

Public

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

June 5, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mark R. Fantauzzi, D.O.

REDACTED

Re: License No. 182556

Dear Dr. Fantauzzi:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 13-165. This order and any penalty provided therein goes into effect June 12, 2013.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to: c/o Physician Monitoring Unit, NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719.

If your license is framed, please remove it from the frame and only send the parchment paper on which your name is printed. Our office is unable to store framed licenses.

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Enclosed for your convenience is an affidavit. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

BPMC No. 13-165

IN THE MATTER

SURRENDER

OF

ORDER

MARK FANTAUZZI, D.O.
CO-12-01-0288-A

Upon the application of **MARK FANTAUZZI, D.O.**, (Respondent), to Surrender his license to practice medicine in the State of New York, which is made a part of this Surrender Order, it is

ORDERED, that the Surrender, and its terms, are adopted and it is further

ORDERED, that Respondent's name be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this Surrender Order shall be effective upon issuance by the Board, either by mailing of a copy of this Surrender Order, either by first class mail to Respondent at the address in the attached Surrender of License or by certified mail to Respondent's attorney, or upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 6/4/2013

REDACTED

ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
MARK FANTAUZZI, D.O.
CO-12-01-0288-A

SURRENDER
OF
LICENSE

MARK FANTAUZZI, D.O., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about July 2, 1990, I was licensed to practice medicine in the State of New York and issued license number 182556 by the New York State Education Department.

My current address is REDACTED

I understand that the New York State Board for Professional Medical Conduct has charged me with four (4) Specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A," is attached to and part of this Surrender of License.

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license to practice medicine in the State of New York on the grounds that I do not contest the Specifications.

I ask the Board to accept the surrender of my license, and I agree to be bound by all of the terms set forth in attached Exhibit "B."

I understand that if the Board does not accept my Surrender of License none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Surrender of License shall not be used against me in any way and shall be kept in strict confidence; and

~~of License shall not be used against me in any way and shall be kept in strict confidence; and~~
the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board accepts the surrender of my license, the Chair of the Board shall issue a Surrender Order in accordance with its terms. I agree that the Surrender Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first. The Surrender Order, this Surrender of License, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

I ask the Board to accept this Surrender of License, which I submit of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

I understand and agree that the attorney for the Department of Health, the Director of the Office of Professional Medical Conduct, and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed Surrender of License and Surrender Order, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

Date: 05/29/2013, 2013

REDACTED

Mark Fantauzzi, D.O.
Respondent

The undersigned agree to Respondent's attached Surrender of License and to its proposed penalty, terms and conditions.

Date: May 30, 2013

REDACTED

PAUL TSUI

Associate Counsel

Bureau of Professional Medical Conduct

Date: 6/3, 2013

REDACTED

KEITH W. SERVIS

Director, Office of Professional

Medical Conduct

IN THE MATTER
OF
MARK FANTAUZZI, D.O.
CO-12-01-0288-A

STATEMENT
OF
CHARGES

MARK FANTAUZZI, D.O., Respondent, was authorized to practice medicine in New York State on July 2, 1990, by the issuance of license number 182556 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 9, 2011, the State Medical Board of Ohio (hereinafter "Ohio Board") permanently revoked the Respondent's license to practice osteopathic medicine and surgery in Ohio, Certificate No. 34-005948, upon the Respondent executing a Surrender with a Consent to Revocation. The Ohio Board had commenced an action against the Respondent on or about June 8, 2011 based upon the Drug Enforcement Administration of the U.S. Department of Justice (hereinafter "DEA") issuing the Respondent an Order to Show Cause and Immediate Suspension of Registration on or about May 17, 2011 as his registration constituted an imminent danger to the public health and safety. The immediate suspension was based on factual allegations that included, but were not limited to, that Respondent began working on or about September 10, 2009 at a clinic in Portsmouth, Ohio, that was a cash only business, which was owned and operated by two individuals who had no medical training and who hired or contracted with doctors to issue prescriptions for controlled substances to their clientele; that Respondent prescribed controlled substances for other than legitimate medical purposes or outside the usual course of professional practice; that Respondent made false representations to the Ohio State Board of Pharmacy in his application to obtain a terminal distributor license for controlled substances; that one of Respondent's patients died from an overdose four days after Respondent prescribed 112 dosage units of 15 mg and 30 mg oxycodone and 28 dosage units of 2 mg alprazolam. With respect to Respondent's prescribing of controlled substances, the DEA alleged that Respondent failed to provide an individualized treatment plan and justification for prescribing controlled substances to treat intractable pain;

