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

PROTHONOTARY

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Department of State

Commonwealth of Pennsylvania,	:	
Bureau of Professional and	:	File No. 10-53-08063
Occupational Affairs	:	
v.	:	Docket No. 2349-53-10
Peter Fabulian, D.O.,	:	
Respondent	:	

FINAL ORDER

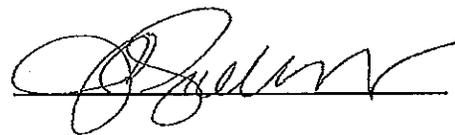
AND NOW, this 13th day of January 2012, noting that neither party filed an application for review and that the State Board of Osteopathic Medicine (Board) did not issue a Notice of Intent to Review, in accordance with 1 Pa. Code § 35.226(a)(3) and 49 Pa. Code § 16.57, the hearing examiner's adjudication and order¹ dated December 1, 2011, appended to this order as Annex A, is now the FINAL ORDER of the Board in this proceeding.

This order is retroactive to December 21, 2011, 20 days from the date of mailing of the Hearing Examiner's Adjudication and Order.

**BUREAU OF PROFESSIONAL &
OCCUPATIONAL AFFAIRS**

**STATE BOARD OF OSTEOPATHIC
MEDICINE**


KATIE TRUE
COMMISSIONER


JOSEPH C. GALLAGHER, JR., DO
CHAIRMAN

Respondent's Attorney:

Samuel C. Stretton, Esquire
301 South High Street
P.O. Box 3231
West Chester, PA 19381-3231

¹ Please note that this order corrects the Hearing Examiner's Order to read ... "for no less than five years, retroactive to the Immediate Temporary Suspension of Respondent's license on June 28, 2010."

Prosecuting Attorney:

Keith E. Bashore, Esquire

Board counsel:

Steven R. Dade, Esquire

Date of mailing:

January 13, 2012

HISTORY

This matter comes before a hearing examiner for the Department of State on a two count amended order to show cause (AOSC) filed March 29, 2011, in which the Commonwealth alleged that Peter Fabulian, D.O. (Respondent) is subject to disciplinary action by the State Board of Osteopathic Medicine (Board) under the Osteopathic Medical Practice Act (Act), Act of October 5, 1978, P.L. 1109, No. 261, *as amended*, 63 P.S. § 271.1 – 271.18, at § 15(a)(3), 63 P.S. § 271.15(a)(3), because he pled guilty to a crime involving moral turpitude or related to the practice of the profession. The second count under the Medical Care Availability and Reduction of Error (Mcare), Act of March 20, 2002, P.L. 154 No. 13, § 701, *et seq.*, 40 P.S. § 1303.711 charged Respondent with failure to provide proof of medical professional liability insurance to the Department of Insurance for the period subsequent to July 15, 2004 and to the present.

Commonwealth's original order to show cause (OSC) was served on Respondent on December 17, 2010. Respondent filed an answer to the OSC simultaneous with a notice of request for hearing on January 13, 2011. The Notice of hearing set March 18, 2011 for the date of hearing. On February 10, 2011, Respondent filed a motion for a continuance of the March 18, 2011 hearing. An order granting continuance was issued and directed Respondent to provide available dates for hearing for the month of March 2011. On February 17, 2011, a letter from Respondent was received advising the Hearing Examiner that April 13, 2011 would be convenient for the expert witnesses of Respondent.

