

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

**Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs**

**vs.**

**Richard P Fitzgibbons, M.D.  
Respondent**

**File No.: 11-49-00844**

**Docket No: 1294-49-13**

Department of State

2013 DEC 11 AM 9:35

PROHIBITORY

**CONSENT AGREEMENT AND ORDER**

**PARTIES**

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and **Richard P Fitzgibbons, 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. MD011908E, which was originally issued on July 10, 1970, and which is currently set to expire on December 31, 2014.

### **STIPULATED FACTS**

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

- a. 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:  
100 Four Falls Corporate Center, Suite 312, W Conshohocken, PA 19428-2959.
- c. From on or about September 29, 2009 through October 12, 2009, the Respondent was the Director of Comprehensive Counseling Services ("CCS"), 100 Four Falls Corporate Center, Suite 312, W. Conshohocken, PA 19428.
- d. On or about September 29, 2009 and October 12, 2009, the Respondent and Licensed Professional Counselor Peter C. Kleponis, provided treatment to Patient P.C. on 7 occasions.
- e. On or about November 16, 2009, the Respondent provided Patient P.C.'s superior(s) with information obtained during treatment sessions with Patient P.C.
- f. Patient P.C. did not provide written consent for the Respondent to communicate with Patient P.C.'s superior(s) regarding Patient P.C.'s treatment.

### **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 the Act Section 41(6), 63 P.S. §422.41(6) because the Respondent violated a lawful regulation promulgated by the Board at 49 Pa.Code §16.61(a)(1) by revealing personally identifiable facts, obtained as the result of practitioner-patient relationship, without the prior written consent of the patient and Section 41(8) of the Act, 63 P.S. §422.41(8) because the Respondent is guilty of unprofessional conduct in that Respondent disclosed confidential information without written release.

**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 the Act at: the Act Section 41(6), 63 P.S. §422.41(6) because the Respondent violated a lawful regulation promulgated by the Board at 49 Pa.Code §16.61(a)(1) by revealing personally identifiable facts, obtained as the result of practitioner-patient relationship, without the prior written consent of the patient and Section 41(8) of the Act, 63 P.S. §422.41(8) because the Respondent is guilty of unprofessional conduct in that Respondent disclosed confidential information without a written release.

**PUBLIC REPRIMAND**

b. A **PUBLIC REPRIMAND** shall be placed on Respondent's permanent disciplinary record with the Board.

**PROBATION**

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 placed on **PROBATION** for a period of **SIX (6) MONTHS** subject to the following terms and conditions:

(1) 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;

(2) 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;

(3) 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;

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

(5) 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.

(6) 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;

(7) 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.

(8) Below is the contact information for BEI

Probation Compliance Officer Bureau of Enforcement and Investigation Box 2649 Harrisburg, PA 17105-2649 (717-783-7228)
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#### **REMEDIAL EDUCATION**

d. Prior to the expiration of the probationary period, Respondent shall attend and successfully complete at least **TWENTY (20)** hours of remedial education on the topic of **MEDICAL ETHICS and PROFESSIONALISM**.

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

(1) The Respondent shall obtain **PRE-APPROVAL** of the remedial continuing education courses from the Prosecuting Attorney.

(2) The additional hours of remedial education required by this Order shall consist of hours attended or completed after the date this Order is approved by the Board;

(3) 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 remedial 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 Prosecuting Attorney. Respondent shall note the file number and docket number of this matter on any documentation submitted to the Prosecuting Attorney. The address for the Prosecuting Attorney is:

Joan Miller, Esquire 2601 N. 3rd Street P.O. Box 2649 Harrisburg, PA 17105-2649
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h. Acceptable proof of completion of the **TWENTY (20)** 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;

i. Respondent shall authorize the course provider to send a course assessment to the Prosecuting Attorney;

j. The 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 remedial 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;

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

1. 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**

m. 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 TERMINATION** of the period of probation, and **ACTIVATION** of the 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, terminating the period of probation and suspending the Respondent's authorizations to practice the profession, without credit for any period 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;

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

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

p. 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.

q. 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 Attorney John R. O'Rourke, Jr. 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.

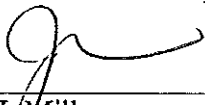
#### **AGREEMENT DOES NOT PREVENT ADDITIONAL DISCIPLINE BASED ON OTHER COMPLAINTS**

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;

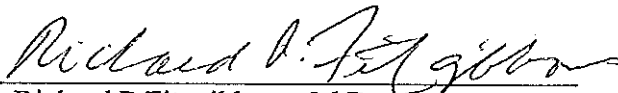
#### **VERIFICATION OF FACTS AND STATEMENTS**

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

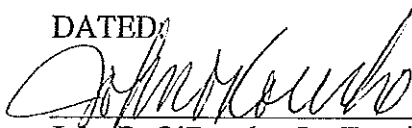
understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Joan J. Miller  
Prosecuting Attorney

DATED: 11/22/13

  
\_\_\_\_\_  
Richard P Fitzgibbons, M.D.  
Respondent

DATED:

  
\_\_\_\_\_  
John R. O'Rourke, Jr., Esquire  
Attorney for Respondent

DATED: 11/11/13

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

Commonwealth of Pennsylvania  
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vs.

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File No.: 11-49-00844

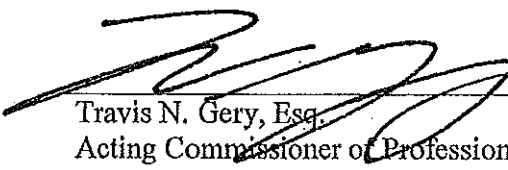
Docket No: 1294-49-13

ORDER

AND NOW, this 14th day of December 2013, 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


  
Travis N. Gery, Esq.  
Acting Commissioner of Professional and  
Occupational Affairs

For the Commonwealth:

For the Respondent:

Date of mailing:

BY ORDER:  
STATE BOARD OF MEDICINE

  
Andrew J. Behnke, M.D.  
Chair

Joan J. Miller, Esquire  
2601 North Third Street  
P. O. Box 2649  
Harrisburg, PA 17105-2649

John R. O'Rourke, Jr., Esquire  
11 East Airy Street  
Norristown, PA 19404

12/11/13