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6 *Attorneys for Complainant*

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against,
12 **ATIF BABAR MALIK, M.D.**
13 P.O. Box 2348
Germantown MD 20875-2348
14 Physician's and Surgeon's Certificate No. A
84906
15 Respondent.

Case No. 800-2019-054518

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

17 On December 26, 2019, an employee of the Medical Board of California (Board) sent by
18 certified mail a copy of Accusation No. 800-2019-054518, Statement to Respondent, Notice of
19 Defense in blank, copies of the relevant sections of the California Administrative Procedure Act
20 as required by sections 11503 and 11505 of the Government Code, and a request for discovery, to
21 Atif Babar Malik, M.D. (Respondent) at his address of record with the Board, P.O. Box 2348,
22 Germantown, MD 2075-2348. The United States Post Office returned the package marked
23 "Addressee Unknown." (Accusation package, proof of service, USPS tracking notice, Exhibit
24 Package, Exhibit 1¹.)

25 There was no response to the Accusation. On January 30, 2020, an employee of the
26 Attorney General's Office sent by certified mail, addressed to Respondent at his address of

27
28 ¹ The evidence in support of this Default Decision and Order is submitted herewith as the
"Exhibit Package."

1 record, as well as to the correctional center where Respondent is incarcerated: Atif Babar Malik,
2 M.D. 62539-037, FCI Loretto P.O. Box 1000, Cresson PA 16630; and to the address of
3 Respondent's daughter- his power of attorney: 2492 Mullinix Mill Rd, Mount Airy, MD 21771-
4 3728, a courtesy Notice of Default, advising Respondent of the service Accusation, and
5 providing him with an opportunity to file a Notice of Defense and request relief from default.
6 The green receipt for the package addressed to the prison address was signed and returned; the
7 package sent to the address of record was returned marked "not deliverable as addressed" and the
8 package sent to the power of attorney was not collected. (Exhibit Package, Exhibit 2, Notice of
9 Default, proof of service, tracking/delivery information.)

10 Respondent has not responded to service of the Accusation or the Notice of Default. He
11 has not filed a Notice of Defense. As a result, Respondent has waived his right to a hearing on
12 the merits to contest the allegations contained in the Accusation.

13 FINDINGS OF FACT

14 I.

15 Christine J. Lally is the Interim Executive Director of the Board. The charges and
16 allegations in the Accusation were at all times brought and made solely in the official capacity of
17 the Board's Executive Director.

18 II.

19 On October 10, 2003, Physician's and Surgeon's Certificate No. A84906 was issued by
20 the Board to Atif Babar Malik, M.D. The certificate is delinquent, having expired on October 31,
21 2018. (Exhibit Package, Exhibit 3, license certification.)

22 III.

23 On December 26, 2019, Respondent was duly served with an Accusation, alleging causes
24 for discipline against Respondent. A Courtesy Notice of Default was thereafter served on
25 Respondent. Respondent failed to file a Notice of Defense.

26 ///

27 ///

28 ///

IV.

The allegations of the Accusation are true as follows:

A. On March 15, 2019 the Commonwealth of Pennsylvania State Board of Medicine issued a Consent Agreement and Order regarding Respondent's license to practice medicine in Pennsylvania. Under the terms of the Consent Agreement and Order, Respondent agreed to the permanent voluntary surrender of his Pennsylvania medical license. The Pennsylvania Board's action was the result of Respondent's criminal conviction of multiple felony counts, including health care fraud and conspiracy to defraud the IRS. (A copy of the Consent Agreement and Order issued by the Pennsylvania State Board of Medicine is attached as Exhibit A to the Accusation, Exhibit Package, Exhibit 1.)

B. On July 27, 2017, a Superseding Indictment was filed against Respondent in the United States District Court for the District of Maryland. The indictment charged Respondent with multiple felony counts including: Conspiracy to Violate the Anti-Kickback Act and the Travel Act; Conspiracy to Defraud the IRS; Health Care Fraud; and, False Statements Relating to Health Care Matters. The criminal charges all related to Advanced Pain Management services, LLC, which operated multiple pain management offices, and was owned and operated by Respondent and another individual. On October 27, 2017, following a jury trial, Respondent was found guilty on all counts. On September 11, 2018, Judgment was entered and Respondent was sentenced to 96 months imprisonment and ordered to pay restitution of more than \$1.3 million. (Exhibit Package, Exhibit 4, Judgment in a Criminal Case; Verdict; Superseding Indictment.)

