



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

January 15, 2016

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Saleh A. Fetouh, M.D.

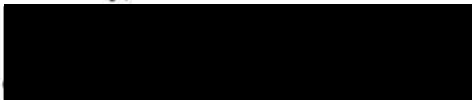

Re: License No. 132008

Dear Dr. Fetouh:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 16-009. This order and any penalty provided therein goes into effect January 22, 2016.

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,


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

Enclosure

cc: J. Mark Gruber, Esq.
Roach Brown McCarthy & Gruber, P.C.
1920 Liberty Building
424 Main Street
Buffalo, New York 14202-3619

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

IN THE MATTER
OF
SALEH FETOUH, M.D.

CONSENT
ORDER

Upon the application of (Respondent) SALEH FETOUH, M.D. in the attached Consent Agreement and Order, which is made a part of this Consent Order; it is

ORDERED, that the Consent Agreement, and its terms, are adopted and; it is further

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

SO ORDERED.

DATE: 1/14/2016


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

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

IN THE MATTER
OF
SALEH FETOUH, M.D.

CONSENT
AGREEMENT

SALEH FETOUH, M.D., represents that all of the following statements are true:

That on or about September 2, 1977, I was licensed to practice as a physician in the State of New York, and issued License No. 132008 by the New York State Education Department.

My current address is [REDACTED]

and I will advise the Director of the Office of Professional Medical Conduct of any change of address. I have sold my practice and retired. Pursuant to the purchase agreement, all patient records have been transferred to the new practice.

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

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

I plead no contest to allegations B1, B2 and C1 of the Specifications, in full satisfaction of the charges against me, and agree to the following penalty:

Immediately upon issuance of the Consent Order for which I apply, my license to practice medicine shall be limited, pursuant to N.Y. Pub. Health Law § 230-a, to preclude patient contact and any practice of medicine, clinical or otherwise. I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition. I shall be precluded from further reliance upon my license to practice medicine to exempt me from the licensure, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated or certified by the Board of Regents, Department of Education, Department of Health or the Department of State.

I further agree that the Consent Order for which I apply shall impose the following conditions:

That Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a; and

That Respondent shall, within 30 days of the issuance of the Consent Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," and shall provide proof of such notification to the Director of OPMC immediately upon having done so; and

That Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, with the following information, in writing, and ensure that this information is kept current: a full

description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; and That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Requirements for Closing a Medical Practice").

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined in N.Y. Educ. Law § 6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement 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 adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Order, this agreement, 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. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board for Professional Medical Conduct and the Office

of Professional Medical Conduct have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, 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 Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

I am aware and agree that, regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the Consent Agreement that I propose in this application, or to decline to do so.

DATE: 12/11/15




SALEH FETOUH, M.D.
Respondent

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 12/11/15

ROACH, BROWN, McCARTHY & GRUBER, P.C.

By: 
J. MARK GRUBER, ESQ.
Attorney for Respondent

DATE: January 7, 2016


JEFFREY J. CONKLIN, ESQ.
Associate Attorney
Bureau of Professional Medical Conduct

DATE: 1/11/16


KEITH W. SERVIS
Director
Office of Professional Medical Conduct

IN THE MATTER

STATEMENT

OF

OF

SALEH FETOUH, M.D.

CHARGES

SALEH FETOUH, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 2, 1977, by the issuance of license number 132008 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A, hereinafter identified in Appendix "A", during the period from on or about July 1999 through July 2011, at his offices located at 2828 Main Street, Buffalo, New York. Respondent's medical care and treatment regarding Patient A deviated from accepted standards of medical care as follows:

1. Respondent failed to recognize a lesion on Patient A's mammogram film regarding examinations conducted in 1999, 2000, 2005, 2006, 2009, 2010 and 2011;
2. Respondent failed to recognize that a lesion on Patient A's mammogram film regarding examinations conducted in 2010 and 2011 revealed features suspicious of malignancy; and
3. Respondent failed to order indicated diagnostic tests.

B. Respondent provided medical care to Patient B, hereinafter identified in Appendix "A", on December 14, 2009, at his office. Respondent's conduct towards Patient B deviated from accepted standards of medical care as follows:

1. With no medical justification, Respondent told Patient B that her sonogram pictures should be sent to Hollywood, and that if she did so, Patient B would become famous because Patient B was so beautiful; and
2. Without medical justification, Respondent asked Patient B if she wanted to have children, and encouraged her to have many children because of her beauty.

C. Respondent provided medical care to Patient C, hereinafter identified in Appendix "A", on May 8, 2014, at his office. Respondent's conduct towards Patient C deviated from accepted standards of medical care as follows:

1. Without medical justification, the Respondent, while discussing mammogram results, stood behind Patient C, who was seated, in physical contact with Patient C's shoulder.