The Commonwealth filed an AOSC upon Respondent on March 29, 2011. Upon receipt of the AOSC, Respondent filed an Answer in which he requested a hearing. The matter was scheduled for hearing on April 13, 2011, and it occurred as scheduled. The Commonwealth was represented by Prosecuting Attorney Keith E. Bashore. Respondent appeared and was

represented by Samuel C. Stretton, Esquire. Respondent called two expert witnesses, Timothy P. Foley, PhD. and Eric Samuel, PhD. Also, Respondent had two character witnesses, Robert B. Leake and David B. Wheatley testify on his behalf. Lastly, Respondent and Respondent's wife, Doreen Fabulian, testified, she concerning her husband's behavior and financial status. At the conclusion of the hearing, Respondent requested permission to file a brief. Respondent was directed to file his brief within 30 days of receipt of the transcript. The Commonwealth was given 20 days to file a reply brief. On May 25, 2011, Respondent requested an extension of time to file his brief, which was not objected to by the Commonwealth. An Order was issued on May 25, 2011 enlarging the time for Respondent's brief by 20 days to be followed by Commonwealth's brief in 20 days from receipt of Respondent's brief. The record was closed with the filing of the Commonwealth's reply brief on June 28, 2011.

FINDINGS OF FACT

1. Respondent holds a license to practice osteopathic medicine in the Commonwealth of Pennsylvania, license no. OS-008019-L. (Commonwealth Exhibit C-1 at paragraph 1; Commonwealth Exhibit C-2 at paragraph 1.)

2. Respondent's license expired on October 31, 2010, and may be renewed thereafter upon the filing of the appropriate documentation and payment of the necessary fees. (Commonwealth Exhibit C-1 at paragraph 2; Commonwealth Exhibit C-2 at paragraph 2.)

3. At all pertinent times, Respondent held a license to practice osteopathic medicine in the Commonwealth of Pennsylvania. (Board records; Commonwealth Exhibit C-1 at paragraph 3; Commonwealth Exhibit C-2 at paragraph 3.)

4. Respondent's last known address on file with the Board is 115 Marshall Street, Kennett Square, PA 19348 though Respondent indicated that he has relocated to 26 West Maim Street, Strasburg, PA 17579. (Commonwealth Exhibit C-1 at paragraph 4; Commonwealth Exhibit C-2 at paragraph 4; Docket No. 2349-53-10; Notes of Testimony (NT) at 83.)

5. On June 17, 2010, a Police Criminal Complaint was filed by Detective John a. Trevisan, Jr. of the Kennett Square Police Department in the matter of Commonwealth of Pennsylvania v. Peter Fabulian before Magisterial District Judge Daniel F. Maisano of Kennett Square, PA, alleging that Respondent touched several female patients in a suggestive or sexually during medical examinations without consent. (Commonwealth Exhibit C-1 at paragraph 6, Commonwealth Exhibit C-2 at paragraph 6; NT 132, 133)

6. On June 17, 2010, bail was imposed on Respondent by Magisterial District Judge Maisano with the condition that Respondent only examines female patients with another person

present in the examination room. (Commonwealth Exhibit C-1 at paragraphs 8, 10, Commonwealth Exhibit C-2 at 8, 10; NT 139, 140)

7. On August 25, 2010, a Criminal Information was filed in the Chester County Court of Common Pleas in the matter of Commonwealth of Pennsylvania v. Peter Fabulian at Criminal Action No. CR-2928-2010 alleging that Respondent had indecent contact with several woman with the purpose of arousing sexual desire in the persons without consent, which constituted two counts of sexual assault. (Commonwealth Exhibit C-1, C-2 at 12, 13.)

8. On December 13, 2010, Respondent entered a plea of guilty in Chester County Court of Common Pleas to the first and second counts of indecent assault contained in the Criminal Information. (Commonwealth Exhibit C-1, C-2 at 14)

9. On March 1, 2011, Chester County Court of Common Pleas sentenced Respondent for his guilty plea to imprisonment for a term of one month to 23 months to be followed by electronic home confinement for a period of five months after release, and probation for a period of two years, along with other terms and conditions. (Commonwealth Exhibit C-1, C-2 at 16, 17)

10. Respondent failed to maintain medical malpractice insurance from July 15, 2004 until his osteopathic medical license was suspended under the Board's authority by an Immediate Temporary Suspension effective June 2010. (Commonwealth Exhibit C-1, C-2 at 34; NT 128)