V.

DETERMINATION OF ISSUES

A. Pursuant to the foregoing Findings of Fact, Respondent's conduct and the action of the Commonwealth of Pennsylvania State Board of Medicine constitute cause for discipline within the meaning of Business and Professions Code sections 2305 and 141(a).

B. Respondent's conduct and criminal convictions constitute unprofessional conduct and the conviction of crimes substantially related to the qualifications, functions or duties of a

///

1 physician and surgeon, and are cause for discipline pursuant to Business and Professions Code
2 sections 2234 and/or 2236.

3
4 **DISCIPLINARY ORDER**

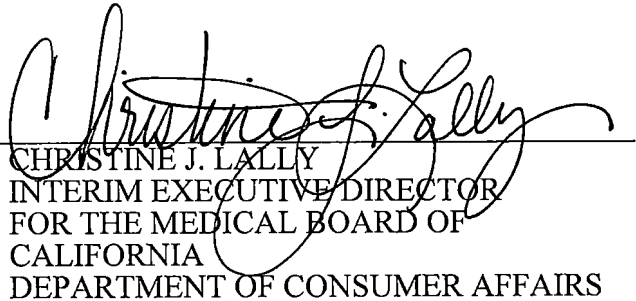
5 Physician's and Surgeon's certificate No. A84906 issued to Atif Babar Malik, M.D.
6 is hereby **REVOKED**.

7 Respondent shall not be deprived of making a request for relief from default as set forth in
8 Government Code section 11520(c) for good cause shown. However, such showing must be
9 made in writing by way of a motion to vacate the default decision and directed to the Medical
10 Board of California at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815 within seven
11 (7) days of the service of this Decision.

12 This Decision will become effective on May 8, 2020 at 5:00 pm

13 It is so ordered on April 10, 2020

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CHRISTINE J. LALLY
INTERIM EXECUTIVE DIRECTOR
FOR THE MEDICAL BOARD OF
CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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Exhibit 1

Accusation No. 800-2019-054518,
Related Documents and Declaration of Service

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JANE ZACK SIMON
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Facsimile: (415) 703-5480
E-mail: Janezack.simon@doj.ca.gov
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2019-054518

Atif Babar Malik, M.D.
P.O. Box 2348
Germantown, MD 20875-2348

A C C U S A T I O N

Physician's and Surgeon's Certificate
No. A 84906,

Respondent.

PARTIES

1. Christine J. Lally (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On October 10, 2003, the Medical Board issued Physician's and Surgeon's Certificate Number A 84906 to Atif Babar Malik, M.D. (Respondent). The Physician's and Surgeon's Certificate is delinquent, having expired on October 31, 2018.

JURISDICTION

3. This Accusation is brought before the Medical Board of California under the authority of the following sections of the California Business and Professions Code (Code) and/or other relevant statutory enactment:

1 A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a
2 period not to exceed one year, or place on probation, the license of any licensee who has
3 been found guilty under the Medical Practice Act, and may recover the costs of probation
4 monitoring.

5 B. Section 2305 of the Code provides, in part, that the revocation, suspension, or other
6 discipline, restriction or limitation imposed by another state upon a license to practice
7 medicine issued by that state, or the revocation, suspension, or restriction of the authority
8 to practice medicine by any agency of the federal government, that would have been
9 grounds for discipline in California under the Medical Practice Act, constitutes grounds for
10 discipline for unprofessional conduct.

11 C. Section 141 of the Code provides:

12 “(a) For any licensee holding a license issued by a board under the
13 jurisdiction of a department, a disciplinary action taken by another state, by any
14 agency of the federal government, or by another country for any act
15 substantially related to the practice regulated by the California license, may be
16 a ground for disciplinary action by the respective state licensing board. A
certified copy of the record of the disciplinary action taken against the licensee
by another state, an agency of the federal government, or by another country
shall be conclusive evidence of the events related therein.

