

IN THE MATTER OF

Harold O. Alexander, M.D.

Respondent

License Number: D22219

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BEFORE THE MARYLAND

STATE BOARD OF

PHYSICIANS

Case Number: 7713-0016

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### CONSENT ORDER<sup>1</sup>

On January 13, 2014, the Maryland State Board of Physicians (the "Board"), charged Harold O. Alexander, M.D. (the "Respondent"), License Number D22219, pursuant to his probationary terms and conditions and with violating the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") § 14-404(a) (2009 Repl. Vol. & 2013 Supp.).

The pertinent provisions of Health Occ. § 14-404(a) provide the following:

(3) Is guilty of:

...

(ii) Unprofessional conduct in the practice of medicine [.]

Md. Regs. Code 10.12.01 provides in pertinent part:

#### **.01 Definitions**

...

B. Terms Defined.

...

(6) "Surgical abortion facility" means an outpatient facility that provides surgical termination of pregnancy as a regular service...

#### **.02 License Required.**

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<sup>1</sup> This Consent Order supersedes the terms and conditions of the August 22, 2012 Consent Order and April 4, 2013 Final Order.

- A. A person may not establish or operate a surgical abortion facility without obtaining a license from the Secretary.

...

...

#### **.05 Administration.**

...

- B. Medical Director.

- (1) The surgical abortion facility shall have a medical director who:

- (a) Is responsible for the overall medical care that is provided by the facility; and
- (b) Advises and consults with the staff of the facility on all medical issues relating to services provided by the facility.

...

#### **.06 Personnel.**

- A. Qualifications of Physicians and Staff. A facility shall ensure that all physicians and other health professionals who are employees or contractual staff have been appropriately trained and licensed or certified under the Health Occupations Article, Annotated Code of Maryland.

...

#### **.07 Surgical Abortion Services.**

- A. Surgical abortion procedures shall be performed in a safe manner by a physician credentialed by the facility under Regulation .06 of this chapter.

...

- E. If anything other than an unsupplemented local anesthetic is needed to accomplish a surgical procedure, a health practitioner as described in Regulation .08 of this chapter

shall conduct a pre- anesthesia evaluation and document the anesthetic risk to the patient.

...

**.08 Anesthesia Services.**

- A. Anesthetics shall be administered by health practitioners who are licensed, certified, or otherwise authorized to do so under the Health Occupations Article, Annotated Code of Maryland.
- B. Anesthetics shall be administered only by a:
  - (1) Qualified anesthesiologist;
  - (2) A physician qualified to administer anesthesia; or
  - (3) A certified registered nurse anesthetist in accordance with:
    - (a) Health Occupations Article, § 8-205, Annotated Code of Maryland; and
    - (b) COMAR 10.27.06.

**.09 Emergency Services.**

...

- B. The facility shall have:
  - (1) A registered nurse available on site for emergency treatment whenever there is a post-operative surgical abortion patient in the facility;

...

**.11 Pharmaceutical Services.**

- A. The surgical abortion facility shall:

...

- (2) Develop and implement policies and procedures for pharmacy services in accordance with accepted professional practice.

- B. Administration of Drugs.

- (1) Staff shall prepare and administer drugs according to established policies and acceptable standards of practice.

...

**.13 Medical Records.**

- A. The facility shall maintain a complete, comprehensive, and accurate medical record for a patient.

...

The relevant terms of the Board's April 4, 2013 Final Order Terminating Suspension and Imposing Probation provide the following:

...**ORDERED** that Dr. Alexander is placed on **PROBATION** for a minimum period of **TWO YEARS**, and Dr. Alexander shall fully and satisfactorily comply with the following terms and conditions of probation:

...

6. Dr. Alexander shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §§ 14-101--14-702, and all laws and regulations governing the practice of medicine in Maryland...

On March 12, 2014, Disciplinary Panel A was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

**I. FINDINGS OF FACT**

Disciplinary Panel A finds the following:

**I. BACKGROUND**

1. At all times relevant to these charges, the Respondent was and is a physician licensed to practice medicine in the State of Maryland. The Respondent was initially licensed in Maryland on or about June 21, 1978, and his

license is presently active. The Respondent's license expires on September 30, 2014.

2. The Respondent is board-certified in Obstetrics and Gynecology.

3. At all times relevant to these charges, the Respondent practiced medicine at Practice A<sup>2</sup> in Forestville, Maryland, conducting medical and surgical abortions and gynecologic services. The Respondent was the Medical Director and General Manager of Practice A.

4. At all times relevant to these charges, the Respondent did not hold hospital privileges.

5. At all times relevant to these charges, Practice A was not a licensed facility for the performance of surgical abortions as required by Md. Code Regs. 10.12.01.02.