11. Respondent was aware that the law required him to maintain medical malpractice insurance throughout his active practice of medicine in the Commonwealth, though was financially unable to advance the premium required because of his economic distress. (Commonwealth C-2 at 34; NT 128)

Testimony of Timothy P. Foley, PhD. - Expert Witness

12. Timothy P. Foley, PhD., was qualified as an expert in psychology with emphasis on sexual problems, in which he specializes in assessing and treating individuals to control sexual behavior. (NT 15-17)

13. Dr. Foley evaluated Respondent and found no evidence of a major mental illness or quality of a deviant sexual behavior and no paraphilic disorder, which would be incompatible with medical practice. (Respondent Exhibit R-2; NT 24-26)

14. Respondent has made an important step in accepting what he did was wrong and appears dedicated to figuring out and correcting his untoward behavior towards female patients. (Respondent Exhibit R-2; NT 30, 31)

15. Dr. Foley recommended, when permitted to treat patients, that Respondent have a chaperone present, continue in psychotherapy and inform patients of his untoward sexual behavior problems. (Respondent Exhibit R-2; NT 28, 29)

Testimony of Eric Samuel, PhD. - Expert Witness

16. Eric Samuel, PhD. was qualified as an expert witness in psychology in sexual problems, performing evaluations on sexual offenders and treating victims of sexual abuse. (NT 42, 43)

17. Dr. Samuel is Respondent's current treating psychoanalyst and intends to see him into the indefinite future. (Respondent Exhibit R-1; NT 46, 47)

18. Dr. Samuel administered the Millon Multi-Axial Clinical Inventory III, 3rd edition test, which is an evaluation to identify mental illness and the STATIC-99 assessment that provides a probable risk level of committing future sex offenses. Respondent was evaluated to have no mental illness, but the indicator identified neurosis and intermittently sadness and

depression. He is not diagnosed as a sexual offender of predatory behavior or a psycho or mental abnormality. The STATIC-99 evaluative test produced a low level risk of repeating sexual offensive behavior. (Respondent Exhibit R-1; NT 47, 48, 51, 62)

19. Respondent does not have a serious emotional or mental illness in that there is no serious psychological disorder, but he has serious psychological problems relating to boundary maintenance and awareness based on his own childhood abuse. (Respondent Exhibit R-1; NT 53, 67, 68)

20. Respondent is diagnosed as a rejection-sensitive, empty, naïve individual who has a minimal insight into himself. With the deterioration of his marriage, Respondent has pulled away emotionally and physically from his wife resulting in attempts to develop relationships with other people. (Respondent Exhibit R-1; NT 54)

21. Respondent is dissociative, lacking the self-awareness of what he is doing and the consequences of those actions. (NT 57, 58)

22. Respondent's low score on the STATIC-99 test is indicative of a higher likelihood of succeeding in lowering the risk of repeat behavior by educating the person how to avoid the untoward behavior. (NT 70,71)

23. Recommended treatment would focus on disassembling Respondent's psychological problems by first identifying the specific issues, secondly, educate Respondent as to what happens to the persons who are his victims and the harmful behaviors that cause psychological damage and finally identify situations that Respondent will be vulnerable to become involved in this behavior in the future that triggers the untoward behavior. (NT 58, 59)

24. Dr. Samuel recommends that Respondent continue treatment for a minimum of two to three years, receive couples counseling, be formally reevaluated before returning to

practice, and if permitted to return to practice, he should have a chaperone present at all times.
(Respondent Exhibit R-1; NT 59, 62-64)

25. Respondent is contrite as to his inappropriate behavior with patients and welcoming of continued psychotherapy with Dr. Samuel and open to family and marriage counseling (Respondent Exhibit R-1; NT 109, 111, 112, 114)

