IN THE MATTER OF	*	**BEFORE THE MARYLAND**
MICHAEL BASCO, M.D.	*	**STATE BOARD OF**
Respondent	*	**PHYSICIANS**
License Number: D72935	*	**Case Number: 2013-0282**

* *

CONSENT ORDER

BACKGROUND

The Maryland Board of Physicians (the "Maryland Board") received information that Michael Basco, M.D., (the "Respondent") (D.O.B. 10/5/1959), License Number D72935, was disciplined by the Pennsylvania State Board of Medicine (the "Pennsylvania Board") for failing to keep an adequate medical record for a patient. In an Order dated August 31, 2012, the Pennsylvania Board disciplined the Respondent by reprimand.

Based on the above referenced sanction, the Maryland Board has grounds to charge the Respondent with violating the following provisions of the Maryland Medical Practice Act (the "Act"), under H. O. § 14-404(a):

> (a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
>
> > (21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veteran's Administration for an act that would be grounds for disciplinary action under this section,

The Maryland Board has determined that the acts for which the Respondent was disciplined in Pennsylvania would be grounds for disciplinary action under H.O. § 14-404(a). The grounds for disciplinary action under H.O. § 14-404(a) are as follows:

(40) Fails to keep adequate medical records as determined by appropriate peer review.

Based on the action taken by the Pennsylvania Board, the Respondent agrees to enter into this Consent Order with the Maryland Board of Physicians, consisting of Procedural Background, Findings of Fact, Conclusions of Law, and Order of reciprocal action.

I. FINDINGS OF FACT

The Board finds the following:

1. At all times relevant to these charges, the Respondent was a physician licensed to practice Obstetrics and Gynecology in the State of Maryland. The Respondent was initially licensed in Maryland on or about August 17, 2011.

2. By Adjudication and Order dated August 26, 2011, the Pennsylvania Board disciplined the Respondent by public reprimand based on the findings that the Respondent was disciplined in Texas for failing to maintain adequate medical records.

A copy of the Pennsylvania Board Adjudication and Order is attached hereto.

II. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Maryland Board concludes as a matter of law that the disciplinary action taken by the Pennsylvania Board against the Respondent was for an act or acts that would be grounds for disciplinary action under Health Occ. § 14-404(a)(40) had those offenses been committed in this state.

III. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 19th day of DECEMBER, 2012, by a majority of the quorum of the Board considering this case:

ORDERED that the Respondent's license to practice medicine in the State of Maryland be and is hereby **REPRIMANDED**; and be it further

ORDERED that this **CONSENT ORDER** is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 et seq. (2004 Repl. vol.).

12-27-12
Date

Carole J. Catalfo
Executive Director
Maryland Board of Physicians

CONSENT

I, Michael Basco, M.D., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I admit to the Findings of Fact and Conclusions of Law, and I agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue

and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Consent Order, and understand its meaning and effect.

11/20/2012
Date

Michael Basco MD
Michael Basco, M.D.
Respondent

STATE OF District of Columbia

CITY/COUNTY OF Washington

I HEREBY CERTIFY that on this 20th day of November, 2012, before me, the subscriber, a Notary Public for the State and City/County aforesaid, personally appeared Michael Basco, M.D., and made oath in due form of law that the execution of the foregoing Consent Agreement was his voluntary act and deed.

AS WITNESSETH my hand and my notarial seal

Notary Public

MY COMMISSION EXPIRES:

CHARIELL D. BAISDEN NOTARY PUBLIC MY COMMISSION EXPIRES 12/14/2015 DISTRICT OF COLUMBIA

COPY

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

Commonwealth of Pennsylvania,	:	
Bureau of Professional and	:	File No. 11-49-09907
Occupational Affairs	:	
v.	:	Docket No. 0552-49-12
Michael Angelo Basco, M.D.,	:	
Respondent	:	

2012 AUG 31 AM 9:05 Department of State PROTHONOTARY

FINAL ORDER ADOPTING HEARING EXAMINER'S ADJUDICATION AND ORDER

AND NOW, this 31 day of August 2012, the State Board of Medicine (Board) adopts the Adjudication and Order of the hearing examiner as the Final Adjudication and Order in this case. A copy of the Adjudication and Order is attached as Attachment A.

This order shall take effect immediately.