6. At all times relevant to these charges, the Respondent employed two employees at Practice A: Employee A, hired as the "Clinical Administrator" and office manager, and Employee B, hired as a receptionist and medical assistant.

7. On October 25, 2013, the Board ordered the Respondent to cease and desist from performing any surgical abortions and from administering any Controlled Dangerous Substances ("CDS"), including but not limited to sedation. On December 19, 2013, following a post-deprivation hearing, the Board modified the October 25, 2013 Cease and Desist Order to prohibit the Respondent from performing any surgical abortions at an unlicensed surgical abortion facility and ordered that he only perform such procedures at a surgical abortion facility licensed by Md. Code Regs. 10.12.01.02; and to limit the Respondent's

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<sup>2</sup> In order to maintain confidentiality, facility names will not be used in this document.

prescription/administration of CDS consistent with the Drug Enforcement Administration ("DEA") Memorandum of Agreement dated October 28, 2013.

#### **PRIOR DISCIPLINARY HISTORY**

8. On or about May 14, 2012, the Board charged the Respondent with unprofessional conduct in the practice of medicine, failure to meet the standard of quality medical care and inadequate medical recordkeeping. The unprofessional conduct charges were based on allegations of sexual misconduct including inappropriate comments the Respondent made toward patients, complaints the Respondent hugged and kissed patients, and inappropriate prescribing by the Respondent including self-prescribing and prescribing to family members and friends.

9. On or about August 22, 2012, the Respondent entered into a Consent Order with the Board, resolving the charges set forth in ¶ 8. The Consent Order imposed a minimum of a three month suspension of the Respondent's medical license, and a minimum of two years of probation with terms and conditions, conditioned upon an evaluation finding the Respondent safe to practice medicine.

10. On April 4, 2013, the Board issued a Final Order terminating the Respondent's suspension and placing him on a minimum of two years of probation with terms and conditions.

11. At all times relevant to these charges, the Respondent was under the probationary terms and conditions imposed by the Consent Order.

## **CURRENT COMPLAINT AND OHCQ INSPECTION**

12. On or about October 21, 2013, the Office of Health Care Quality ("OHCQ") conducted a licensure inspection of Facility A ("inspection") and based on the results of the inspection as set forth below, OHCQ filed a complaint with the Board.

13. The inspection included an on-site visit by OHCQ surveyors ("surveyors"), an interview of the Respondent and a review of Facility A's policy and procedure manual, personnel files, quality assurance and infection control program and professional credentialing.

14. During the inspection, the surveyors reviewed the medical records of ten of the Respondent's patients (identified as Patients A through J) who had received abortions conducted by the Respondent between June 12, 2013 and October 14, 2013, when Facility A was unlicensed as a surgical abortion facility. The Respondent reported to the surveyors that he performed surgical abortion procedures at Facility A on a routine basis.

15. The inspection revealed and the Respondent acknowledged that during all times relevant there was no registered nurse ("R.N.") on site when the Respondent performed surgical abortion procedures.<sup>3</sup> Md. Code Regs. 10.12.01.09B (1) requires that an R.N. be available on site for emergency treatment whenever there is a post-operative surgical abortion patient in the facility.

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<sup>3</sup> Nine of the patient records reviewed had first trimester pregnancies; one patient (Patient B) underwent a saline with cytotec instillation for a mid-trimester abortion.

16. The inspection revealed that the Respondent's employees at Facility A included only Employee A and Employee B, neither of whom were licensed by the Board or the Maryland Board of Nursing in any capacity.

17. The Respondent documented that he "trained" Employees A and B on or about August 15, 2012 to administer "sedating medications" to patients upon order from the physician.<sup>4, 5</sup>

18. According to the Respondent's handwritten notes, conscious sedation includes CDS such as IV diazepam,<sup>6</sup> IV fentanyl citrate,<sup>7</sup> IV midazolam<sup>8</sup> and IV Demerol.<sup>9</sup>

19. During the inspection, the Respondent stated to the surveyors that he is not the individual who administers the conscious sedation to patients during the procedures. According to the surveyors, the Respondent represented to them during the survey that the Respondent "tells" the medical assistants when to push the medications through the IV ports.<sup>10, 11</sup>

20. The Respondent was unable to provide the surveyors with policies and procedures in accordance with professional practice for pre-drawn medications, narcotic medication management, narcotic log documentation and for the administration of IV sedation.

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<sup>4</sup> The Respondent is the only physician performing surgical abortions at Facility A.