26. Respondent acknowledges that he has a long way to go in addressing his problems and issues for recovery. (NT 122)

27. Respondent's reputation in the community is that of a truthful, honest, and peaceful and law abiding person. (NT 78, 81)

28. Respondent's wife is willing to participate in marriage and family counseling.
(NT 87)

29. Respondent is not presently working and is financially depressed with no funds in reserve. (NT 118-119)

30. Respondent has not practiced medicine since his arrest and has agreed not to practice while awaiting the Board's final decision in the instant matter. (NT 119, 168)

31. Respondent participated in the hearing in this matter, was represented by counsel, and testified on his own behalf. NT at 7 and *passim*.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. Findings of Fact 1 – 3.
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 31.
3. Respondent is subject to discipline under section 15(a)(3) of the Act, 63 P.S. § 271.15(a)(3), in that Respondent was convicted of crimes involving moral turpitude or related to the practice of osteopathic medicine. Findings of Fact 5 – 9
4. Respondent is subject to discipline under the section 711 of the Mcare Act at 40 P.S. §1303.711, in that Respondent failed to provide proof of medical professional liability insurance to the Department of Insurance. Finding of Fact 10, 11

DISCUSSION

Violation

There is no dispute in the record that Respondent pled guilty to two misdemeanor counts of indecent assault against two of his patients in the *Matter of Commonwealth of Pennsylvania v. Peter Fabulian* in the Chester County Court of Common Pleas on December 13, 2010. Respondent was sentenced to a term of imprisonment of one to twenty-three months to be followed by electronic home monitoring for a period of five months after release and an additional two years of probation.

The Commonwealth has satisfied the factual burden of establishing the violations alleged in Count One. The fact of the conviction itself is not subject to dispute. The only issue is whether the misdemeanors Respondent was convicted of constitute crimes of moral turpitude, which is defined as "anything done knowingly contrary to justice, honesty, or good morals." *Moretti v. State Board of Pharmacy*, 277 A.2d 516, 518 (Pa. Cmwlth. 1971). The courts have further explained that such a crime is "contrary to the common sense of the community." *Foose v. State Board of Motor Vehicle Dealers & Manufacturers*, 578 A.2d 1355, 1358 (Pa. Cmwlth. 1990).

The criminal convictions for Respondent's misdemeanors were brought under 18 Pa.C.S.A. § 3126, which provide in pertinent part:

§ 3126. Indecent assault

(a) Offense defined.—A person who has indecent contact with the complainant or causes the complainant to have indecent contact with the person is guilty of indecent assault if:

- (1) the person does so without the complainant's consent.

* * *

That these offenses constitute crimes of moral turpitude requires little elaboration. The offenses themselves, as defined, are inconsistent with justice, honesty, or good morals. These offenses are contrary to the common sense of the community; especially the crimes are committed by a doctor against his patients.

By a preponderance of the evidence, the Commonwealth has met its burden in proving that Respondent is subject to disciplinary action because he was convicted of crimes of moral turpitude, in violation of 63 P.S. § 271.15(a)(3). Therefore, Count One of the OSC is sustained.

In Count Two of this action, the Commonwealth charged Respondent with failure to maintain medical malpractice insurance. Under Section 711(d) of the Medical Care Availability and Reduction of Error (Mcare) Act, health care providers are, with certain exceptions, required to maintain minimum medical professional liability coverage. There is no dispute in the record that Respondent failed to maintain insurance as required by Mcare from June 2004 until his license was suspended by the Board in June 2010 for the same. Respondent's major disagreement is with the Commonwealth's request that an assessment of the Mcare repayment of \$25,980.00 be imposed upon Respondent for the unpaid Mcare premium between 2004 and 2010. Respondent argues that there is no statutory authority to allow such an assessment and further argues that the payment is punitive in nature. (Respondent's Post-Hearing Brief).

