

COPY

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

PROHIBITION  
2018 FEB -8 PM 4:30  
Department of State

Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs

File No.: 17-49-12012

vs.

Mark B Fabi, M.D.,  
Respondent

Docket No: 2436-49-17

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and Mark B Fabi, 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. MD036925E, which was originally issued on September 29, 1986, and which will expire on December 31, 2018. However, Respondent license is currently suspended pursuant to a December 19, 2017 Preliminary Order approving a Petition for Appropriate Relief.

## 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 office address, as on file with the Board is:  
1601 Walnut St., Suite 810, Philadelphia pa 19102.

c. On September 7, 2016, at Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs vs. Mark B. Fabi, MD, File number 10-49-09109, Docket Number 0497-49-15, the Board issued an Order approving a Consent Agreement in which, among other things, Respondent was found to have violated Section 41(8) of the Act, 63 P.S. § 422.41(8), and the Act's Regulations at Section 16.92, 49 Pa. Code § 16.92, in that Respondent was guilty of unprofessional conduct, including the departure from, or failure to conform to the standards of acceptable and prevailing medical practice in regard to his general treatment, as well as, prescribing of controlled substances. Also present in the Order was the finding that Respondent violated the Act's Regulations at Section 16.95, 49 Pa. Code § 16.95, in that Respondent failed to maintain full and complete medical records. **See Exhibit A.**

d. The September 7, 2016 Consent Agreement and Order, beginning on page 10, provides that Respondent's license shall be suspended for a period of twenty-four (24) month, but the enforcement of that suspension shall be stayed in favor of a period of twenty-four (24) months, during which time Respondent shall

comply with specific terms and conditions that are more clearly set forth in the September 7, 2016 Consent Agreement and Order. **See Exhibit A.**

e. The terms of the September 7, 2016 Consent Agreement and Order required the Respondent to do the following:

(1) Paragraph 6(d)(1) required Respondent, within sixty (60) days from the date the Consent Agreement was approved, to develop and submit a protocol for his office relating to adequate record keeping;

(2) Paragraph 6(d)(2) required Respondent, within sixty (60) days from the date the Consent Agreement was approved, to develop and submit a protocol for his office relating to the prescription monitoring program he utilized for patient to whom he prescribes controlled substances;

(3) Paragraph 6(d)(4) required Respondent, within sixty (60) days from the date the Consent Agreement was approved, to contract with a Board approved practice monitor to work with Respondent on the development of the protocols referenced in Paragraphs 6(d)(1) & (2);

(4) Paragraph 6(d)(5) required Respondent, within sixty (60) days from the date the Consent Agreement was approved, to contract with Lifeguard for opioid prescribing monitoring and following Lifeguard's recommended period

of opioid prescriber monitoring and complete Lifeguard's opioid prescriber course.

**See Exhibit A.**

f. Respondent has failed to comply with the above referenced terms of the September 7, 2016 Consent Agreement and Order, and pursuant to Paragraph 6(d)(6) violations of the above referenced terms constitute violations of the September 7, 2016 Consent Agreement and Order. **See Exhibit A.**

g. Paragraph 6(p), beginning on page 19 of the September 7, 2016 Consent Agreement and Order, states that notification of a violation of the terms or conditions of the Order shall result in the IMMEDIATE VACATING of the stay order, TERMINATION of the period of probation, and ACTIVATION of the entire period of suspension of Respondent's license to practice as a Medical Physician and Surgeon in the Commonwealth of Pennsylvania, subject to the procedure set forth in that sub-paragraph. **See Exhibit A.**

h. Based on the above referenced violations of the September 7, 2016 Consent Agreement and Order, the Commonwealth presented a Petition for Appropriate Relief to the Board's Probable Cause Screening Committee<sup>1</sup> on December 19, 2017. **See Exhibit A.**

i. The Petition for Appropriate Relief was approved by the Board's Probable Cause Screening Committee on December 19, 2017 by way of a Preliminary Order suspending Respondent's license to practice medicine. **See Exhibit A.**

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<sup>1</sup> The Board's Probable Cause Screening Committee consisted of Bruce A. Brod, MD, Keith E. Loiselle, and Charles A. Castle, MD.

j. A true and correct copy of the Notice, Preliminary Order, Petition for Appropriate Relief, and September 7, 2016 Consent Agreement and Order is incorporated as **Exhibit A**.

#### **MITIGATION**

k. Respondent has provided the Commonwealth with three (3) quarterly reports from The Center for Personalized Education for Physicians (CPEP) that covers a review of Respondent's practice records from January 2017 through September 2017. It should be noted that these reports were a required portion of the language found in Section 6(d)(4) of the September 7, 2016 Consent Agreement and Order. **See Exhibit A**.

l. Respondent has provided the Commonwealth with a certificate for 16.5 hours of CME from the Pennsylvania Medical Society. It should be noted that this certificate complies with the requirement that Respondent complete Lifeguard's opioid prescriber course as set forth in Section 6(d)(5) of the September 7, 2016 Consent Agreement and Order. **See Exhibit A**.

#### **ALLEGED VIOLATIONS**

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

a. Section 41(6) of the Act, 63 P.S. § 422.41(6) by violating a lawful order of the board entered in a disciplinary proceeding; and

b. Section 2205(b)(1) of Act 48, 63 P.S. § 2205(b)(1), by violating a lawful disciplinary order of the board.

**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 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 violated:

(1) Section 41(6) of the Act, 63 P.S. § 422.41(6) by violating a lawful order of the board entered in a disciplinary proceeding; and

(2) Section 2205(b)(1) of Act 48, 63 P.S. § 2205(b)(1), by violating a lawful disciplinary order of the board.

**SUSPENSION**

b. Respondent's license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania, along with any other licenses, registrations, certificates, approvals, authorizations, or permits (hereinafter referred to collectively as "authorizations to practice the profession") issued by the Board to Respondent at the time this Consent Agreement is adopted by the Board are

hereby **SUSPENDED** for a period of twenty-four (24) months, which shall be effective as of the date the within agreement is approved by the Board.

**PROBATION**

c. The suspension of Respondent's authorizations to practice the profession shall be immediately **STAYED IN FAVOR OF PROBATION** subject to the following terms and conditions:

(1) Within sixty (60) days of the date this agreement is approved by the Board, Respondent shall develop and submit, to the Probation Compliance Officer and Prosecuting Attorney, a protocol for his office relating to adequate record keeping.

(2) Within sixty (60) days of the date this agreement is approved by the Board, Respondent shall develop and submit, to the Probation Compliance Officer and Prosecuting Attorney, a protocol for his office relating to the prescription monitoring program he utilized for patients to whom he prescribes controlled substances.

(3) Respondent shall maintain documentation in each patient's records of compliance with the above-referenced protocols.