17 “(b) Nothing in this section shall preclude a board from applying a
18 specific statutory provision in the licensing act administered by the board that
19 provides for discipline based upon a disciplinary action taken against the
licensee by another state, an agency of the federal government, or another
country.”

20 D. Section 2234 of the Code provides that the Board shall take action against a licensee
21 who is charged with unprofessional conduct.

22 E. Section 2236 of the Code provides that the conviction of any offense
23 substantially related to the qualifications, functions or duties of a physician and surgeon
24 constitutes unprofessional conduct.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Discipline, Restriction, or Limitation Imposed by Another State)**

27 4. On March 15, 2019 the Commonwealth of Pennsylvania State Board of Medicine
28 issued a Consent Agreement and Order regarding Respondent’s license to practice medicine in

1 Pennsylvania. Under the terms of the Consent Agreement and Order, Respondent agreed to the
2 permanent voluntary surrender of his Pennsylvania medical license. The Pennsylvania Board's
3 action was the result of Respondent's criminal conviction of multiple felony counts, including
4 health care fraud and conspiracy to defraud the IRS. A copy of the Consent Agreement and
5 Order issued by the Pennsylvania State Board of Medicine is attached as Exhibit A.

6 5. Respondent's conduct and the action of the Pennsylvania State Board of Medicine, as
7 set forth in paragraph 4, above, constitutes cause for discipline pursuant to sections 2305 and/or
8 141(a) of the Code.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct/Criminal Conviction)**

11 6. On July 27, 2017, a Superseding Indictment was filed against Respondent in the
12 United States District Court for the District of Maryland. The indictment charged Respondent
13 with multiple felony counts including: Conspiracy to Violate the Anti-Kickback Act and the
14 Travel Act; Conspiracy to Defraud the IRS; Health Care Fraud; and, False Statements Relating to
15 Health Care Matters. The criminal charges all related to Advanced Pain Management services,
16 LLC, which operated multiple pain management offices, and was owned and operated by
17 Respondent and another individual. On October 27, 2017, following a jury trial, Respondent was
18 found guilty on all counts. On September 19, 2018, Respondent was sentenced to 96 months
19 imprisonment and ordered to pay restitution of more than \$1.3 million.

20 7. Respondent's conduct and criminal convictions constitute unprofessional conduct and
21 the conviction of crimes substantially related to the qualifications, functions or duties of a
22 physician and surgeon, and are cause for discipline pursuant to Business and Professions Code
23 sections 2234 and/or 2236.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Medical Board of California issue a decision:

27 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 84906,
28 issued to Atif Babar Malik, M.D.;

- 1 2. Revoking, suspending or denying approval of Atif Babar Malik, M.D.'s authority to
2 supervise physician assistants and advanced practice nurses;
3 3. Ordering Atif Babar Malik, M.D., if placed on probation, to pay the Board the costs
4 of probation monitoring; and
5 4. Taking such other and further action as deemed necessary and proper.

6
7 DATED: December 26, 2019


CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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

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2019 MAR 15 AM 11:39
Department of State

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

File No.: 16-49-11406

vs.

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

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.

**TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 23rd DAY OF April A.D. 2019**


PROTHONOTARY

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.
18 U.S.C. §1952(a)(1) and 1952(a)(3)
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 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.

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.

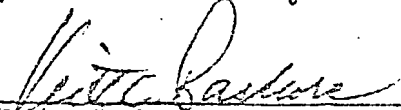
AGREEMENT DOES NOT PREVENT ADDITIONAL DISCIPLINE BASED ON OTHER COMPLAINTS

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.



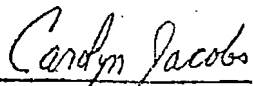
Keith E. Bashore
Prosecuting Attorney

DATED: 2/14/19



Atif Babar Malik, M.D.
Respondent

DATED:



Carolyn Jacobs
Attorney for Respondent

DATED: 2/13/2019