BUREAU OF PROFESSIONAL & OCCUPATIONAL AFFAIRS

Katie True

KATIE TRUE
COMMISSIONER

STATE BOARD OF MEDICINE

James W. Freeman MD

JAMES W. FREEMAN, M.D.
CHAIR

Hearing Examiner: Suzanne Rauer, Esquire

Respondent: Michael Angelo Basco, M.D.
1215 I Street NE, Apt. 8
Washington, DC 20002

Prosecuting Attorney: Keith E. Bashore, Esquire

Board counsel: Teresa Lazo, Esquire

Date of mailing: August 31, 2012

Attachment A

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

Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs		
v.	Docket No.	0552-49-12
	File No.	11-49-09907
Michael Angelo Basco, M.D., Respondent		

ADJUDICATION AND ORDER

Suzanne Rauer
Hearing Examiner

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686

HISTORY

This matter was initiated by the filing of an Order to Show Cause (OSC) alleging that Michael A. Basco, M.D. (Respondent) is subject to disciplinary action under section 41(4) of the Medical Practice Act (Act), Act of December 20, 1985, P.L. 457, *as amended*, at 63 P.S. §422.41(4), as a result of disciplinary action taken against his license to practice medicine by the proper licensing authority of another state. The Commonwealth filed its OSC on March 21, 2012. Respondent filed an Answer to the OSC on April 25, 2012.

A formal administrative hearing was scheduled for June 13, 2012 and was held on that date in Harrisburg, Pennsylvania before Hearing Examiner Suzanne Rauer. David M. Green, Esquire, was present on behalf of the Commonwealth and presented the Commonwealth's case through documentary evidence. Respondent did not appear at the hearing. The Commonwealth waived the filing of a post-hearing brief and the record in this matter closed on June 26, 2012, with the filing of the notes of testimony (N.T.).

FINDINGS OF FACT

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, License No. MD055836L, which was originally issued on May 10, 1995. (Board records)

2. Respondent's license expired on December 31, 2002, but may be renewed, reactivated or reinstated thereafter upon the filing of the appropriate documentation and payment of the necessary fees. (Board records)

3. At all times pertinent to the factual allegations, Respondent held a license to practice medicine in the Commonwealth of Pennsylvania. (Board records)

4. Respondent's current address is 1215 1 Street NE, Apt. 8, Washington, DC 20002. (Docket No. 0552-49-12, Respondent's Return Address)

5. On August 26, 2011, the Texas Medical Board issued an Agreed Order finding Respondent in violation of Section 164.051(a)(3) of their Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code, by and through violation of Board Rule 165.1, which requires the maintenance of adequate medical records, as set forth in the Agreed Order, *In the Matter of the License of Michael Angelo Basco, M.D., License No. H-5151.* (Exhibit C-1)

6. The Texas Medical Board assessed an administrative penalty totaling $3,000.00 and ordered that Respondent complete eight hours of continuing medical education in medical recordkeeping. (Exhibit C-1)

7. Respondent was served with the OSC and all subsequent pleadings, orders and motions filed of record in this matter. (Docket No. 0552-49-12)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact, Nos. 1, 2)

2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. §504. (Finding of Fact, No. 7)

3. Respondent is subject to disciplinary action under section 41(4) of the Act, 63 P.S. § 422.41(4), in that disciplinary action was taken against his license to practice medicine by the proper licensing authority of Texas. (Findings of Fact, Nos. 5, 6).

4. The Board is authorized to impose disciplinary or corrective measures or a civil penalty pursuant to section 42(a) of the Act, 63 P.S. § 422.42(a), and is also authorized to impose a civil penalty pursuant to section 908 of the Mcare Act, 40 P.S. § 1303.908 and under section 5(b) of Act 48 of 1993, Act of July 2, 1993, P.L. 345, No. 48, 63 P.S. § 2205(b)(4), which authorizes a civil penalty of up to $10,000.00 per violation on any licensee who violates any provision of the applicable licensing act or board regulation.

DISCUSSION

The Commonwealth charged in its OSC that Respondent had disciplinary action taken against his license by the proper licensing authority of Texas, thereby subjecting him to disciplinary action in Pennsylvania under section 41(4) of the Act, 63 P.S. § 422.41(4). Section 41(4) provides in relevant part as follows:

> **§ 422.41. Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder**
>
> The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:
>
> * * *
>
> (4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken, ... by a proper licensing authority of another state, territory, possession or country, or a branch of the Federal Government.
>
> * * *

The Commonwealth's evidence at the hearing consisted of a certified copy of the Agreed Order issued by the Texas Medical Board on August 26, 2011, pursuant to which the Texas Board ordered that Respondent successfully complete 8 hours of continuing medical education in medical recordkeeping and pay an administrative penalty in the amount of $3,000.00. Based on the above, the Commonwealth has met its burden of proof[1] that Respondent is subject to disciplinary action under section 41(4) of the Act, 63 P.S. § 422.41(4), in that disciplinary action

[1]The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). The Commonwealth therefore has the burden of proving the charges against Respondent with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602.

was taken against his license to practice medicine by the proper licensing authority of another state. The only question remaining is the sanction to be imposed.