D. Respondent provided medical care to Patient D, hereinafter identified in Appendix "A", on or about March 2012, at his office. Respondent's conduct towards Patient D deviated from accepted standards of medical care as follows:

1. Without medical justification, Respondent hugged Patient D while their bodies were face-to-face. During the hug, Respondent placed his arms around Patient D's arms in an inappropriate manner;
2. Without medical justification, Respondent pressed his body hard against Patient D; and
3. Without medical justification, Respondent kissed Patient D on her cheek.

E. Respondent provided medical care to Patient E, hereinafter identified in Appendix "A", on November 26, 2011, at his office. Respondent's conduct towards Patient E deviated from accepted standards of medical care as follows:

1. Without medical justification, Respondent pressed his lower body hard against Patient E while measuring her height; and
2. Without medical justification, Respondent patted Patient E's abdominal and pelvic area with his hand.

SPECIFICATIONS OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of:

1. The facts as alleged in two or more of the following paragraphs: A and A.1, A and A.2, and/or A and A.3; and/or B and B.1 and/or B and B.2; and/or C and C.1; and/or D and D.1, D and D.2, and/or D and D.3; and/or E and E.1 and/or E and E.2.

SECOND THROUGH FIFTH SPECIFICATIONS

WILFULL PHYSICAL AND VERBAL HARRASSMENT AND ABUSE

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(31) by having willfully harassed and abused a patient physically and/or verbally as alleged in the following facts:

2. The facts as alleged in paragraphs B and B.1, and/or B and B.2.
3. The facts as alleged in paragraphs C and C.1.
4. The facts as alleged in paragraphs D and D.1, D and D.2, and/or D and D.3.
5. The facts as alleged in paragraphs E and E.1, and/or E and E.2.

SIXTH THROUGH NINTH SPECIFICATIONS
CONDUCT IN THE PRACTICE OF MEDICINE EVIDENCING MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in New York Education Law §6530(20) by conduct in the practice of medicine which evidences moral unfitness to practice medicine.

6. The facts alleged in paragraphs B and B.1, and/or B and B.2.
7. The facts alleged in paragraphs C and C.1.
8. The facts alleged in paragraphs D and D.1, D and D.2, and/or D and D.3.
9. The facts alleged in paragraphs E and E.1, and/or E and E.2.

DATE: January 7, 2016
Albany, New York

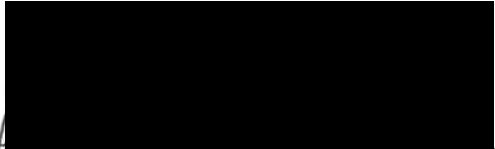

HENRY WEINTRAUB, ESQ.
Chief Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

**Requirements for Closing a Medical Practice Following a
Revocation, Surrender, Limitation or Suspension of a Medical License**

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 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 in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent 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 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee 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. Licensee 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. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the

reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.

9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date. The licensee has sold his medical practice pursuant to a purchase agreement, a copy of which is annexed hereto. The terms of the sale require payments in monthly installments to the licensee, over a period of five years, to a professional corporation. Such payment schedule shall not be deemed a violation of paragraph "9" of the Requirements to Close a Medical Practice herein.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.

PROFESSIONAL ASSETS PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into as of the date below stated, by and between (i) **SALEH A. FETOUH, PC**, a professional service corporation organized and existing under the laws of the State of New York, with an office at 2828 Main Street, Buffalo, New York 14214 (hereafter referenced as "Seller"), (ii) **DIAGNOSTIC X-RAY SERVICE, INC.**, a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania and authorized to conduct business by the State of New York under the assumed name **PORTABLE X-RAY SERVICES OF WESTERN NEW YORK**, with an office at 6000 North Bailey Avenue, Suite 1-B, Amherst, New York 14226 (hereafter referenced as "DXSI"), (iii) **FETOUH REALTY LLC**, a New York limited liability company (hereafter referenced as "Landlord"), with an office at 260 Depew Avenue, Buffalo, New York 14214, of which **SALEH A. FETOUH, MD**, a physician licensed to practice in the State of New York, and the sole shareholder of Seller, is the sole member, (iv) **SALEH A. FETOUH, MD** (hereafter referenced as "Physician") and **David A. Paul, Physician, PC**, a professional service corporation organized and existing under the laws of the State of New York (hereafter referenced as "Purchaser").