<sup>5</sup> The surveyor's notes reflect that Medical Assistant A was not hired until June 2013. Medical Assistant B was hired in February 2012.

<sup>6</sup> Schedule IV benzodiazepine.

<sup>7</sup> Schedule II CDS.

<sup>8</sup> Schedule IV benzodiazepine.

<sup>9</sup> Schedule II CDS.

<sup>10</sup> The Respondent subsequently denied this to be the case in an interview conducted by the Board's staff on October 25, 2013, and in a written submission to the Board.

<sup>11</sup> The Respondent subsequently denied that he had authorized Employees A and B to administer sedating medications to surgical abortion patients.



21. On October 21, 2013, the surveyors located four plastic bins in the narcotics cabinet that contained syringes with medications including CDS. The syringes were labeled only with the name of the medication, and failed to include the date the medication had been drawn into the syringe, the concentration of the medication, the expiration date of the medication, or the initials of the person who had drawn up the medication. The Respondent was unable to provide the surveyor with the corresponding medication vials.

22. The Respondent stated that Employee A routinely took the narcotic log book and the patient medical records home each night after office hours. Medical Assistant A routinely typed the contents of the narcotics log at her home each evening to record the CDS that had been administered to patients during surgical abortion procedures.

23. Facility A's narcotic log failed to include signatures by licensed individuals of CDS counts at the beginning and end of each shift.

24. According to the surveyors, the Respondent stated that he provided Employees A and B with keys to the facility's CDS cabinet.

25. According to the surveyors, the Respondent stated that Facility A did not have a policy and procedure for documenting the administration of narcotics, for the counting of narcotics or for the IV administration of pre-drawn CDS.

26. The Respondent's actions as outlined in pertinent part above constitute a violation of Md. Code Regs. 10.12.01.08 which requires that anesthetics be administered by health practitioners who are licensed, certified, or otherwise authorized to do so under the Health Occupations statute (which include a

physician qualified to administer anesthesia or a certified registered nurse anesthetist).

27. The Respondent's actions as outlined in pertinent part above constitute a violation of Md. Code Regs. 10.12.01.11A (2) which requires that the facility develop and implement policies and procedures for pharmacy services in accordance with accepted professional practice.

28. The Respondent's actions as outlined in pertinent part above constitute a violation of Md. Code Regs. 10.12.01.11B (1) which requires that staff prepare and administer drugs according to established policies and acceptable standards of practice.

#### **MEDICAL RECORD-KEEPING**

A review of ten patient records (identified as Patients A through J) produced by the Respondent at the request of the surveyors, revealed the following:

29. The Respondent performed surgical abortions on Patients A, D, F, G, H, I and J (between June 10, 2013 and October 14, 2013), all young women with first trimester pregnancies.<sup>12</sup> All seven patients received conscious sedation by IV including different combinations of Nubain,<sup>13</sup> diazepam and/ or Demerol. There was a documented set of preoperative vital signs for each patient, but the Respondent failed to document any postoperative vital signs. Moreover, there was no documentation of the patients' postoperative status, including bleeding.

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<sup>12</sup> Patient B underwent a curettage following an explosive unattended delivery. Patient C's record did not contain documentation of the type of anesthesia received. Patient E received local anesthesia during her procedure.

<sup>13</sup> Non-scheduled opioid analgesic used for pain and anesthesia.

30. With regard to Patients A, D, F, G, H, I and J, the Respondent failed to document the following criteria as specified in Practice A's Policy and Procedure Manual, before the patients were discharged:

The patient must be ambulatory with a stable blood pressure and pulse, and bleeding must be controlled.

31. With regard to Patients A, D, F, G, H, I and J, the Respondent failed to ensure that vital signs were documented every 15 minutes or at discharge as specified by Facility A's Policy and Procedure Manual, which provided:

Vital signs every 15 minutes.

32. The surveyor requested to review the medical records of two additional patients who had undergone surgical abortions at Practice A on October 16, 2013.<sup>14</sup> The Respondent was unable to recall the names of the two patients or produce the requested medical records.

33. As outlined in pertinent part above, the Respondent violated Md. Code Regs. 10.12.01.13 which requires that the facility shall maintain a complete, comprehensive, and accurate medical record for a patient.

#### **BOARD'S INTERVIEW OF THE RESPONDENT**

34. On or about October 25, 2013, the Board's staff interviewed the Respondent under oath with regard to the allegations.

35. The Respondent stated that he had performed approximately 150 abortions at Practice A since June 2013.

36. The Respondent stated that both Employees A and B assisted him with patient care throughout the abortion procedures.

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<sup>14</sup> The Respondent had represented to the surveyor that he had conducted two surgical abortions on October 16, 2013.