(4) Within sixty (60) days of the date this agreement is approved by the Board, Respondent shall contract with a Board approved practice monitor, including but not limited to Lifeguard, to work with Respondent on the development

of the protocols referenced in the above paragraphs, and to conduct quarterly records review monitoring of Respondent's practice throughout the period of probation referenced in the above paragraph to assure Respondent continues to apply said protocols and to assure Respondent's practice conforms to quality standards of the medical profession and to generate reports of the findings of said quarterly records review monitoring;

(5) Within sixty (60) days of the date this agreement is approved by the Board, Respondent shall contract with Lifeguard for opioid prescriber monitoring, and following Lifeguard's recommended period of opioid prescriber monitoring.

(6) Respondent's failure to fully cooperate with and successfully comply with the terms, conditions and/or recommendations of the practice monitor shall be deemed a violation of this Consent Agreement and Order

(7) Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice as a medical physician and surgeon in this Commonwealth or any other state or jurisdiction in which Respondent holds an authorization to

practice the profession. Provided, however, summary traffic violations shall not constitute a violation of this Order;

(8) Respondent shall at all times cooperate with the Bureau of Professional and Occupational Affairs ("Bureau"), any of its agents or employees and the Bureau of Enforcement and Investigation ("BEI") and its agents and employees, in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Order, including Respondent causing to be submitted at his own expense written reports, records and verifications of actions that may be required by the Bureau, BEI or any of its agents or employees;

(9) Respondent's failure to fully cooperate with and successfully comply with the terms and conditions of this probation shall be deemed a violation of this Consent Agreement and Order;

(10) Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order;

(11) Respondent shall notify BEI, in writing, within twenty (20) days of the filing of any criminal charges, the initiation of any other legal action (civil or

administrative) pertaining to the Respondent's practice as a medical physician and surgeon, and/or the initiation, action, restriction or limitation relating to Respondent by the professional licensing authority of any state or jurisdiction.

(12) Respondent shall notify BEI by telephone within seventy-two (72) hours, and shall notify both BEI and the Board in writing within ten (10) days of any change in the name(s) and address(es) of the place(s) at which Respondent will practice as a medical physician and surgeon and a description of Respondent's duties and responsibilities at such places of practice;

(13) Respondent shall notify BEI by telephone within seventy-two (72) hours, and shall notify both BEI and the Board in writing within ten (10) days of any change in the Respondent's home address and/or telephone number.

(14) If Respondent will be absent from the Commonwealth of Pennsylvania for any period exceeding twenty (20) days, Respondent must notify BEI, in writing, of Respondent's absence and must provide a list of the jurisdiction(s) in which Respondent intends to stay more than forty-eight (48) hours. Respondent consents to the release by the Bureau or BEI of any information or data

produced as a result of this Agreement or probation to the proper licensing authority of any jurisdiction in which Respondent intends to remain for greater than forty-eight (48) hours.

(15) During any period of Ordered Probation, Respondent shall supply any current professional employer with a copy of this Consent Agreement and Order.

(16) Within fifteen (15) days of the date of this Order, and within (15) days of the date of any change in professional employer Respondent shall have his professional employer submit to BEI written verification that the professional employer *a)* has received a copy of this Consent Agreement and Order, *b)* understands the conditions of this probation, and *c)* agrees to report any suspected violation by Respondent of this probation. If Respondent is or becomes self-employed, Respondent shall submit a statement to that effect to BEI and shall produce any requisite documentation to BEI to substantiate such a statement.

(17) Respondent consents to the release by the Bureau or BEI of any information or data produced as a result of this probation to any professional employer or prospective professional employer,

(18) Unless otherwise directed, Respondent, his professional employer, and any other person needing or required to make reports under this Order concerning Respondent's practice and contact information shall cause those reports, data or other information to be filed with BEI at:

Probation Compliance Officer Bureau of Enforcement and Investigation Box 2649 Harrisburg, PA 17105-2649 717-783-7230
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**REMEDIAL EDUCATION**

d. Prior to the expiration of the probationary period, Respondent shall attend and successfully complete 25 hours of CME referenced in Paragraph 6(e) of the September 7, 2016 Consent Agreement. The remedial education shall be on the topic(s) of prescribing controlled substances and record keeping through intensive in-person courses from Board Approved providers, including but not limited to the Pennsylvania Medical Society, the American Academy of Pain Medicine, the American Society of Addiction Medicine, and Case Western Reserve University.

e. 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 be in addition to the hours necessary during each renewal period;

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

f. 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.

g. Respondent shall submit acceptable proof of successful completion of the remedial professional education course(s) to the Board's Board Administrator. 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
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h. Acceptable proof of completion of the 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 professional education (CPE) credits awarded. Acceptable proof shall not consist of receipts, course outlines or agendas,

cancelled checks, payment acknowledgments, or self-prepared records, among other documents;

i. Respondent shall authorize the course provider to send a course assessment to the Board's Board Administrator;

j. 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;

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

#### **AGREEMENT TO RELINQUISH AUTHORITY AND CEASE AREA OF PRACTICE**

1. Respondent, in order to not abandon his patients and allow them to obtain other healthcare providers for treatment, agrees that within sixty (60) days

of the date the within Agreement is approved he shall cease treatment of pain management patients and agrees to voluntarily terminate the prescribing of opioids, without waiving any authority to prescribe any other medication coming under the authority of his current DEA registration;

m. Respondent shall verify his compliance with this section of the within Agreement by authorizing his contracted, Board approved monitor to review his records and issue a letter to the Probation Compliance Officer verifying the cessation of the above areas of practice.

**VIOLATION OF PROBATION BECAUSE OF FAILURE TO SUCCESSFULLY COMPLETE REMEDIAL EDUCATION AS REQUIRED BY CONSENT AGREEMENT AND ORDER**

n. If the Respondent fails to submit acceptable proof of successful completion of the Remedial Education as required by this Consent Agreement, Respondent's license to practice as a medical physician and surgeon and any and all authorizations to practice the profession issued by the Board and held by Respondent shall be **IMMEDIATELY AND INDEFINITELY SUSPENDED**, without further hearing, until such time as Respondent does provide the Board's Board Administrator with acceptable proof of successful completion of the Remedial Education as required by this Consent Agreement.

**VIOLATION(S) OF PROBATION FOR REASONS OTHER THAN FAILURE TO TIMELY COMPLETE REMEDIAL EDUCATION**

o. Notification of a violation of the terms or conditions of this Consent Agreement and Order for reasons other than failure to timely complete Ordered Remedial Education shall result in the **IMMEDIATE VACATING** of the stay order, **TERMINATION** of the period of probation, and **ACTIVATION** of the

entire period of suspension of Respondent's authorizations to practice the profession in the Commonwealth of Pennsylvania as follows:

(1) The prosecuting attorney for the Commonwealth shall file with the Board a Petition which alleges that Respondent has violated any terms or conditions of this Consent Agreement and Order other than failure to complete the Ordered remedial education in a timely manner;

(2) Upon a probable cause determination that Respondent has violated any of the terms or conditions of this Consent Agreement and Order, the Board shall, without holding a formal hearing, issue a preliminary order vacating the stay of the suspension in this matter, terminating the period of probation and activating the entire period of suspension of Respondent's authorizations to practice the profession, without credit for any period of suspension stayed in favor of probation;

(3) Notification of the Board's Preliminary Order shall be mailed to Respondent within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Board. If service by mail is unsuccessful, the Commonwealth is authorized to attempt service by

personal service and/or publication of legal notice in a newspaper of general circulation in the county of Respondent's last known address.

