

**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**

Case No.: 21-49-010285

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 of 1985, 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 63 PaC.S. §§ 3101-3118.

LICENSURE STATUS

2. At all relevant and material times, Respondent held the following license to practice as a Medical Physician and Surgeon under the authority of the Medical Board in the Commonwealth of Pennsylvania: license no. MD011908E which was originally issued on July 10, 1970 and is current through December 31, 2022.

Prothonotary Filed On:
Sep 15 2021 10:56 AM
Department of State

STIPULATED FACTS

3. The Respondent admits that the following allegations are true:
 - a. Respondent holds the following license to practice as a Medical Physician and Surgeon in the Commonwealth of Pennsylvania: license no.: MD011908E.
 - b. Respondent's license may be continually reactivated, renewed, or reinstated upon the filing of the appropriate documentation and payment of the necessary fees.
 - c. Respondent's last known office address, as on file with the Board is: 101 W. Elm Street, Suite 320, Conshohocken, PA, 19428. From discussion with Respondent's wife, as Respondent's office is in the process of closing, a more current address is 524 Scott Road, Gladwyne, PA 19035.
 - d. On or about June 18, 2021, the Commonwealth was notified of a risk that Respondent was potentially mentally or physically impaired to the point that he could not practice medicine with reasonable skill and safety to patients.
 - e. On or about July 13, 2021, Respondent's wife, Adele Fitzgibbons ("Mrs. Fitzgibbons") informed the Commonwealth that Respondent had been admitted for psychiatric care, that he was unable to safely practice medicine, and that as his Agent, she wished to surrender his license.¹

¹ Mrs. Fitzgibbons submitted a copy of a signed Power of Attorney which authorizes her to act as her husband's Agent in both health and financial matters, including the powers to "disclaim property" and to "sign, acknowledge and deliver all deeds, agreements, proxies, receipts, releases and satisfactions".

AUTHORITY OF THE BOARD

4. The Board is authorized to suspend or revoke, or otherwise restrict Respondent's license under sections 41 and 42 of the Act, 63 P.S. §§ 422.41 & 422.42; or impose a civil penalty under Section 908 of the Mcare Act, 40 P.S. §§ 1303.908, and/or Section under 15(b) of the Act, 63 P.S. § 665(b), or 63 Pa.C.S. § 3108(b)(4); and/or impose the costs of investigation under 63 Pa.C.S. § 3108(b)(5)

SUMMARY OF DISCIPLINE

5. The following encapsulates the discipline as set forth in the Proposed Order:

- Respondent's license to practice as a Medical Physician and Surgeon will be VOLUNTARILY SURRENDERED.

PROPOSED ORDER

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

VIOLATIONS: Respondent violated the Act at:

- (1) 63 P.S. §422.41(5) in that Respondent is unable to practice the profession with reasonable skill and safety to patients by reason of illness.

VOLUNTARY SURRENDER

b. In consideration for not imposing other disciplinary sanctions (which could include the revocation of Respondent's license to practice as a Medical Physician and Surgeon and/or the imposition of civil penalties of up to ten thousand dollars (\$10,000) per violation and/or the costs of investigation, the Parties propose, and the Respondent hereby accepts, the **VOLUNTARY SURRENDER** of Respondent's license to practice

as a Medical Physician and Surgeon in the Commonwealth of Pennsylvania, license number MD011908E, 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. Respondent acknowledges that with the voluntary surrender of his authorizations to practice the profession, Respondent is surrendering any and all property rights he may have in those authorizations to practice the profession and will no longer be eligible to renew those authorizations to practice the profession. As further stated consideration for the Commonwealth not seeking other disciplinary sanctions against Respondent, Respondent agrees to:

- (1) Cease practicing as a Medical Physician and Surgeon in the Commonwealth on and after the effective date of this Consent Agreement, and shall not indicate any ability to practice the profession in the Commonwealth in any manner whatsoever in the future,
- (2) unless otherwise specified in this agreement, Respondent agrees to not apply, at any time in the future, for the reactivation, reinstatement, reissuance, or the issuance of any authorization to practice issued by the Board and further directs that the board should not consider, and may deny without hearing, any application for an authorization to practice filed with the Board.