37. According to the Respondent, in November 2012, he applied to OHCQ for a surgical abortion facility license. At the time, his medical license had been suspended.

38. The Respondent acknowledged that in March 2013, he spoke with the Director of OHCQ (Dr. N) and she informed him that in order for him to be granted a surgical abortion facility license, he had to hold a medical license.

39. The Respondent stated that on or about April 19, 2013, OHCQ notified him that his surgical abortion facility license had become inactive.

40. The Respondent stated that on April 22, 2013, he applied to OHCQ for reinstatement of his surgical abortion facility license.

41. The Respondent acknowledged that he did not employ a registered nurse at Practice A.

42. The Respondent stated that Employee A was responsible for documenting the narcotics log and often she completed the documentation at home after office hours. The Respondent was aware Employee A brought patient records to her personal home for reference in completing the narcotic log documentation.

43. The Respondent stated that he monitors the pulse-oximetry of the conscious sedation patients for the first 15 minutes they are in the recovery room.

44. The Respondent acknowledged that he does not have someone continuously monitoring the postoperative patients in the recovery room once "we deem them to be stable."

## **BOARD'S INTERVIEW OF EMPLOYEE A**

45. On November 14, 2013, the Board's staff interviewed Employee A by telephone under oath.

46. Employee A stated that she was hired by the Respondent effective June 1, 2013 as a part time "assistant office manager and medical assistant." She had worked for the Respondent approximately three years prior to this date. Employee A was not a licensed health care worker and stated she had "no medical background."

47. Employee A denied any knowledge of an August 15, 2012 Orientation Checklist addressing moderate sedation that had been completed by the Respondent and was present in her personnel file.

48. Employee A assisted the Respondent with surgical abortions.

49. Employee A stated that routinely patients' vital signs were not monitored in the recovery room following the surgical abortion procedures.

## **BOARD'S INTERVIEW OF EMPLOYEE B**

50. On November 12, 2013, the Board's staff interviewed Employee B by telephone under oath.

51. Employee B stated that she was hired by the Respondent as a part-time receptionist<sup>15</sup> in February 2011.

52. Employee B described her education as "high school." She is not licensed in Maryland in any health care occupation.

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<sup>15</sup> Employee B also works as a receptionist for a physician who shares office space with the Respondent (Dr. M). Dr. M's practice is not affiliated with the Respondent's practice.

53. Employee B described her job responsibilities as answering the telephone, assisting the Respondent with "paperwork" and that she reviews "patient instructions" with the Respondent's patients.

54. Employee B stated that she "check[s] on ...patients" if the Respondent has to leave the room. She stated that in the Recovery Room if pulse-oximetry on a patient goes off, she will notify the Respondent.

55. Employee B denied taking vital signs while the patients were in the recovery room.

56. Employee B denied any knowledge of an August 15, 2012 Orientation Checklist addressing moderate sedation that had been completed by the Respondent and was present in her personnel file.

57. Employee B stated that Employee A, the only other employee at the Respondent's practice, assisted the Respondent with patient care. She confirmed that the Respondent did not employ a registered nurse in his practice.

## **II. CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, Disciplinary Panel A concludes as a matter of law that the Respondent's actions and inactions constitute unprofessional conduct in the practice of medicine in violation of Health Occ. § 14-404 (a)(3)(ii) and a violation of the Respondent's April 4, 2013 Consent Order.

## **III. ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

**ORDERED** that as of the date of this Consent Order, the Respondent's license to practice medicine be actively **SUSPENDED** for a period of **THREE (3) MONTHS**; and it is further

**ORDERED** that after **THREE (3) MONTHS** of active suspension, the Board will stay the **SUSPENSION** of the Respondent's medical license for a minimum period of three years and he shall be placed on a minimum of **THREE (3) YEARS of PROBATION** subject to the following terms and conditions:

- a. Within **NINETY (90) DAYS** of the suspension being lifted, the Respondent shall satisfactorily complete the recordkeeping course already commenced with John Steinberg, M.D. After 90 days, if the Respondent does not satisfactorily complete the recordkeeping course, the Board may reimpose an active suspension of his medical license until he satisfactorily completes the course. The course shall not be counted towards the Respondent's Continuing Medical Education ("CME") requirements for licensure ;
- b. The Respondent shall be subject to a chart or peer review in six months to one year after he resumes medical practice. An unsatisfactory review may be considered a violation of this Consent Order;
- c. The Respondent cannot be employed as a sole practitioner for a minimum period of one year. The Respondent's practice shall be supervised for a minimum period of one year by a Maryland licensed supervisor ("supervisor") approved by Disciplinary Panel A ("Panel A"). The Respondent is responsible for submitting the name and credentials of a Maryland-licensed physician for Panel A approval to supervise his practice as follows:
  1. The purpose of the supervision shall be to monitor the Respondent's medical practice by reviewing patient charts, and to focus on (1) the quality of patient care delivered by the Respondent; and (2) the Respondent's recordkeeping;
  2. The supervising physician shall submit **monthly** reports to Panel A for a period of **12 months**, detailing the issues discussed and the Respondent's progress. Each report shall include, but not be limited to, a report of the Respondent's