(4) Within twenty (20) days of mailing of the notification of the Board's action, Respondent may answer the Commonwealth's Petition and request that a formal hearing be convened concerning Respondent's alleged violation of probation, in which Respondent may seek relief from the Preliminary Order activating the suspension.

**The answer shall be set forth in numbered paragraphs corresponding to the numbered paragraphs of the Petition. Respondent shall admit or deny each of the allegations set forth in the paragraphs in the Petition.**

Respondent shall mail the original answer and request for hearing, and all other pleadings to

Office of Prothonotary Bureau of Professional and Occupational Affairs 2601 N. 3rd Street P.O. Box 2649 Harrisburg, PA 17105-2649
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**(5) Respondent shall send a copy of the answer, request for hearing, and all subsequent filings in the matter to the prosecuting attorney for the Commonwealth;**

(6) If a request for a formal hearing is received from Respondent, the Board shall convene a formal hearing within forty-five (45) days from the date of the Board's receipt of Respondent's request for a formal hearing;

(7) If Respondent files an answer and request for a hearing within the twenty (20) day period, the Preliminary Order activating the suspension shall remain in effect unless and until the Board issues a determination favorable to Respondent after holding the formal hearing;

(8) The facts and averments in paragraphs 3 & 4 of this Consent Agreement and Order shall be deemed admitted and uncontested for purposes of the hearing;

(9) If the Board after such hearing makes a determination adverse to Respondent, the Board will issue a Final Order activating the suspension of Respondent's license and imposing any additional disciplinary measures it deems appropriate;

(10) If a request for a formal hearing is not received from Respondent within the prescribed twenty (20) day period, the Board's Preliminary Order shall become a Final Order twenty (20) days after the date of its mailing;

(11) If the stay is terminated, Respondent shall still comply with all terms and conditions of probation during the active suspension, other than those terms and conditions pertaining to the active practice of the profession. Continued failure by Respondent to comply with the unaffected terms and conditions of probation shall result in further disciplinary action against Respondent;

p. Respondent's failure to fully comply with any terms of this Order may also constitute grounds for additional disciplinary action.

q. Respondent shall make written application to the Board at the end of the total period of probation requesting that Respondent's authorizations to practice the profession be reinstated to unrestricted status.

r. 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.

s. 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 Charles J. Hartwell, 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

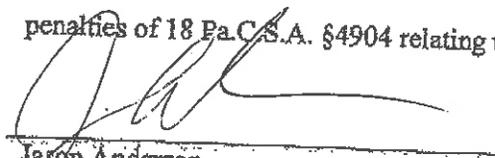
other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

**AGREEMENT DOES NOT PREVENT ADDITIONAL DISCIPLINE BASED ON OTHER COMPLAINTS**

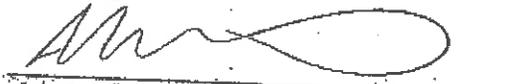
14. Nothing in this Order shall preclude the Prosecution Division for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement;

**VERIFICATION OF FACTS AND STATEMENTS**

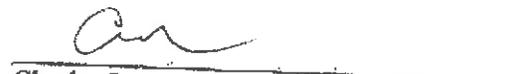
15. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

  
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Jason Anderson  
Prosecuting Attorney

DATED: 2/1/18

  
\_\_\_\_\_  
Mark B Fabi, M.D.  
Respondent

DATED: 1/31/2018

  
\_\_\_\_\_  
Charles J. Hartwell  
Attorney for Respondent

DATED: 02-01-18

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

Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs

vs.

Mark B. Fabi, MD  
Respondent

File No.: 17-49-12012

Docket No: 243 -49-17

**NOTICE**

Formal disciplinary action has been filed against you for violating the terms of probation imposed on you by a prior order of the State Board of Medicine (Board). The attached Preliminary Order has activated the suspension of your license under the terms of the prior Order and you may also be subject to additional action against your license which could result in the suspension, revocation or other limitation of your license, the imposition of civil penalties of up to \$10,000 for each violation of the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, ("Act"), 63 P.S. §§ 422.1-422.53, and/or the Act of July 2, 1993, P.L. 345, No. 48 ("ACT 48"), 63 P.S. §§ 2201-2207, *as amended*. You may also be subject to the imposition of costs of investigation.

If you wish to defend against the charges in the attached Petition for Appropriate Relief or to present evidence to mitigate any penalty that may be imposed, the procedures for doing so are explained in the Preliminary Order attached to the Petition for Appropriate Relief.

You have the right to retain an attorney. Although you may represent yourself without an attorney, you are advised to seek the help of an attorney. You also have the right to have an interpreter provided should you request one.

All proceedings are conducted under the Administrative Agency Law and the General Rules of Administrative Practice and Procedures.

You are directed to file a written answer to the Petition for Appropriate Relief within TWENTY (20) days of the mailing date of the Preliminary Order. IF YOU DO NOT FILE A WRITTEN ANSWER, AN ORDER MAKING THE PRELIMINARY ORDER FINAL MAY BE ENTERED AGAINST YOU WITHOUT A HEARING. To file your written answer, you must bring or send an original and three (3) copies of your written answer and any pleadings or other documents related to this matter to the following address:

Prothonotary  
Bureau of Professional and Occupational Affairs  
2601 North Third Street  
P.O. Box 2649  
Harrisburg, PA 17105

You must also send a separate copy of your written answer and any other pleadings or documents related to this case to the prosecuting attorney named in the Petition for Appropriate Relief.

EXHIBIT  
A

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

Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs

vs.

Mark B. Fabi, MD  
Respondent

File No.: 17-49-12012

Docket No: 2435 -49-17

PRELIMINARY ORDER

AND NOW, this 17<sup>th</sup> day of December 2017, the State Board of Medicine Probable Cause Screening Committee, makes a probable cause determination that **Mark B. Fabi, MD** ("Respondent"), license number MD036925E, violated the terms and conditions of the September 7, 2016 Consent Agreement and Order ("Order") at Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs vs. Mark B. Fabi, MD, File number 10-49-09109, Docket Number 0497-49-15, as alleged in the attached Commonwealth's Petition for Appropriate Relief.

Accordingly, the stay of the suspension of Respondent's license is now VACATED, the period of probation is now TERMINATED, and Respondent's license to practice as a Medical Physician and Surgeon, license number MD036925E, along with any other licenses, registrations, certificates, approvals, authorizations, or permits issued to Respondent by the Board are now actively indefinitely SUSPENDED for no less than twenty-four (24) months.