WHEREAS Seller is the (i) tenant in a building located at 2828 Main Street, Buffalo, New York (the "Practice Premises") and owned by Landlord, (ii) owner of a professional medical practice consisting of a diagnostic radiology practice named Saleh A. Fetouh, PC and operating under the assumed name, "Breast Screening Center of Western New York" (the "Medical Practice") and (iii) owner of certain tangible medical, radiological and imaging equipment, furniture, fixtures and inventory located at the Practice Premises and used in relation to the Medical Practice (the "Business Assets") and medical records, patient charts, goodwill and similar physician clinical records and assets of the Medical Practice (the "Professional Assets"); and

WHEREAS Seller wishes to sell to Purchaser all Professional Assets of the Medical Practice (the "Professional Assets"), but excluding all Business Assets; and

WHEREAS Seller and Landlord wish to allow Purchaser to occupy the Practice Premises under a subtenancy with DXSI and Seller is willing immediately to vacate the Practice Premises; and

WHEREAS Landlord is willing to (i) terminate Seller's tenancy in the Practice Premises, (ii) allow Purchaser to occupy the Practice Premises as a subtenant of DXSI, and (iii) execute a lease with DXSI on mutually acceptable terms, including without limitation Purchaser's sublease of the Premises or a portion thereof from DXSI;

WHEREAS Purchaser wishes to purchase the Professional Assets from Seller, but specifically excluding therefrom cash on hand, accounts receivable, insurance policies and the Business Assets;

WHEREAS Purchaser wishes to occupy the Practice Premises, and execute a sublease with DXSI, on mutually acceptable terms.

NOW, THEREFORE, for and in consideration of all of the benefits to be derived herefrom, receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Purchase of Assets. Seller hereby sells, assigns, transfers and sets over to Purchaser all of Seller's rights and title in and to the Professional Assets of its Medical Practice, including without limitation all radiological and other imaging records of the Medical Practice, patient lists, and the goodwill of the Medical Practice. Specifically excluded from the Professional Assets and this sale are all of the cash, accounts receivable, and insurance policies of the Seller; all personal effects, personal records, and other miscellaneous items of a personal nature to which

Seller retains title; and the Business Assets. For the avoidance of doubt, the sale of the Business Assets, is the subject of a separate agreement of even date herewith by and between Seller and DXSI.

The Professional Assets sold herein are owned by Seller with good and clear title and transferred and conveyed by Seller to Purchaser free and clear of all liens, encumbrances, security interests, burdens, obligations, liabilities, contracts, obligations or commitments of any kind or nature.

Purchaser is not accepting or assuming from Seller, and Seller is not transferring or assigning, any liability or responsibility of any kind or nature to Purchaser for any debt, obligation, lien, encumbrance, contract, contingency, commitment, duty or liability of Seller, whether written or oral.

Seller and Purchaser agree to cooperate in the allocation of the purchase price herein for tax purposes in accordance with the requirements of Internal Revenue Service Form 8594.

2. Notice to Third Parties. Seller and Purchaser hereby agree that Purchaser shall be entitled to send notices to those persons to whom Purchaser desires advising that Purchaser has acquired the Professional Assets.

3. Warranties. Seller represents and warrants to Purchaser that all representations and warranties made by Seller in this Agreement are true, accurate and complete when made herein and as of the closing date specified herein, and reaffirms that Seller is the owner of the Professional Assets free and clear of all liens, encumbrances, security interests, burdens, obligations, liabilities, contracts, obligations or commitments of any kind or nature, and has all necessary power and authority to transfer the same to Purchaser via good and clear title.

4. Purchase Price. Purchaser shall pay to Seller a total sum of:

as the purchase price for the Professional Assets. The total sum of the purchase price is to be paid over the next five years in installments of:

for sixty months. The first installment payment is due at the time of the closing with subsequent payments payable on the first day of each month, beginning on August 1, 2015 and continuing on the first day of each subsequent month until the total sum is paid in full. If any installment payment is not paid within five (5) days of its due date, Purchaser agrees to pay an additional late charge of 5% (five percent) of the installment payment due. Any payment not paid within 30 days of its due date also shall bear interest at the rate of 12% percent per annum until paid in full to Seller. All payments shall be made to Seller, and mailed to 260 Depew Avenue, Buffalo, NY 14214. The parties have agreed that such purchase price is a fair and just price given the rights and responsibilities of the parties and that a negotiable instrument in the form of a promissory note fully evidencing the foregoing terms and conditions of payment shall be executed by Purchaser and tendered to Seller at closing.

5. Lease. Concurrent with the consummation of this transaction, Seller is vacating the Practice Premises effective as of the date herein below set forth. Seller hereby represents and warrants to Purchaser that it has previously complied with the notice provision notifying Landlord of its intent to vacate the Practice Premises. Landlord represents that it has waived any notice requirement.

Landlord and DXSI have agreed to negotiate and execute a mutually satisfactory lease (the "Lease") for the Practice Premises, under which DXSI shall be tenant and Purchaser or its successors and assigns may occupy as subtenant. DXSI currently occupies the Practice Premises

under an interim occupancy agreement in anticipation of the negotiation and execution of the Lease and a sublease with Purchaser.