Section 711 of the Mcare Act, 40 P.S. § 1303.711, states as follows:

§ 1303.711. Medical professional liability insurance

(a) Requirement.-- A health care provider providing health care services in this Commonwealth shall:

(1) purchase medical professional liability insurance from an insurer which is licensed or approved by the department; or

(2) provide self-insurance.

(b) Proof of insurance.-- A health care provider required by subsection (a) to purchase medical professional liability insurance or provide self-insurance shall submit proof of insurance or self-insurance to the department within 60 days of the policy being issued.

(c) Failure to provide proof of insurance.-- If a health care provider fails to submit the proof of insurance or self-insurance required by subsection (b), the department shall, after providing the health care provider with notice, notify the health care provider's licensing authority. **A health care provider's license shall be suspended or revoked by its licensure board or agency if the health care provider fails to comply with any of the provisions of this chapter. (Emphasis added)**

* * *

Count Two, falling as it does under the Mcare Act, subjects Respondent to the imposition of a civil penalty of up to \$10,000 under § 908 of the Mcare Act, 40 P.S. § 1303.908, as follows:

§ 1303.908. Licensure board-imposed civil penalty

In addition to any other civil remedy or criminal penalty provided for in this act, the [Medical Practice Act] or the [Osteopathic Medical Practice Act], the State Board of Medicine and the State Board of Osteopathic Medicine . . . 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 . . . 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). (Emphasis added)

Under the statutory sections found at 63 P.S. 271.11¹ and 271.15,² the Board has the authority to impose a civil penalty of up to \$1,000.00 or suspend or revoke a license for violations. Based on

¹ Section 11. Penalty provisions.

(c) Board-imposed civil penalty.--In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the 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 \$1,000 on any current licensee who violates any provision of this act or on any person who practices osteopathic medicine without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). ((c) amended July 2, 1993, P.L.418, No.59)

the above statutory provisions, the hearing examiner agrees that there is no authority under the Osteopathic Medical Practice Act or the Mcare act to allow for such an assessment.

SANCTION

The Commonwealth has proven Counts One and Two of its OSC, and the only question remaining is the appropriate sanction the Board should impose. Under professional licensing statutes such as the Act and the Law, 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 Board of Medicine*, 670 A.2d 765, 767 (Pa.Cmwth. 1996), *appeal denied* 679 A.2d 230 (Pa. 1996). The duty of the Board is to protect the health and safety of the citizens of the Commonwealth and to ensure that the sanction imposed promotes such protection of the public.

The criminal acts of Respondent are contrary to the expectations citizens have of their doctors. Commonwealth citizens expect that doctors will provide care for them in order to advance their welfare and health. If a doctor engages in criminal conduct against patients, the Commonwealth would do a great disservice to its citizens by allowing an individual like Respondent to continue to practice medicine in this Commonwealth.

² Section 15. Reasons for refusal, revocation or suspension of license.

(a) The board shall have authority to refuse, revoke or suspend the license of a physician for any of the following reasons:

* * *

- (3) Conviction of a felony, a crime involving moral turpitude, or a crime related to the practice of osteopathic medicine. Conviction shall include a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere, or receiving probation without verdict, disposition in lieu of trial, or an Accelerated Rehabilitative Disposition in the disposition of felony charges. ((3) amended Dec. 20, 1985, P.L.398, No.108)

* * *

In mitigation, Respondent testified on his own behalf, along with his wife. Two friends of Respondent testified to his reputation in the community and to his character. First to testify were expert witnesses for Respondent, Timothy P. Foley, PhD. and Eric Samuel, PhD., who evaluated and administered psychological tests to him in an effort to determine his psychological make-up. Both witnesses are licensed psychologists in Pennsylvania and experts in assessing and treating individuals with sexual control behavior problems.

Dr. Foley's evaluation found no evidence of a major mental illness or quality of a deviant sexual behavior and no paraphilic disorder, which would be incompatible with medical practice. Respondent has made an important step in accepting what he did as wrong and appears dedicated to figuring out and correcting his untoward behavior towards female patients.