Respondent shall immediately cease practicing the profession. Within ten (10) days, Respondent shall surrender Respondent's wall certificate(s), biennial renewal certificate(s) and wallet card(s) (or notarized affidavit of their loss or destruction) by mailing them to:

Jason Anderson  
Prosecuting Attorney

Bureau of Professional and Occupational Affairs  
P.O. Box 69521  
Harrisburg, PA 17106-9521

or by delivering them in person at:

Bureau of Professional and Occupational Affairs  
One Penn Center  
2601 North 3rd St.  
Harrisburg, Pennsylvania

Respondent shall be notified of this Preliminary Order within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Board;

**Within twenty (20) days of mailing of this Preliminary Order, Respondent shall answer the Commonwealth's Petition concerning Respondent's alleged violation of probation, in which Respondent may seek relief from this Preliminary Order activating the suspension. The answer shall be in writing and shall set forth in numbered paragraphs corresponding to the numbered paragraphs of the Petition for Appropriate Relief. Respondent shall admit or deny each of the allegations set forth in the paragraphs in the Petition for Appropriate Relief.**

Respondent's answer shall be drawn as to fully and completely advise the parties and the agency as to the nature of the defense. Respondent shall serve the prosecuting attorney for the Commonwealth with a copy of the answer and all subsequent filings in this matter;

If Respondent files an answer within the twenty (20) day period, this Preliminary Order activating the suspension shall remain in effect unless and until the Board issues a determination favorable to Respondent after holding the formal hearing;

If an answer is received from Respondent, the Board or its duly authorized hearing examiner shall convene a formal hearing within forty-five (45) days from the date of the Board's receipt of Respondent's request for a formal hearing;

The facts and averments in the September 7, 2016 Consent Agreement and Order shall be deemed admitted and uncontested at this hearing;

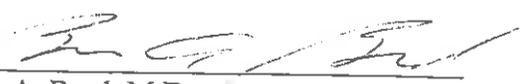
If the Board after such hearing makes a determination adverse to Respondent, the Board will issue a Final Order activating the suspension of Respondent's license and imposing any additional disciplinary measures it deems appropriate;

If Respondent fails to file an Answer within the twenty (20) day period, the Board may deem the facts and averments contained in the Commonwealth's Petition for Appropriate Relief to be admitted and will issue a Final Order activating the suspension of Respondent's license and imposing any additional disciplinary measures it deems appropriate without holding a formal hearing;

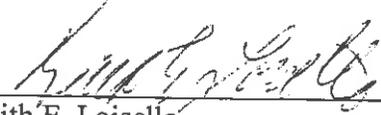
If the stay is terminated, Respondent shall still comply with all terms and conditions of probation in the September 7, 2016 Consent Agreement and Order during the active suspension, other than those terms and conditions pertaining to practicing the profession. Continued failure by Respondent to comply with the unaffected terms and conditions of probation shall result in further disciplinary action against Respondent;

This Order shall take effect immediately upon mailing.

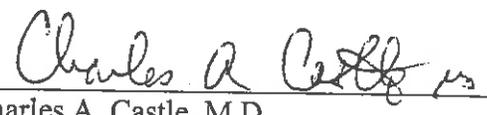
**BY ORDER:  
BEFORE THE STATE BOARD OF MEDICINE**



Bruce A. Brod, M.D.  
Committee Member



Keith E. Loiselle  
Committee Member



Charles A. Castle, M.D.  
Committee Member

For the Commonwealth:

Jason Anderson  
Prosecuting Attorney  
Commonwealth of Pennsylvania  
Bureau of Professional and Occupational Affairs  
P.O. Box 69521  
Harrisburg, PA 17106-9521

For the Respondent:

Mark B. Fabi, MD  
c/o Charles J. Hartwell, Esquire  
Dethlefs, Pykosh, Shook, & Murphy  
2132 Market Street  
Camp Hill, PA 17011

Date of Mailing:

December 20, 2017

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

Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs

vs.

Mark B. Fabi, MD  
Respondent

File No.: 17-49-12012

Docket No: 2475 -49-17

PETITION FOR APPROPRIATE RELIEF

NOW COMES the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth"), by and through its Prosecuting Attorney, Jason Anderson, and files the within Petition for Appropriate Relief and in support, avers as follows:

1. At all relevant and material times, Mark B. Fabi, MD ("Respondent") held the following license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania: license no. MD036925E.

2. Respondent's license was originally issued on September 29, 1986, and currently is on probation pursuant to the terms of a September 7, 2016 Consent Agreement and Order.

3. Respondent's last known address on file with the Board is: The Benjamin Franklin House, 834 Chestnut Street, Suite 427, Philadelphia, PA 19107.

4. On September 7, 2016, at Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs vs. Mark B. Fabi, MD, File number 10-49-09109, Docket Number 0497-49-15, the Board issued an Order approving a Consent Agreement in which, among other things, Respondent was found to have violated Section 41(8) of the Act, 63 P.S. § 422.41(8), and the Act's Regulations at Section 16.92, 49 Pa. Code § 16.92, in that Respondent was guilty of unprofessional

conduct, including the departure from, or failure to conform to the standards of acceptable and prevailing medical practice in regard to his general treatment, as well as, prescribing of controlled substances. Also present in the Order was the finding that Respondent violated the Act's Regulations at Section 16.95, 49 Pa. Code § 16.95, in that Respondent failed to maintain full and complete medical records. **See Exhibit A.**

5. The September 7, 2016 Consent Agreement and Order, beginning on page 10, provides that Respondent's license shall be suspended for a period of twenty-four (24) month, but the enforcement of that suspension shall be stayed in favor of a period of twenty-four (24) months, during which time Respondent shall comply with specific terms and conditions that are more clearly set forth in the September 7, 2016 Consent Agreement and Order. **See Exhibit A.**

6. The terms of the September 7, 2016 Consent Agreement and Order required the Respondent to do the following:

a. Paragraph 6(d)(1) required Respondent, within sixty (60) days from the date the Consent Agreement was approved, to develop and submit a protocol for his office relating to adequate record keeping;

b. Paragraph 6(d)(2) required Respondent, within sixty (60) days from the date the Consent Agreement was approved, to develop and submit a protocol for his office relating to the prescription monitoring program he utilized for patient to whom he prescribes controlled substances;

c. Paragraph 6(d)(4) required Respondent, within sixty (60) days from the date the Consent Agreement was approved, to contract with a Board approved practice monitor to work with Respondent on the development of the protocols referenced in Paragraphs 6(d)(1) & (2);

d. Paragraph 6(d)(5) required Respondent, within sixty (60) days from the date the Consent Agreement was approved, to contract with Lifeguard for opioid prescribing monitoring and following Lifeguard's recommended period of opioid prescriber monitoring and complete Lifeguard's opioid prescriber course.

**See Exhibit A.**

7. Respondent has failed to comply with the above referenced terms of the September 7, 2016 Consent Agreement and Order, and pursuant to Paragraph 6(d)(6) violations of the above referenced terms constitute violations of the September 7, 2016 Consent Agreement and Order.

**See Exhibit A.**

8. Paragraph 6(p), beginning on page 19 of the September 7, 2016 Consent Agreement and Order, states that notification of a violation of the terms or conditions of the Order shall result in the IMMEDIATE VACATING of the stay order, TERMINATION of the period of probation, and ACTIVATION of the entire period of suspension of Respondent's license to practice as a Medical Physician and Surgeon in the Commonwealth of Pennsylvania, subject to the procedure set forth in that sub-paragraph.

