

COMMONWEALTH OF MASSACHUSETTS

Suffolk, Ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-19-0224

Atif B. Malik, M.D.,
Respondent

Appearance for Petitioner:

Lawrence Perchick, Esq.
Board of Registration in Medicine
200 Harvard Mill Square, Ste. 330
Wakefield, MA 01880

Appearance for Respondent:

Carolyn Jacobs, Esq.
Jacobs & Dembert, P.A.
One South Street, Suite 2100
Baltimore, MD 21202-3280

Administrative Magistrate:

Kenneth J. Forton, Esq.

ORDER OF DEFAULT AND RECOMMENDED DECISION

On May 3, 2019, the Board of Registration in Medicine issued a Statement of Allegations against the Respondent, Dr. Atif B. Malik. His license last lapsed in 2006, and he has not practiced medicine in Massachusetts since then. The Board seeks to discipline Dr. Malik for a series of violations tied to his December 12, 2017 conviction for a variety of crimes for which he was sentenced to eight years incarceration that he is now serving.

The Board also seeks summary suspension of Dr. Malik's license pending a final hearing on the Statement of Allegations. The Board filed its motion for summary suspension with DALA on May 8, 2019. DALA scheduled a hearing on the motion for May 21, 2019 at 10:00 a.m. The Board appeared for the hearing. The Respondent did not. The Board represented to DALA that, after failed attempts to agree upon a surrender of his license, Dr. Malik intended not to oppose the summary suspension or defend himself against the Statement of Allegations.

It is difficult to see grounds for summarily suspending the license of a physician who has not held a Massachusetts license since 2006 and who is scheduled to be incarcerated for at least six more years. Summary suspension requires that Dr. Malik be an *immediate* and/or *serious* threat to public health, safety or welfare. *See* 243 CMR 1.03(11). Neither is true at present. Nonetheless, the Board's Order of Temporary Suspension remains in effect because Dr. Malik has not opposed it and apparently does not intend to oppose it.

Considering that he does not intend to defend himself, I ordered Dr. Malik, no later than *June 14, 2019*, to either resign his inchoate right to renew his license, or show cause why DALA should not adopt the Statement of Allegations as true and recommend that the Board impose appropriate discipline. Dr. Malik did not respond.

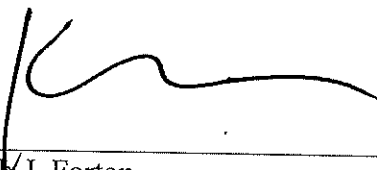
On June 18, 2019, the Board filed a Motion for Entry of Default Judgment and Summary Decision based on the Respondent's failure to answer the Statement of Allegation, failure to appear at the summary suspension hearing, and failure to respond to DALA's Order to Show Cause.

801 CMR 1.01(6)(d) requires that a Respondent file full, direct and specific answers to a Statement of Allegations. The Respondent has failed to file such an Answer. Further, Respondent's failure to appear at the summary suspension hearing and his failure to respond to the Order to Show Cause indicate his intention not to defend his license. Accordingly, as permitted by G.L. c. 30A, § 10, the Respondent is defaulted. *See also* 801 CMR 1.07(g).

As a consequence of the default, all of the allegations contained in the Statement of Allegations are deemed proven and true, and accordingly I hereby recommend to the Board of Registration in Medicine that it impose appropriate sanctions against the Respondent.

So ordered.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth J. Forton
Administrative Magistrate

Dated: **JUL -3 2019**

EXHIBIT A

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

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

File No.:

16-49-11406

vs.

**Atif Babar Malik, M.D.,
Respondent**

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DEPARTMENT OF STATE

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and **Atif Babar Malik, 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 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; the Criminal History Record Information Act, Act of July 16, 1979, P.L. 116, No. 47 ("CHRIA"), *as amended*, 18 Pa. C.S. §§ 9101 – 9183; 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.

MD448885, which was originally issued on June 4, 2013, and which expired on December 31, 2016.