Respondent failed to obtain evaluations from supporting specialists when prescribing controlled substances to treat intractable pain; Respondent failed to obtain informed consent from patients, as evidenced by the lack of documentation relating to the risks and benefits of long-term opioid use and the alternatives thereto, when prescribing controlled substances to treat intractable pain; and Respondent failed to document the effects of treatments with controlled substances during periodic follow-up examinations. On or about September 14, 2011, Respondent voluntarily surrendered his DEA registration.

B. On or about January 30, 2012, the Department of Health Professions, Commonwealth of Virginia (hereinafter "Virginia Board"), suspended Respondent's License to practice osteopathic medicine, License No. 0102-050023, based on the disciplinary action taken by the Ohio Board as set forth in Paragraph A above.

C. On or about April 27, 2012, the Board of Medical Licensure, Commonwealth of Kentucky (hereinafter "Kentucky Board") had Respondent surrender his license to practice osteopathy in the Commonwealth of Kentucky, License No. 02646, pursuant to an Agreed Order of Surrender (hereinafter "Kentucky Order") for violating the provisions of KRS 311.597(17) based on the revocation of Respondent's license in Ohio and suspension of his license in Virginia.

D. On or about May 3, 2012, the Georgia Composite Medical Board, State of Georgia (hereinafter "Georgia Board") had Respondent surrender his license to practice medicine in the State of Georgia, License No. 43202, pursuant to a Voluntary Surrender Order (hereinafter "Georgia Order").

E. On or about May 4, 2012, the North Carolina Medical Board, State of North Carolina (hereinafter "North Carolina Board"), pursuant to a Consent Order (hereinafter "North Carolina Order") indefinitely suspended Respondent's license to practice medicine in the State of North Carolina, License No. 200000212, and had Respondent surrender his license based upon the surrender and revocation of his license in the State of Ohio and surrender of his DEA registration as set forth in Paragraph A above.

F. On or about May 9, 2012, the Board of Osteopathic Examination, State of Tennessee (hereinafter "Tennessee Board"), pursuant to a Consent Order (hereinafter

"Tennessee Order") had Respondent voluntarily surrender his license as a doctor of osteopathic medicine in the State of Tennessee, License No. 828, based upon the surrender and revocation of his license in Ohio and surrender of his DEA registration as set forth in Paragraph A above.

G. On or about May 30, 2012, the State Board of Registration for the Healing Arts, State of Missouri (hereinafter "Missouri Board"), by a default order following a hearing, revoked Respondent's license as a physician, License No. 110525, for a period of seven (7) years before he can apply for reinstatement based upon the actions taken against his licenses in the State of Ohio and Commonwealth of Virginia.

H. The conduct resulting in the Ohio Board disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State Law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(3) (practicing the profession with negligence on more than one occasion);
3. New York Education Law §6530(4) (practicing the profession with gross negligence on a particular occasion);
4. New York Education Law §6530(5) (practicing the profession with incompetence on more than one occasion);
5. New York Education Law §6530(6) (practicing the profession with gross incompetence);
6. New York Education Law §6530(20) (conduct in the practice of medicine which evidences moral unfitness to practice medicine; and/or
7. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

I. The conduct resulting in the Virginia Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(9)(d) (having his license to practice medicine suspended or having other disciplinary action by a duly authorized professional disciplinary

agency of another state, where the conduct resulting in the suspension or other disciplinary action would, if committed in that state, constitute professional misconduct under the laws of that state).

J. The conduct resulting in the Kentucky Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(9)(d) (having disciplinary action taken or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action or surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State).