9. A true and correct copy of the September 7, 2016 Consent Agreement and Order is incorporated as **Exhibit A.**

**WHEREFORE**, pursuant to the procedure set forth in PARAGRAPH 6(p) of the September 7, 2016 Consent Agreement and Order, the Commonwealth respectfully requests that the Board: **(1)** make a probable cause determination that Respondent violated the terms and conditions of the Order; **(2)** issue a Preliminary Order VACATING its previous Order staying the suspension in this matter, TERMINATING the period of probation and ACTIVELY SUSPENDING Respondent's license to practice as a Medical Physician and Surgeon, license

number MD036925E, along with any other licenses, registrations, certificates, approvals, authorizations, or permits issued to Respondent by the Board; (3) notify Respondent of the Preliminary Order and suspension, and; (4) take such other action as the Board deems appropriate.

Respectfully submitted,



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Jason Anderson  
Prosecuting Attorney  
Commonwealth of Pennsylvania  
Department of State

DATE: *November 29, 2017*

**COPY**

PROTONOTARY

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF MEDICINE  
Department of State

Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs

vs.

Mark B Fabi, M.D.,  
Respondent

File No.: 10-49-09109

Docket No: 0497-49-15

**CONSENT AGREEMENT AND ORDER**

**PARTIES**

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and Mark B Fabi, 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. MD036925E, which was originally issued on September 29, 1986, and which will expire on December 31, 2016.

EXHIBIT  
A

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 office address, as on file with the Board is:  
The Benjamin Franklin House, 834 Chestnut Street, Philadelphia, PA 19107.

4. Although Respondent denies that any violation of the Act has occurred and would dispute and/or deny such allegations, if a hearing were held in this matter, the Commonwealth would present the following evidence or testimony:

a. Respondent is board certified with the American Board of Psychiatry and Neurology and has been handling/treating patients for chronic pain management since 2000.

b. From approximately October 4, 2006 to approximately October 21, 2007, Respondent provided treatment for Decedent MM.

c. Pursuant to Respondent's medical records<sup>1</sup>, Decedent MM was a 38 year-old male that presented to Respondent on October 4, 2006. During this visit, Respondent obtained an oral history from Decedent MM remarkable for: 1) a motor vehicle accident that occurred in the summer of 2005, 2) a prior MRI indicating a L4-L5 intervertebral disc herniation, 3) nagging pain in his right lower back that had increased over time, 4) prior treatment for the aforementioned

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<sup>1</sup> The sum total of the medical records Respondent retained and/or had in his possession, regarding his treatment of Decedent MM from October 4, 2006 until his death on October 21, 2007, consisted of approximately 9 total pages of evaluation and treatment notes.

disc herniation and right lower back pain with chiropractic and decompression therapy, 5) prior prescriptions for Lyrica, Percocet & OxyContin<sup>2</sup>, 6) current treatment for asthma with Albuterol by his primary care physician (Dr. Lynn Carlton), 7) current use of alcohol and marijuana, 8) prior use of anabolic steroids, and 9) an alcoholic father that died of a myocardial infarction.

d. According to Respondent's medical records, during the October 4, 2006 initial visit, Respondent did not: 1) perform a personal physical examination of Decedent MM, 2) review and maintain a copy of Decedent MM's previous MRI/MRI Report, 3) obtain medical records/patient releases for medical records, and 4) order/perform any diagnostic tests for Decedent MM.

e. Additionally, during the October 4, 2006 initial visit, Respondent diagnosed Decedent MM with: 1) major depressive disorder, 2) pain disorder associated with psychological factors and a medical condition, 3) L4-L5 radiculopathy, and 4) a Global Assessment of Function in the range of 21% to 30%.

f. At the conclusion of the October 4, 2006 initial visit, Respondent's intended course of treatment was a trial of opioid therapy and antidepressant therapy. Specifically, Respondent prescribed Decedent MM 120 immediate-release 5 mg Oxycodone to be taken 4 times per day for 30 days. In addition, Respondent provided Decedent MM with samples of 60 mg Cymbalta.

g. As indicated in Respondent's medical records of the November 7, 2006 visit, Respondent noted that Decedent MM did not have a change in his

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<sup>2</sup> The dosage and/or amount of each prescription was not noted in Respondent's records.

mood or complaint of pain. However, Respondent continued Decedent MM's samples of 60 mg Cymbalta. In addition, Respondent altered Decedent's MM's pain prescription to 60 extended release 80 mg OxyContin to be taken 2 times per day for 30 days.

h. According to Respondent's medical records of the December 8, 2006 visit, Decedent MM informed Respondent that he would be undergoing a percutaneous discectomy. In addition, Respondent continued Decedent MM's samples of 60 mg Cymbalta, as well as Decedent's MM's pain prescription for 60 extended release 80 mg OxyContin to be taken 2 times per day for 30 days.

i. Pursuant to Respondent's medical record of the January 3, 2007 visit, Decedent MM informed Respondent that his pain level was its most severe to date and that he ran out of pain medication after 22 days. After receiving the information, Respondent continued the previous course of treatment by providing Decedent MM with samples of 60 mg Cymbalta, as well as prescribing 60 extended release 80 mg OxyContin to be taken 2 times per day for 30 days.

j. As indicated by Respondent's medical records of the February 20, 2007 visit, Decedent MM verbally informed Respondent that he had undergone the percutaneous discectomy and was scheduled for a follow up appointment on February 28, 2007. In addition, Decedent MM reported that he was only dealing with moderate pain following the percutaneous discectomy but had increased anxiety. In response to this information, Respondent: 1) continued Decedent MM's samples of 60 mg Cymbalta, 2) added 2 mg Xanax, 3) altered Decedent's MM's pain prescription to 120 extended release 40 mg OxyContin to be taken 4

times per day for 30 days, and 4) added 120 10 mg Percocet to be taken 4 times per day for 30 days.

k. Based on Respondent's medical records of the March 20, 2007 visit, Decedent MM informed Respondent that he would be undergoing a follow up MRI on March 27, 2007. In addition, Respondent continued Decedent MM's: 1) samples of 60 mg Cymbalta, 2) prescription of 2 mg Xanax, 3) prescription of 120 extended release 40 mg OxyContin to be taken 4 times per day for 30 days, and 4) prescription of 120 10 mg Percocet to be taken 4 times per day for 30 days.

l. Pursuant to Respondent's medical records of the April 13, 2007 visit, Respondent reviewed a copy of the March 27, 2007 MRI Report that Decedent MM provided; however, Respondent did not maintain/retain a copy of the Report in his records. In addition, Decedent MM informed Respondent that his pain had worsened from the previous visit; therefore, Respondent continued Decedent MM's: 1) samples of 60 mg Cymbalta, 2) prescription of 2 mg Xanax, 3) prescription of 120 10 mg Percocet to be taken 4 times per day for 30 days, but 4) changed his prescription to 120 extended release 80 mg OxyContin with instructions that 2 pills to be taken 2 times per day for 30 days.