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 address on file with the Board is: P.O. Box 2348, Germantown, MD 20875.

c. On or about July 27, 2017, a Superseding Indictment was issued by a Grand Jury in the United States District Court for the District of Maryland in the matter of United States of America v. Atif Babar Malik, et. al. at Criminal No. MJG-16-0324.

d. A true and correct copy of the Superseding Indictment is attached and incorporated as **Exhibit A**.

e. Count One of the Superseding Indictment charged Respondent with felony Conspiracy to Violate the Anti-Kickback Act, 42 U.S.C. §1320a-7b(b), and the Travel Act, 18 U.S.C. §§1952(a)(1) and 1952(a)(3).

f. Counts Two through Thirteen of the Superseding Indictment charged Respondent with felony counts of Receipt of Unlawful Remuneration in Violation of the Anti-Kickback Act.

g. Counts Fourteen through Seventeen of the Superseding Indictment charged Respondent with felony counts of violating the Travel Act.

h. Count Eighteen of the Superseding Indictment charged Respondent with felony Conspiracy to Defraud the IRS, 18 U.S.C. §371.

i. Counts Nineteen through Twenty-Four of the Superseding Indictment charged Respondent with felony counts of Health Care Fraud, 18 U.S.C. §§371 and 2.

j. Counts Twenty-Five through Twenty-Seven of the Superseding Indictment charged Respondent with felony counts of False Statements Relating to Health Care Matters, 18 U.S.C. §§1035(a)(1) and 1035(a)(2).

k. On or about October 27, 2017, a jury issued verdicts in the United States District Court for the District of Maryland following a trial in the matter of United States of America v. Atif Babar Malik at Criminal No. MJG-16-0324.

l. A true and correct copy of the verdict sheet referenced in paragraph 3k is attached and incorporated as **Exhibit B**.

m. Respondent was found guilty of Counts One through Twenty-Seven of the Superseding Indictment in the matter of United States of America v. Atif Babar Malik, et. al. at Criminal No. MJG-16-0324.

ALLEGED VIOLATIONS

4. The Commonwealth alleges that 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 5(b)(4) of ACT 48, 63 P.S. §2205(b)(4) and/or impose the costs of investigation under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated the Act at

Section 41(4), 63 P.S. § 422.41(3), in that Respondent was convicted of a total of twenty-six (26) felony counts in a federal court.

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 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 Mearc Act, 40 P.S. §§ 1303.908, and/or Section 5(b)(4) of ACT 48, 63 P.S. § 2205(b)(4) and/or impose the costs of investigation under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated the Act at Section 41(4), 63 P.S. § 422.41(3), in that Respondent was convicted of a total of twenty-six (26) felony counts in a federal court.

PERMANENT 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 the imposition of civil penalties and/or the costs of investigation), the Parties propose, and the Board hereby accepts, the **PERMANENT VOLUNTARY SURRENDER** of 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. Respondent acknowledges that with

the permanent 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, manager, director, partner, member, 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 adoption of this Consent Agreement and Order, surrender Respondent's wall certificate, biennial renewal certificate and wallet card (or notarized affidavit of their loss or destruction) by mailing them to:

Keith E. Bashore, Prosecuting Attorney
Pennsylvania Department of State
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

e. 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.

f. 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 Carolyn Jacobs 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.

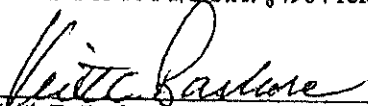
AGREEMENT DOES NOT PREVENT ADDITIONAL DISCIPLINE BASED ON OTHER COMPLAINTS

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.



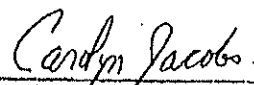
Keith E. Bashore
Prosecuting Attorney

DATED: 2/14/19



Atif Babar Malik, M.D.
Respondent

DATED:



Carolyn Jacobs
Attorney for Respondent

DATED: 2/13/2019