K. The conduct resulting in the Georgia Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(9)(d) (having disciplinary action taken or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action or surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State).

L. The conduct resulting in the North Carolina Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(9)(d) (having disciplinary action taken or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action or surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State).

M. The conduct resulting in the Tennessee Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(9)(d) (having disciplinary action taken or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action or surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State).

N. The conduct resulting in the Missouri Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York State Education Law §6530(9)(b) (having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State).

2. New York State Education Law §6530(9)(d) (having his license to practice medicine revoked or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation and/or other disciplinary involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State).

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts in Paragraph A and/or H.
2. The facts in Paragraphs A, B, C, D, E, F, G, H, I, J, K, L, M, and/or N.

THIRD AND FOURTH SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked and/or having other disciplinary action taken or having surrendered his license to practice medicine after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender of license, revocation of license and/or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws New York State, in that Petitioner charges:

3. The facts in Paragraphs A and/or H.
4. The facts in Paragraphs A, B, C, D, E, F, G, H, I, J, K, L, M, and/or N.

DATED: *Feb. 26*, 2013
Albany, New York

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

REQUIREMENTS FOR CLOSING A MEDICAL PRACTICE FOLLOWING A REVOCATION, SURRENDER OR SUSPENSION (of six months or more) OF A MEDICAL LICENSE

1. Respondent shall immediately cease and desist from engaging in the practice of medicine (in New York State) in accordance with the terms of the Order. In addition, Respondent shall refrain from providing an opinion as to professional practice or its application and from representing himself as being eligible to practice medicine.
2. Respondent shall have delivered, to OPMC at Riverview Center, 150 Broadway, Suite 355, Menands, NY 12204-2719, Respondent's original license to practice medicine in New York State and current biennial registration within five (5) days of the effective date of the Order.
3. Respondent shall within fifteen (15) days of the Order, notify all patients of the cessation of his medical practice and will refer all patients to another licensed practicing physician for their continued care, as appropriate.
4. Respondent shall make arrangements for the transfer and maintenance of the medical records of his patients. Within thirty days of the effective date of the Order, Respondent shall notify OPMC of these arrangements including the appropriate and acceptable contact person's name, address, and telephone number who shall have access to these records. Original records shall be retained for at least six years after the last date of service rendered to a patient or, in the case of a minor, for at least six years after the last date of service or three years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information on the record is kept confidential and made available only to authorized persons. When a patient and/or his/her authorized representative requests a copy of the patient's medical record, or requests that the original medical record be forwarded to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic, and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of his/her inability to pay.
5. In the event that Respondent holds a Drug Enforcement Agency (DEA) certificate for New York State, Respondent shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender his/her DEA controlled substance privileges for New York State to the DEA. Respondent shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Respondent shall within fifteen (15) days of the Order's effective date, return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement, New York State Department of Health at Riverview Center, 150 Broadway, Menands, NY 12204-2719. Respondent shall cause all prescription pads bearing his/her name to be

~~destroyed. If no other licensee is providing services at Respondent's practice location,~~
all medications shall be properly disposed of.

7. Respondent shall not share, occupy or use office space in which another licensee provides health care services. Respondent shall cause all signs to be removed within fifteen (15) days and stop all advertisements, professional listings whether in telephone directories, on the Internet or otherwise, professional stationery or billings by which his/her eligibility to practice is represented.
8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by Respondent or others) while barred from engaging in the practice of medicine. Respondent may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of this Order.
9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and if Respondent's license is revoked, surrendered or suspended for a term of six months or more under the terms of this Order, Respondent shall divest himself/herself of all financial interest in the professional services corporation in accordance with New York Business Corporation Law. Such divestiture shall occur within ninety (90) days of the effective date of this Order. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the effective date of this Order.
10. Failure to comply with the above directives may result in a civil penalty or further criminal penalties as may be authorized pursuant to the law. Under Section 6512 of the Education Law it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when such professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in Section 230-a of the Public Health Law, which includes fines of up to \$10,000 for each specification of charges of which Respondent is found guilty and may include revocation of a suspended license.