m. According to Respondent's medical records of the May 11, 2007 visit, Decedent MM informed Respondent that he attended a consultation regarding having his L5-S1 disc replaced. After receiving this information, Respondent did not conduct any additional diagnostics, reevaluation or request copies of reports, but continued the previous course of treatment by providing Decedent MM: 1) samples of 60 mg Cymbalta, 2) prescription of 2 mg Xanax, 3) prescription of 120

10 mg Percocet to be taken 4 times per day for 30 days, and 4) prescription of 120 extended release 80 mg OxyContin.

n. Based on Respondent's medical records of the June 29, 2007 visit, Respondent noted that Decedent MM's mood/psychiatric state had changed from major depressive single episode to major depressive recurrent. In response to this, Respondent continued the previous course of treatment, without conducting any additional diagnostics, physical examinations or reevaluation, by providing Decedent MM: 1) samples of 60 mg Cymbalta, 2) prescription of 2 mg Xanax, 3) prescription of 120 10 mg Percocet to be taken 4 times per day for 30 days, and 4) prescription of 120 extended release 80 mg OxyContin.

o. In accordance with the Respondent's medical records of the July 20, 2007 visit, Respondent continued the previous course of treatment by providing Decedent MM: 1) samples of 60 mg Cymbalta, 2) prescription of 2 mg Xanax, 3) prescription of 120 10 mg Percocet to be taken 4 times per day for 30 days, and 4) prescription of 120 extended release 80 mg OxyContin.

p. According to Respondent's medical records of the August 20, 2007 visit, Decedent MM informed Respondent that his pain level was its most severe to date. In response to this information, Respondent continued the previous course of treatment, without conducting any additional diagnostics, physical examinations or reevaluation, by providing Decedent MM: 1) samples of 60 mg Cymbalta, 2) prescription of 2 mg Xanax, 3) prescription of 120 10 mg Percocet to be taken 4 times per day for 30 days, 4) prescription of 120 extended release 80

mg OxyContin, and 5) added a prescription of 90 15 mg Roxicodone to be taken 3 times per day for 30 days.

q. Pursuant to Respondent's medical records of the September 17, 2007 visit, Respondent continued the previous course of treatment by providing Decedent MM: 1) samples of 60 mg Cymbalta, 2) prescription of 2 mg Xanax, 3) prescription of 120 10 mg Percocet to be taken 4 times per day for 30 days, 4) prescription of 120 extended release 80 mg OxyContin, and 5) added a prescription of 90 15 mg Roxicodone to be taken 3 times per day for 30 days.

r. In accordance with Respondent's October 17, 2007 medical records, Decedent MM informed Respondent that he had gained approximately 50 pounds. However, Respondent continued the previous course of treatment, without conducting any additional diagnostics, physical examinations or reevaluation, by providing Decedent MM: 1) samples of 60 mg Cymbalta, 2) prescription of 2 mg Xanax, 3) prescription of 120 10 mg Percocet to be taken 4 times per day for 30 days, 4) prescription of 120 extended release 80 mg OxyContin, and 5) added a prescription of 90 15 mg Roxicodone to be taken 3 times per day for 30 days.

s. Although Respondent made notations in his medical records indicating when Decedent MM's mood/psychiatric state changed throughout the year of treatment, Respondent never altered his Cymbalta therapy or performed a reevaluation for the diagnosis of major depression. In addition, when Decedent MM presented with anxiety, Respondent prescribed Xanax, but Respondent never altered the dosage or performed a reevaluation for the diagnosis of anxiety.

Further, Respondent did not document attempts to have Decedent MM submit to psycho-therapy to treat his major depression and anxiety.

t. Throughout Respondent's treatment of Decedent MM from October 4, 2006 to October 21, 2007, Respondent continually changed the doses of and added opioid medications to Decedent MM's pain management therapy<sup>3</sup>, but did not perform any patient monitoring in the form of physical examinations, physical/mental reevaluations, blood work, urine drug screening and/or pill counts.

u. On October 21, 2007, Decedent MM was found dead at his residence.

v. The City of Philadelphia Medical Examiner (Medical Examiner) determined Decedent MM's cause of death to be "combined acute drug intoxication".

w. The Medical Examiner's autopsy revealed that Decedent had an Oxycodone serum level of 3,293 ng/mL<sup>4</sup> and an Alprazolam serum level of greater than (>) 500 ng/mL<sup>5</sup>.

#### ALLEGED VIOLATIONS

5. The Commonwealth alleges that the Board is authorized to 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

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<sup>3</sup> During the October 4, 2006 to October 21, 2007 course of treatment, Respondent raised Decedent MM's daily dose of Oxycodone from 20 mg/day to 405 mg/day.

<sup>4</sup> The normal therapeutic Oxycodone serum level is between 10 ng/mL and 200 ng/mL.

<sup>5</sup> The normal therapeutic Alprazolam serum level is between 5 ng/mL and 40 ng/mL.

impose the costs of investigation upon Respondent under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated:

a. the Act at Section 41(8), 63 P.S. § 422.41(8), and the Regulations at Section 16.92, 49 Pa. Code § 16.92, in that Respondent is guilty of immoral or unprofessional conduct, including departure from, or the failure to conform to the standards of acceptable and prevailing medical practice in regard to his general treatment, as well as prescribing of controlled substances; and

b. the Regulations at Section 16.95, 49 Pa. Code § 16.95, in that Respondent failed to maintain full and complete medical records.

#### PROPOSED ORDER

6. 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 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 violated:

(1) the Act at Section 41(8), 63 P.S. § 422.41(8),  
and the Regulations at Section 16.92, 49 Pa. Code § 16.92,  
in that Respondent is guilty of immoral or unprofessional  
conduct, including departure from, or the failure to conform  
to the standards of acceptable and prevailing medical

practice in regard to his general treatment, as well as  
prescribing of controlled substances; and

(2) the Regulations at Section 16.95, 49 Pa. Code §  
16.95, in that Respondent failed to maintain full and  
complete medical records.

#### COSTS OF INVESTIGATION

b. An assessment for the **COSTS OF INVESTIGATION** of four thousand two hundred dollars (\$4,200.00) is levied upon Respondent. Respondent shall tender the full sum of four thousand two hundred dollars (\$4,200.00) 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.

#### SUSPENSION

c. Respondent's license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania, along with any other licenses, registrations, certificates, approvals, authorizations, or permits (hereinafter referred to collectively as "authorizations to practice the profession") issued by the Board to

Respondent at the time this Consent Agreement is adopted by the Board are hereby **SUSPENDED** for a period of twenty-four (24) months.

**PROBATION**

d. The suspension of Respondent's authorizations to practice the profession shall be immediately **STAYED IN FAVOR OF PROBATION** subject to the following terms and conditions:

(1) Within sixty (60) days of the date this agreement is approved by the Board, Respondent shall develop and submit, to the Probation Compliance Officer and Prosecuting Attorney, a protocol for his office relating to adequate record keeping.