(3) not work as an unlicensed assistant to any person holding an authorization from the Board to practice the profession,

(4) not possess a controlling interest in any organization requiring an authorization from the Board to practice the profession,

(5) not possess a controlling interest in any organization whose employees require an authorization from the Board to practice the profession when conducting the business of the organization,

c. For purposes of this paragraph, the term 'controlling interest' shall include being an owner, officer, director, partner, or associate, as well as owning any quantity of outstanding corporate stock sufficient to control or direct the actions of the firm.

d. Respondent shall, within ten (10) days of the issuance of this Order, surrender Respondent's wall certificate, biennial renewal certificate and wallet card (or a notarized affidavit of their loss or destruction) by mailing them to

Adam J. Williams Prosecuting Attorney Bureau of Professional and Occupational Affairs P.O. Box 2649 Harrisburg, PA 17105-2649

or by delivering them in person at:

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

e. **REINSTATEMENT:** As a prerequisite to reinstatement of Respondent's authorizations to practice the profession, Respondent must provide an affirmative showing that Respondent has complied with all terms and conditions of this Agreement and that Respondent's resumption of unsupervised practice does not present a threat to the public health and safety. **Respondent is required to remain in compliance with all terms and conditions of this Agreement until the Board issues the order terminating Respondent's probationary status.**

f. Respondent acknowledges if the Respondent petitions for reinstatement of his license the Board may take actions, which include, but are not limited to:

- (1) requiring the Respondent to appear at a formal or informal hearing;
- (2) granting reinstatement with conditions; or
- (3) denying the petition.

g. Additionally, as a condition precedent to reinstatement of Respondent's license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania,

- (1) Respondent shall have the burden of demonstrating to the satisfaction of the Board that the Respondent bears the requisite honesty, trustworthiness,

integrity, and competency to be entrusted to hold a license to practice medicine; and

(2) Respondent shall undergo a mental and physical examination by a Board-Approved Evaluator and shall comply with any and all conditions that may be recommended by the Evaluator and/or the Board in order for Respondent to practice medicine with reasonable skill and safety to patients.

(3) Respondent shall have the burden of demonstrating to the Board that the Respondent is able to practice medicine with reasonable skill and safety to patients.

(4) Respondent shall provide a current Criminal History Record Information (a/k/a “Criminal Records Check”) from the state-wide government agencies of all states where the Respondent has resided since the approval of this Order, compiled no more than three (3) months prior to the Petition for Reinstatement.

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

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

j. Nothing in this Agreement shall preclude the prosecuting attorney for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Agreement.

k. 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.

l. 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 this Consent Agreement and Order shall be admitted into evidence, without objection, in any proceeding before the Department of State.

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 the following rights related to that hearing: to be represented by counsel; 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 adverse final decision.

ACKNOWLEDGMENT OF RIGHT TO ATTORNEY

9. Respondent acknowledges the right to consult with and 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.

WAIVER OF CLAIMS

10. Should the Board vote not to adopt the Order proposed in this Consent Agreement, the presentation and consideration of this Consent Agreement shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. Respondent expressly waives the right to raise any claims or issues, including any and all constitutional claims or issues, which may arise or have arisen during the review, presentation and deliberation of this Consent Agreement. These claims or issues include, but are not limited to, bias, the commingling of prosecutorial and adjudicative functions by the Board or its counsel, and the Board, in its discretion, recommending a different sanction based upon the facts set forth in the Consent Agreement. 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 a hearing unless otherwise separately stipulated.

LIMITS ON MODIFICATION OF ORDER

11. Respondent agrees not to seek modification of the Order adopting and implementing this Consent Agreement without first obtaining the express written permission from the prosecution division. Any modification is at the sole discretion of the Board.

AGREEMENT NOT BINDING UNTIL APPROVED

12. This Consent Agreement is between the Commonwealth and Respondent. The Office of General Counsel has approved this Consent Agreement as to form and legality. The disciplinary provisions of this Consent Agreement do not take effect unless and until the Board issues an order adopting this Consent Agreement.

ENTIRE AGREEMENT

13. This Consent Agreement contains the entire agreement between the parties. There are no other terms, obligations, covenants, representations, statements, or conditions, oral or otherwise, of any kind whatsoever concerning this agreement.

AGREEMENT DOES NOT PREVENT FUTURE DISCIPLINE

14. Nothing in this Order shall preclude the prosecution division of the Department of State 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.


Adam J. Williams

Prosecuting Attorney

DATED: 08-02-2021


Adele Fitzgibbons

Agent for Respondent, Richard P. Fitzgibbons

DATED: 07/28/2021

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ORDER

AND NOW, this 14th day of September 2021, 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**



K. Kalonji Johnson
Commissioner

For the Commonwealth:

Respondent:

Date of mailing: September 16, 2021

**BY ORDER:
STATE BOARD OF MEDICINE**



Mark B. Woodland, M.S., M.D.
Chair

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2601 North Third Street
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524 Scott Rd.
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