deemed settled and discontinued upon the Board issuing an Order adopting this Consent Agreement.

ADMISSIBILITY OF CONSENT AGREEMENT IN FUTURE PROCEEDINGS

6. Respondent agrees that if Respondent is charged with a violation of an Act enforced by this Board in the future, this Consent Agreement and Order shall be admitted into evidence without objection in that proceeding.

ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING

7. Respondent acknowledges receipt of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and knowingly and voluntarily waives the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

ACKNOWLEDGMENT OF RIGHT TO ATTORNEY

8. Respondent acknowledges that he is aware that he has the right to consult with, and/or be represented by, private legal counsel of Respondent's choosing and at Respondent's expense when reviewing, considering and accepting the terms of this Consent Agreement. Respondent had

an opportunity to consult with and has been advised by Attorney Julia E. Gabis, regarding this Consent Agreement.

WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS

9. Respondent expressly waives any constitutional rights and issues, such as commingling of prosecutorial and adjudicative functions by the Board or its counsel, which may arise or have arisen during the negotiation, preparation and/or presentation of this Consent Agreement. Respondent specifically agrees that if the Board rejects this agreement, it may assume that the facts and averments as alleged in this Consent Agreement are true and correct for the limited purpose of recommending a sanction, based on those assumed facts, that would be acceptable to the Board before hearing the case. In the event that the Board does assume the facts and averments as alleged in this Consent Agreement are true for purposes of making a recommendation as to an acceptable sanction, such action shall not constitute commingling of prosecutorial and adjudicative functions by the Board or its counsel, and the Respondent expressly waives any constitutional rights and issues related to alleged commingling, bias, or violation of due process rights to have an unbiased and impartial adjudicator in any subsequent hearing. If a hearing is subsequently held, neither this Consent Agreement nor the proposed terms of settlement may be admitted into evidence and any facts, averments, and allegations contained in the Consent Agreement must be proven at hearing unless otherwise separately stipulated. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

NO MODIFICATION OF ORDER

10. Respondent agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the Stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

AGREEMENT NOT BINDING ON OTHER PARTIES

11. The Office of General Counsel has approved this Consent Agreement as to form and legality; however, this Consent Agreement shall have no legal effect unless and until the Board issues the stipulated Order.

EFFECT OF BOARD'S REJECTION OF CONSENT AGREEMENT

12. Should the Board not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

ENTIRE AGREEMENT

13. This agreement contains the whole agreement between the participants; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

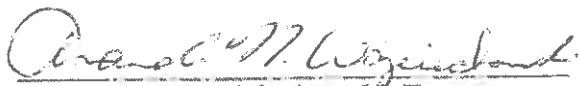
AGREEMENT DOES NOT PREVENT ADDITIONAL DISCIPLINE BASED ON OTHER COMPLAINTS

14. Nothing in this Order shall preclude the Prosecution Division for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement;

VERIFICATION OF FACTS AND STATEMENTS

15. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent

understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Amanda N. Wojciechowski, Esq.
Prosecuting Attorney

DATED: 6/6/16



Tushar Sarker, M.D.
Respondent

DATED: 5/23/16



Julia E. Gabis, Esq.
Attorney for Respondent

DATED: 5/30/16

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DEPARTMENT OF STATE
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ORDER

AND NOW, this 21st day of June, 2016, the STATE BOARD OF MEDICINE ("Board") adopts and approves the foregoing Consent Agreement and incorporates the terms of paragraph 5, which shall constitute the Board's Order and is now issued in resolution of this matter.

This Order shall take effect immediately.

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS



Ian J. Harlow
Commissioner

For the Commonwealth:

For the Respondent:

Date of mailing:

BY ORDER:
STATE BOARD OF MEDICINE



Marilyn J. Heine, M.D.
Chair

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June 22, 2016