Dr. Samuel, Respondent's current treating psychoanalyst, administered the Millon Multi-Axial Clinical Inventory III, 3rd edition test that evaluates mental illness and the STATIC-99 assessment which provides a probable risk level of committing future sex offenses. Respondent was evaluated to have no mental illness; however, the indicator identified neurosis and intermittent sadness and depression. He was not diagnosed as a sexual offender of predatory behavior or psycho or mental abnormality. The STATIC-99 evaluative test produced a low level risk of repeating sexual offensive behavior. Dr. Samuel emphasized that Respondent does not have a serious emotional or mental illness in that there is no serious psychological disorder, but he has serious psychological problems relating to boundary maintenance and awareness based on his own childhood abuse.

Respondent is diagnosed by Dr. Samuel as a rejection-sensitive, empty, naïve individual who has minimal insight into himself. Dr. Samuel opined that with Respondent's deteriorating marriage, he was pulled away emotionally and physically from his wife resulting in attempts to

develop relationships with other people. Respondent is dissociative, lacking the self-awareness of what he is doing and the consequences of those actions. Importantly, Respondent's low score on the STATIC-99 test is indicative of a higher likelihood of succeeding in lowering the risk of repeat behavior by educating the person how to avoid the untoward behavior. Recommended treatment is to focus on disassembling Respondent's psychological problems by identifying the specific issues, secondly educate Respondent as to what happens to the persons who are his victims and the harmful behaviors that cause psychological damage and finally identify situations that Respondent will be vulnerable to become involved in this behavior in the future that triggers the inappropriate behavior. Dr. Samuel recommends that Respondent continue psychological treatment and therapy for a minimum of two to three years, receive couples counseling, be formally reevaluated before returning to practice medicine, and if permitted to return, practice with a chaperone present at all times.

Respondent and his wife are working on maintaining their marriage and she is willing to participate in couples counseling. Respondent is contrite as to his inappropriate behavior with patients and welcoming of continued psychotherapy with Dr. Samuel and is open to family and marriage counseling. Respondent is not naïve about the arduous path of rehabilitation, and acknowledges that his recovery journey will be long, painful and challenging, however, he is dedicated to that recovery.

Testimony of a friend and patient proffered prior to the present issue of Respondent's criminal conduct, stated that his reputation in the community was positive. His character was represented as truthful, honest, and peaceful and law abiding.

The Commonwealth recommended that Respondent's license to practice osteopathic medicine be suspended for a period of three years retroactive to June 2010. Respondent

recommended two years of suspension. The hearing examiner finds that the appropriate sanction for Count One would be to indefinitely suspend Respondent's license for a minimum period of five years, retroactive to his original Immediate Temporary Suspension on June 28, 2010. Respondent has not practiced and has voluntarily agreed under oath not to practice medicine until a final order of the Board is issued addressing all the charges brought against him by the Commonwealth. Respondent has demonstrated sincerity and good faith by this pledge. Respondent will be required to adhere to requisite conditions while suspended and before applying for consideration for reinstatement of his license to practice osteopathic medicine. A suspension of Respondent's license is ordered, rather than a revocation of said license because with the indefinite suspension, the Board maintains control of Respondent. A revocation of the license extinguishes the authority of the Board and would permit Respondent to reapply for licensure in five years without meeting prerequisite rehabilitation conditions. With an indefinite suspension, discretion would continue to reside with Board as to whether Respondent would be granted a return of his license to practice. Respondent has been diagnosed with serious psychological problems; however, he is not diagnosed with serious mental illness or personality disorders. The salient consideration is that the possibility of rehabilitation and recovery exists for Respondent. He is willing to undertake the journey of rehabilitation and is supported by his wife and family on this path. Therefore, the indefinite suspension provides control by the Board, guaranteeing absolute protection of the patient community, while providing a light for Respondent to reach in the future in the event he completes the criteria for rehabilitation and is evaluated safe to return to the practice of osteopathic medicine.