(2) Within sixty (60) days of the date this agreement is approved by the Board, Respondent shall develop and submit, to the Probation Compliance Officer and Prosecuting Attorney, a protocol for his office relating to the prescription monitoring program he utilized for patients to whom he prescribes controlled substances.

(3) Respondent shall maintain documentation in each patient's records of compliance with the above-referenced protocols.

(4) Within sixty (60) days of the date this agreement is approved by the Board, Respondent shall contract with a Board approved practice monitor, including but not limited to Lifeguard, to work with Respondent on the development

of the protocols referenced in Paragraph 6(d)(1) and 6(d)(2) herein, and to conduct quarterly records review monitoring of Respondent's practice throughout the period of probation referenced in paragraph 6(d) herein to assure Respondent continues to apply said protocols and to assure Respondent's practice conforms to quality standards of the medical profession and to generate reports of the findings of said quarterly records review monitoring;

(5) Within sixty (60) days of the date this agreement is approved by the Board, Respondent shall contract with Lifeguard for opioid prescriber monitoring, and following Lifeguard's recommended period of opioid prescriber monitoring, Respondent shall complete Lifeguard's opioid prescriber course.

(6) Respondent's failure to fully cooperate with and successfully comply with the terms, conditions and/or recommendations of the practice monitor shall be deemed a violation of this Consent Agreement and Order

(7) Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice as a medical physician and surgeon in this Commonwealth or any other state or

jurisdiction in which Respondent holds an authorization to practice the profession. Provided, however, summary traffic violations shall not constitute a violation of this Order;

(8) Respondent shall at all times cooperate with the Bureau of Professional and Occupational Affairs ("Bureau"), any of its agents or employees and the Bureau of Enforcement and Investigation ("BEI") and its agents and employees, in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Order, including Respondent causing to be submitted at his own expense written reports, records and verifications of actions that may be required by the Bureau, BEI or any of its agents or employees;

(9) Respondent's failure to fully cooperate with and successfully comply with the terms and conditions of this probation shall be deemed a violation of this Consent Agreement and Order;

(10) Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order;

(11) Respondent shall notify BEI, in writing, within twenty (20) days of the filing of any criminal

charges, the initiation of any other legal action (civil or administrative) pertaining to the Respondent's practice as a medical physician and surgeon, and/or the initiation, action, restriction or limitation relating to Respondent by the professional licensing authority of any state or jurisdiction.

(12) Respondent shall notify BEI by telephone within seventy-two (72) hours, and shall notify both BEI and the Board in writing within ten (10) days of any change in the name(s) and address(es) of the place(s) at which Respondent will practice as a medical physician and surgeon and a description of Respondent's duties and responsibilities at such places of practice;

(13) Respondent shall notify BEI by telephone within seventy-two (72) hours, and shall notify both BEI and the Board in writing within ten (10) days of any change in the Respondent's home address and/or telephone number.

(14) If Respondent will be absent from the Commonwealth of Pennsylvania for any period exceeding twenty (20) days, Respondent must notify BEI, in writing, of Respondent's absence and must provide a list of the jurisdiction(s) in which Respondent intends to stay more than forty-eight (48) hours. Respondent consents to the

release by the Bureau or BEI of any information or data produced as a result of this Agreement or probation to the proper licensing authority of any jurisdiction in which Respondent intends to remain for greater than forty-eight (48) hours.

(15) During any period of Ordered Probation, Respondent shall supply any current professional employer with a copy of this Consent Agreement and Order.

(16) Within fifteen (15) days of the date of this Order, and within (15) days of the date of any change in professional employer Respondent shall have his professional employer submit to BEI written verification that the professional employer *a)* has received a copy of this Consent Agreement and Order, *b)* understands the conditions of this probation, and *c)* agrees to report any suspected violation by Respondent of this probation. If Respondent is or becomes self-employed, Respondent shall submit a statement to that effect to BEI and shall produce any requisite documentation to BEI to substantiate such a statement,

(17) Respondent consents to the release by the Bureau or BEI of any information or data produced as a

result of this probation to any professional employer or prospective professional employer,

(18) Unless otherwise directed, Respondent, his professional employer, and any other person needing or required to make reports under this Order concerning Respondent's practice and contact information shall cause those reports, data or other information to be filed with BEI at:

Probation Compliance Officer Bureau of Enforcement and Investigation Box 2649 Harrisburg, PA 17105-2649 717-783-7230
--

#### REMEDIAL EDUCATION

e. Prior to the expiration of the probationary period, Respondent shall attend and successfully complete at least twenty-five (25) hours of remedial education on the topic of prescribing controlled substances and record keeping through intensive in-person courses from Board Approved providers, including but not limited to the Pennsylvania Medical Society, the American Academy of Pain Medicine, the American Society of Addiction Medicine, and Case Western Reserve University.

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 from March 1, 2016;

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

g. 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.

h. Respondent shall submit acceptable proof of successful completion of the remedial professional education course(s) to the Board's Board Administrator. 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
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i. Acceptable proof of completion of the twenty-five (25) 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 professional education (CPE) credits awarded. Acceptable proof shall not consist of receipts, course outlines or

agendas, cancelled checks, payment acknowledgments, or self-prepared records, among other documents;

j. Respondent shall authorize the course provider to send a course assessment to the Board's Board Administrator;

k. 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;

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

#### **AGREEMENT TO RELINQUISH AUTHORITY AND CEASE AREA OF PRACTICE**

m. Respondent, in order to not abandon his patients and allow them to obtain other healthcare providers for treatment, agrees that within sixty (60) days

of the date the within Agreement is approved he shall cease treatment of pain management patients and agrees to voluntarily terminate the prescribing of opioids, without waiving any authority to prescribe any other medication coming under the authority of his current DEA registration;

n. Respondent shall verify his compliance with this section of the within Agreement by authorizing his contracted, Board approved monitor to review his records and issue a letter to the Probation Compliance Officer verifying the cessation of the above areas of practice.

**VIOLATION OF PROBATION BECAUSE OF FAILURE TO SUCCESSFULLY COMPLETE REMEDIAL EDUCATION AS REQUIRED BY CONSENT AGREEMENT AND ORDER**

o. If the Respondent fails to submit acceptable proof of successful completion of the Remedial Education as required by this Consent Agreement, Respondent's license to practice as a medical physician and surgeon and any and all authorizations to practice the profession issued by the Board and held by Respondent shall be **IMMEDIATELY AND INDEFINITELY SUSPENDED**, without further hearing, until such time as Respondent does provide the Board's Board Administrator with acceptable proof of successful completion of the Remedial Education as required by this Consent Agreement.