6. Employees. It is Seller's responsibility to notify all of its employees and contractors of the closing of its Medical Practice and their termination of employment with Seller. Purchaser has complete and unfettered discretion with respect to its employment decisions.

7. Closing Date. The closing date for the transfer of the Professional Assets in accordance with the terms and conditions of this Agreement shall be the date herein below set forth. Purchaser is occupying the Practice Premises under an interim occupancy agreement with Landlord with an effective date of July 6, 2015

8. Indemnification and Hold Harmless. Seller and Physician shall jointly and severally indemnify and hold harmless Purchaser and its employees, officers and directors from and against any and all suits, claims, damages, liabilities, fees, expenses, costs, penalties, fines, offsets and/or contingencies of any kind and nature, when and as incurred, arising from or related to the operations, physician and clinical services, billings, activities and functions of the Medical Practice and/or the Professional Assets and/or the Business Assets on or prior to the closing date. Purchaser shall indemnify and hold harmless Seller from and against any and all suits, claims, damages, liabilities, fees, expenses, costs, penalties, fines, offsets and/or contingencies of any kind and nature, when and as incurred, arising from or related to the operations and functions of the Professional Assets after the closing date.

9. Attorney's Fees. In the event of litigation or arbitration arising out of the alleged default, failure to perform, or breach of this Agreement by any party following the execution of this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred as a result thereof, including but not limited to attorney's fees, costs involved in securing substitute performance and all other damages available. A "prevailing party" shall include a party who withdraws or moves to dismiss

a claim in consideration for payment due, performance owed or other consideration in substantial satisfaction of the claim withdrawn or dismissed, or a party who obtains a recorded judgment not subject to appeal.

10. Insurance. Seller hereby agrees to keep insurance in place, including without limitation, comprehensive general liability, and property and casualty coverages, for the Medical Practice and the Business Assets of Seller up to and until July 6, 2015. Purchaser agrees to have in place insurance coverage for the Professional Assets and his own medical practice effective July 6, 2015. Seller hereby admits that he kept in effect medical malpractice liability insurance "occurrence policy" through and including June 30, 2015, the date upon which Seller ceased the practice of medicine.

11. Medical Records. Notwithstanding any other representation, covenant, or warranty to the contrary, Purchaser agrees to be responsible fully, at Purchaser's sole cost and expense, to maintain all appropriate medical records and to furnish appropriate medical records as mandated by federal and state law, rules, and regulations. The records that Purchaser is required to maintain expressly include but are not limited to all prior diagnostic films and reports of Seller that Seller is conveying to Purchaser as part of the Professional Assets, which may be required by any patient or attorney for medical care, court proceedings, or otherwise.

12. Miscellaneous. This Agreement shall be construed under the Laws of the State of New York without regard to principles of conflict of laws. This Agreement shall be binding upon the parties thereto and their respective heirs, administrators, executors, successors and/or assigns. The parties hereby agree that for purposes of interpretation this contract shall be construed as being drafted by both of the parties acting in concert together. The foregoing contains the entire

Agreement between the parties and there are no other understandings, agreements or reliance between them.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date above.

DATED: July 22, 2015

SELLER:
SALEH A. FETOUH, PC

PURCHASER:
DAVID A. PAUL, PHYSICIAN, PC

BY: _____
Saleh A. Fetouh, President

BY: _____
David A. Paul, President

PHYSICIAN:
SALEH A. FETOUH, MD

BY: _____
Saleh A. Fetouh, MD

DIAGNOSTIC X-RAY SERVICE, INC.

BY: _____
Jacob R. Wuerstle, President

LANDLORD:
FETOUH REALTY LLC

BY: _____
Saleh A. Fetouh, President

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 22nd day of July, in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Saleh A. Fetouh, President, Saleh A. Fetouh, PC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

PEARL B. BRUCKS
Notary Public, State of New York
Qualified in Erie County
Commission Expires May 12, 2018

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 22nd day of July, in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared David A. Paul, President, David A. Paul, Physician, PC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

PEARL B. BRUCKS
Notary Public, State of New York
Qualified in Erie County
Commission Expires May 12, 2018

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 22nd day of July, in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Saleh A. Fetouh, MD, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

PEARL B. BRUCKS
Notary Public, State of New York
Qualified in Erie County
Commission Expires May 12, 2018

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 22nd day of July, in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Jacob R. Wuerstle, President, Diagnostic X-Ray Service, Inc., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public
PEARL B. BRUCKS
Notary Public, State of New York
Qualified in Erie County
Commission Expires May 12, 2018

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 22nd day of July, in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Saleh A. Fetouh, President, Fetouh Realty LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public
PEARL B. BRUCKS
Notary Public, State of New York
Qualified in Erie County
Commission Expires May 12, 2018