The Board is authorized to impose disciplinary or corrective measures or a civil penalty pursuant to section 42(a) of the Act, 63 P.S. § 422.42(a), which provides as follows:

> **§ 422.42. Types of corrective action.**
>
> (a) **Authorized actions.** ---When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:
>
> (1) Deny the application for a license, certificate or any other privilege granted by the board.
>
> (2) Administer a public reprimand with or without probation.
>
> (3) Revoke, suspend, limit or otherwise restrict a license or certificate.
>
> (4) Require the board-regulated practitioner to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.
>
> (5) Require the board-regulated practitioner to take refresher educational courses.
>
> (6) Stay enforcement of any suspension, other than that imposed in accordance with section 40, and place a board-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.
>
> (7) Impose a monetary penalty in accordance with this act.

A maximum civil penalty of up to one thousand dollars ($1,000.00) for each and every violation of the Act is authorized under Section 39(b) of the Act, 63 P.S. § 422.39(b). In addition, a maximum civil penalty of up to ten thousand dollars ($10,000.00) for each violation of the Act is authorized under Section 908 of the Medical Care Availability and Reduction of Error Act

(Mcare Act), Act of March 20, 2002, P.L. 154, 40 P.S. § 1303.908[2] and under Section 5(b) of Act 48 of 1993, Act of July 2, 1993, P.L. 345, No. 48, 63 P.S. § 2205(b)(4). In determining a sanction, the primary consideration is that the Board is charged with the responsibility and authority to oversee the profession and to regulate and license professionals to protect the public health and safety. *Barran v. State Bd. of Medicine*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), *appeal denied*, 679 A.2d 230 (Pa. 1996).

Respondent did not appear at the hearing but provided a lengthy answer explaining the circumstances which led to the Texas discipline. (Docket No. 0552-49-12) Respondent also attached to his answer a compact disc which included information relied upon by the Texas Medical Board in making its decision to discipline Respondent and a letter from the Texas Board indicating that Respondent has completed his continuing education and paid the administrative fines. (Docket No. 0552-49-12) The Hearing Examiner cannot consider Respondent's explanation in this regard because, first, the Texas Medical Board Agreed Order speaks for itself and cannot be collaterally attacked in this reciprocal disciplinary action. *See Kahn v. State Bd. of Auctioneer Examiners*, 842 A.2d 936, 943 (Pa. 2004) (holding that "[t]he Board, in a reciprocal disciplinary action, may not consider the merits of the discipline imposed by the foreign jurisdiction, which is the appropriate forum in which to litigate them.") Second, the General

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[2] **§ 1303.908. Licensure board-imposed civil penalty.**

In addition to any other civil remedy or criminal penalty provided for in this act, the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, or the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, the State Board of Medicine and the State Board of Osteopathic Medicine, by a vote of the majority of the maximum number of the authorized membership of each board as provided by law or by a vote of the majority of the duly qualified and confirmed membership or a minimum of five members, whichever is greater, may levy a civil penalty of up to $10,000 on any current licensee who violates any provision of this act, the Medical Practice Act of 1985 or the Osteopathic Medical Practice Act or on any person who practices medicine or osteopathic medicine without being properly licensed to do so under the Medical Practice Act of 1985 or the Osteopathic Medical Practice Act. The boards shall levy this penalty only after affording the accused party the opportunity for a hearing as provided in 2 Pa.C.S. (relating to administrative law and procedure).

Rules of Administrative Practice and Procedure, at 1 Pa. Code § 35.125(d)(2), provide that "[i]n no event, except in the case of a noncontested proceeding, may the pleadings be considered as evidence of fact other than that of the filing thereof unless offered and received in evidence in [sic] under this part." Respondent's Answer and the attached documents were not admitted into evidence. (N.T. 11) Therefore, Respondent's Answer and the attached documents cannot be considered as evidence.