**VIOLATION(S) OF PROBATION FOR REASONS OTHER THAN FAILURE TO TIMELY COMPLETE REMEDIAL EDUCATION**

p. Notification of a violation of the terms or conditions of this Consent Agreement and Order for reasons other than failure to timely complete Ordered Remedial Education shall result in the **IMMEDIATE VACATING** of the stay order, **TERMINATION** of the period of probation, and **ACTIVATION** of the

entire period of suspension of Respondent's authorizations to practice the profession in the Commonwealth of Pennsylvania as follows:

(1) The prosecuting attorney for the Commonwealth shall file with the Board a Petition which alleges that Respondent has violated any terms or conditions of this Consent Agreement and Order other than failure to complete the Ordered remedial education in a timely manner;

(2) Upon a probable cause determination that Respondent has violated any of the terms or conditions of this Consent Agreement and Order, the Board shall, without holding a formal hearing, issue a preliminary order vacating the stay of the suspension in this matter, terminating the period of probation and activating the entire period of suspension of Respondent's authorizations to practice the profession, without credit for any period of suspension stayed in favor of probation;

(3) Notification of the Board's Preliminary Order shall be mailed to Respondent within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Board. If service by mail is unsuccessful, the Commonwealth is authorized to attempt service by

personal service and/or publication of legal notice in a newspaper of general circulation in the county of Respondent's last known address.

(4) Within twenty (20) days of mailing of the notification of the Board's action, Respondent may answer the Commonwealth's Petition and request that a formal hearing be convened concerning Respondent's alleged violation of probation, in which Respondent may seek relief from the Preliminary Order activating the suspension.

The answer shall be set forth in numbered paragraphs corresponding to the numbered paragraphs of the Petition. Respondent shall admit or deny each of the allegations set forth in the paragraphs in the Petition.

Respondent shall mail the original answer and request for hearing, and all other pleadings to

Office of Prothonotary Bureau of Professional and Occupational Affairs 2601 N. 3rd Street P.O. Box 2649 Harrisburg, PA 17105-2649
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(5) Respondent shall send a copy of the answer, request for hearing, and all subsequent filings in the matter to the prosecuting attorney for the Commonwealth;

(6) If a request for a formal hearing is received from Respondent, the Board shall convene a formal hearing within forty-five (45) days from the date of the Board's receipt of Respondent's request for a formal hearing;

(7) If Respondent files an answer and request for a hearing within the twenty (20) day period, the Preliminary Order activating the suspension shall remain in effect unless and until the Board issues a determination favorable to Respondent after holding the formal hearing;

(8) The facts and averments in paragraphs 3 & 4 of this Consent Agreement and Order shall be deemed admitted and uncontested for purposes of the hearing;

(9) If the Board after such hearing makes a determination adverse to Respondent, the Board will issue a Final Order activating the suspension of Respondent's license and imposing any additional disciplinary measures it deems appropriate;

(10) If a request for a formal hearing is not received from Respondent within the prescribed twenty (20) day period, the Board's Preliminary Order shall become a Final Order twenty (20) days after the date of its mailing;

(11) If the stay is terminated, Respondent shall still comply with all terms and conditions of probation during the active suspension, other than those terms and conditions pertaining to the active practice of the profession. Continued failure by Respondent to comply with the unaffected terms and conditions of probation shall result in further disciplinary action against Respondent;

q. Respondent's failure to fully comply with any terms of this Order may also constitute grounds for additional disciplinary action.

r. Respondent shall make written application to the Board at the end of the total period of probation requesting that Respondent's authorizations to practice the profession be reinstated to unrestricted status.

s. 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.

t. 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**

7. 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**

8. 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

9. 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 Charles J. Hartwell, regarding this Consent Agreement.

WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS

10. 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

11. 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

12. 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

13. 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

14. 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

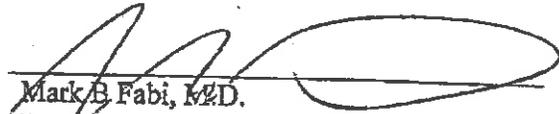
15. Nothing in this Order shall preclude the Prosecution Division for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement;

VERIFICATION OF FACTS AND STATEMENTS

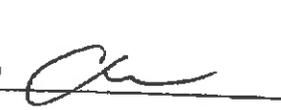
16. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

  
Jason Anderson  
Prosecuting Attorney

DATED:

  
Mark B. Fabi, M.D.  
Respondent

DATED:

7/20/16   
Charles J. Hartwell  
Attorney for Respondent

DATED:

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

Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs

vs.

Mark B Fabi, M.D.,  
Respondent

File No.: 10-49-09109

Docket No: 0497-49-15

ORDER

AND NOW, this 7<sup>th</sup> day of Sept 2016, the STATE BOARD OF MEDICINE ("Board") adopts and approves the foregoing Consent Agreement and incorporates the terms of paragraph 6, 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. Fleine, M.D.  
Chair

Jason Anderson, Esquire  
2601 North Third Street  
P. O. Box 69521  
Harrisburg, PA 17106-9521

Charles J. Hartwell, Esquire  
Dethlefs, Pykosh, Shook, & Murphy  
2132 Market Street  
Camp Hill, PA 17011

September 14, 2016

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

Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs

vs.

Mark B. Fabi, MD  
Respondent

File No.: 17-49-12012

Docket No: 2430 -49-17

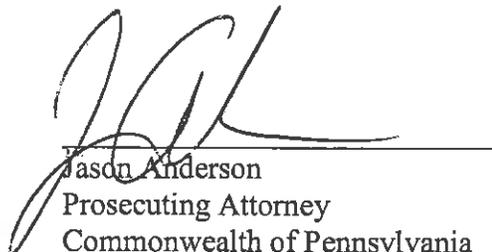
CERTIFICATE OF SERVICE

I, Jason Anderson, hereby certify that I have this 20<sup>th</sup> day of December 2017 caused a true and correct copy of the foregoing Preliminary Order and Petition for Appropriate Relief to be served upon all parties of record in this proceeding in accordance with the requirements of Section 33.31 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 33.31 (relating to service by the agency).

CERTIFIED MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID:

Mark B. Fabi, MD  
c/o Charles J. Hartwell, Esquire  
Dethlefs, Pykosh, Shook, & Murphy  
2132 Market Street  
Camp Hill, PA 17011

9171 9690 0935 0158 6682 41

  
Jason Anderson  
Prosecuting Attorney  
Commonwealth of Pennsylvania  
Department of State  
P. O. Box 69521  
Harrisburg, PA 17106-9521  
(717) 783-7200

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

Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs

vs.

Mark B Fabi, M.D.,  
Respondent

File No.: 17-49-12012

Docket No: 2436-49-17

**ORDER**

*AND NOW*, this *5<sup>th</sup>* day of *February* 2018, the STATE BOARD OF MEDICINE ("Board") adopts and approves the foregoing Consent Agreement and incorporates the terms of paragraph 6, 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: *February 9, 2018*

BY ORDER:  
STATE BOARD OF MEDICINE

  
\_\_\_\_\_  
Bruce A. Brod, M.D.  
Chair

Jason Anderson, Esquire  
2601 North Third Street  
P. O. Box 69521  
Harrisburg, PA 17106-9521

Charles J. Hartwell, Esquire  
Dethlefs, Pykosh, Shook, & Murphy  
2132 Market Street  
Camp Hill, PA 17011