With respect to Count Two, in past cases, the Board has found that failure of a physician to maintain the requisite professional liability insurance for protection of his or her patients to be

irresponsible behavior. In this case, Respondent actively practiced medicine for about six years without malpractice insurance. Respondent explained the failure to obtain the requisite insurance was based on his lack of financial resources to pay the premium. He further testified that he made a misjudgment in continuing to practice without the coverage. The Board is authorized to impose a substantial civil penalty and to suspend or revoke his license. In this case, however, in light of Respondent's age (63), his lengthy license suspension, financial condition, and his earnest efforts with treatment for psychological behavioral problems at considerable expense to himself, the indefinite suspension of his license is appropriate and a sufficient deterrence to Respondent from adopting in the future such a cavalier approach to compliance with Mcare requirements.

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

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

Commonwealth of Pennsylvania,	:	
Bureau of Professional and	:	
Occupational Affairs	:	
	:	Docket No. 2349-53-10
v.	:	File No. 10-53-08063
	:	
Peter Fabulian, D.O.,	:	
Respondent	:	

ORDER

AND NOW, this 30th day of November, 2011, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby ORDERED that the license to practice osteopathic medicine and surgery issued to Respondent, Peter Fabulian, D.O., license no. OS-008019-L, is INDEFINITELY SUSPENDED, for a no less than of five years, retroactive to the Immediate Temporary Suspension of Respondent's license on June 28, 2010.

Respondent shall, if he has not already done so, relinquish his wall certificate, registration certificate, wallet card, and other licensure documents by the effective date of this order, by forwarding them to the following address: State Board of Osteopathic Medicine, Attn: Board Counsel, P.O. Box 2649, Harrisburg, PA 17105-2649.

No sooner than June 28, 2015, Respondent shall be eligible to petition the Board for reinstatement of his license to practice medicine and surgery. Respondent must submit to the Board satisfactory evidence that he is able to practice osteopathic medicine with reasonable skill and safety to patients and has completed at least FIVE YEARS of rehabilitation and continuous sustained recovery. Documentation of such recovery shall include, but is not limited to, all of the following:

(a) An evaluation and assessment from a treatment provider approved by the Professional Health Monitoring Program indicating that Respondent is fit to safely practice medicine. Respondent may obtain the names of Board-approved treatment providers by contacting the Professional Health Monitoring Program, P.O. Box 2649, Harrisburg, PA 17105-2649;

(b) A yearly report or records of continued psychoanalytical therapy and counseling;

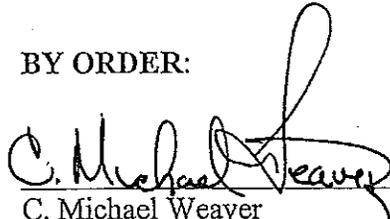
(c) A current Criminal History Record Information (a/k/a "Criminal Record Check") from the state-wide governmental agencies of all states where Respondent has resided since the suspension, compiled no more than three months prior to the petition for reinstatement; and

(d) A signed verification that Respondent has not practiced osteopathic medicine since the suspension.

Prior to reinstatement, Respondent must prove at a formal hearing before the Board or its designee that Respondent is capable of practicing medicine and surgery with reasonable skill and safety to patients.

This order shall be effective 20 days from the date of mailing unless otherwise ordered by the State Board of Osteopathic Medicine.

BY ORDER:


C. Michael Weaver
Hearing Examiner

For the Commonwealth:

Keith E. Bashore, Prosecuting Attorney
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
PROSECUTION DIVISION
P.O. Box 2649
Harrisburg, PA 17105-2649

For Respondent:

Samuel C. Stretton, Esquire
Attorney At Law
301 South High Street
P.O. Box 3231
West Chester, PA 19381-3231

Date of mailing:

12/1/11

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.