The Commonwealth also presented a Consent Agreement and Order issued by the Pennsylvania Board on December 14, 2004, imposing a public reprimand against Respondent based on reciprocal discipline (a public reprimand) imposed by the Texas Board in 2003.[3] (Exhibit C-4) The Commonwealth, thereafter, recommended that a $10,000.00 civil penalty be imposed on Respondent given that he had a previous public reprimand imposed by the Board. (N.T. 13-14)

Upon a review of the complete record in this matter, the Hearing Examiner finds that a $10,000.00 civil penalty is not necessary to protect the public health and safety of the citizens of Pennsylvania. The Texas Board handled Respondent's recordkeeping violations expeditiously in their duty to protect the health and safety of the patients in Texas. While the Texas Board found fault with Respondent's recordkeeping, the Hearing Examiner notes that the Texas Board also found, in mitigation, that Respondent began using electronic medical records and "changed his method of recordkeeping and now documents that he has given the patient Texas Association of Obstetrician and Gynecologists (ACOG) approved pamphlets" and that Respondent cooperated with their board's investigation of that matter. (Exhibit C-1) The Hearing Examiner opines that the civil penalty and continuing education courses ordered by the

[3] In 2003, Respondent received a public reprimand from the Texas Medical Board based on peer review action taken against Respondent for failure to completely disclose information submitted on his hospital privilege application. (Exhibit C-4).

Texas Board are sufficient to address Respondent's problems with recordkeeping.

It would, therefore, seem excessive and punitive to impose a $10,000.00 civil penalty against Respondent for this violation solely because the Board imposed a public reprimand in 2004, without more, especially considering Respondent's improvement in recordkeeping as noted in the Agreed Order and the sanction imposed by the Texas Medical Board for conduct that actually occurred in Texas. For these reasons, the rationale of the Commonwealth as to a sanction is not persuasive.

Accordingly, while recognizing that the Texas Medical Board action constitutes a violation of the reciprocal provisions in the Act and that Respondent was adequately disciplined in that state, a public reprimand will be imposed upon Respondent's Pennsylvania license. A public reprimand will serve to alert the citizens of Pennsylvania that disciplinary action was taken against Respondent's license to practice medicine in Texas.

Accordingly, based upon the above findings of fact, conclusions of law and discussion, the following order shall issue:

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

Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs		
v.	Docket No.	0552-49-12
	File No.	11-49-09907
Michael Angelo Basco, M.D., Respondent		

ORDER

NOW, this **24th** day of **July, 2012,** upon consideration of the foregoing findings of fact, conclusions of law and discussion, the license issued to Respondent, Michael Angelo Basco, M.D., license no. MD055836L, is subject to disciplinary action under the Act at 63 P.S. §422.41(4), and it is **ORDERED** that a **PUBLIC REPRIMAND** be issued against Respondent's license

This Order shall take effect twenty (20) days from the date of mailing shown below, unless otherwise ordered by the State Board of Medicine.

BY ORDER:

Suzanne Rauer
Hearing Examiner

Respondent: Michael Angelo Basco, M.D.
1215 I Street NE, Apt. 8
Washington, DC 20002

Prosecuting Attorney: David M. Green, Esquire
Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649

Date of mailing: July 25, 2012

(Medicine)

NOTICE

REHEARING AND/OR RECONSIDERATION BY HEARING EXAMINER

A party may file an application to the hearing examiner for rehearing or reconsideration **within 15 days of the mailing date** of this adjudication and order. The application must be captioned *"Application for Rehearing"*, *"Application for Reconsideration"*, or *"Application for Rehearing or Reconsideration"*. It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking rehearing or reconsideration, including any alleged error in the adjudication. If the adjudication is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision, the matters relied upon by the petitioner must be set forth in the application.

APPEAL TO BOARD

An application to the State Board of Medicine for review of the hearing examiner's adjudication and order must be filed by a party **within 20 days of the date of mailing** of this adjudication and order. The application must be captioned *"Application for Review"*. It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking the Board's review of the hearing examiner's decision, including any alleged error in the adjudication. Within an application for review a party may request that the Board hear additional argument and take additional evidence.

An application to the Board to review the hearing examiner's decision may be filed irrespective of whether an application to the hearing examiner for rehearing or reconsideration is filed.

STAY OF HEARING EXAMINER'S ORDER

Neither the filing of an application for rehearing and/or reconsideration nor the filing of an application for review operates as a stay of the hearing examiner's order. To seek a stay of the hearing examiner's order, the party must file an application for stay directed to the Board.

FILING AND SERVICE

An original and three (3) copies of all applications shall be filed with:

Prothonotary
P.O. Box 2649
Harrisburg, PA 17105-2649

A copy of all applications must also be served on all parties.

Applications must be received for filing by the Prothonotary within the time limits specified. The date of receipt at the office of Prothonotary, and not the date of deposit in the mail, is determinative. The filing of an application for rehearing and/or reconsideration does not extend, or in any other manner affect, the time period in which an application for review may be filed.

NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 2649
Harrisburg, PA 17105-2649

The name of the individual Board Counsel is identified on the Final Order.