participation in the supervisory process and sufficient information to provide meaningful feedback to Panel A concerning the Respondent's progress;

3. The Respondent has sole responsibility for ensuring that the supervising physician submits the required monthly reports in a timely manner;
  4. If, as determined by Panel A, the reports are untimely or inadequate to provide meaningful feedback, Panel A reserves the right to require the Respondent to submit for approval the name and credentials of another Maryland-licensed physician to supervise the Respondent's practice;
  5. In the event that the Respondent's supervising physician discontinues supervising the Respondent's practice for any reason during the 12-month supervisory period, the Respondent shall immediately notify Panel A or the Board's agents or designees. The Respondent shall be solely responsible for submitting a replacement candidate to serve as his supervisor under the terms specified above;
  6. Panel A has sole authority over any changes in supervision and must approve and ratify any changes in supervision or the frequency of supervision;
  7. If the Respondent fails to complete the supervision in a timely manner as set out above, the Respondent will be deemed in violation of probation and this Consent Order;
  8. An unsatisfactory report from the Respondent's supervisor may be considered a violation of this Consent Order;
  9. After Panel A has received a minimum of 12 satisfactory supervisory reports from the physician supervisor, the Respondent may petition Panel A for the termination of the supervisory condition; and
  10. If Panel A terminates the supervisory condition described in (d), and the Respondent becomes self-employed, in order to perform surgical abortions his facility shall be licensed by the Office of Health Care Quality.
- d. The Respondent shall not self-prescribe or prescribe any medications to family members or close friends. Any prescriptions issued by the Respondent to himself, to family members or close



friends shall be considered a violation of his probation and of this Consent Order; and

- e. The Respondent shall maintain a medical record for each patient. A failure to maintain a medical record shall be considered a violation of probation and of this Consent Order; and it is further

**ORDERED** that a violation of any of the requirements in the preceding paragraphs shall constitute a violation of Probation and/or this Consent Order and, a disciplinary panel of the Board, in its discretion, after notice and opportunity for a show cause hearing before a disciplinary panel of the Board or an evidentiary hearing at the Office of Administrative Hearings, may impose additional sanctions authorized under the Medical Practice Act, including a reprimand, active suspension, an additional period of probation, revocation and/or a monetary fine; and it is further

**ORDERED** that no earlier than three years from commencement of the probationary period, the Respondent may submit a written petition to Disciplinary Panel A requesting termination of probation, but only if he has fully and satisfactorily complied with the all of the probationary terms and conditions set forth above and there are no pending complaints against the Respondent related to the allegations in the charges; and it is further

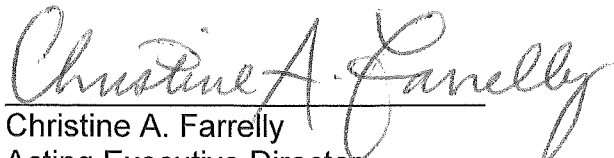
**ORDERED** that the Respondent shall not petition the Disciplinary Panel A for early termination of the terms and conditions of the Consent Order except for the condition specified in (d); and it is further

**ORDERED** that the Respondent shall comply with all laws governing the practice of medicine under the Maryland Medical Practice Act and all rules and regulations promulgated thereunder; and it is further

**ORDERED** that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of the Consent Order; and it is further

**ORDERED** that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't § 10-611 et seq. (2009 Repl. vol. & 2013 Supp.).

4/16/14  
Date

  
Christine A. Farrelly  
Acting Executive Director  
Maryland State Board of Physicians

**CONSENT ORDER**

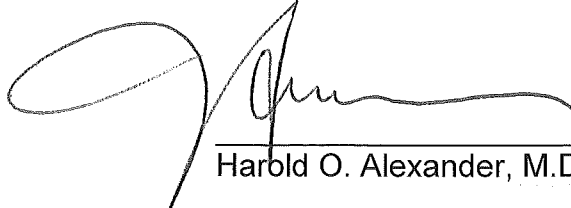
I, Harold O. Alexander, M.D., acknowledge that I am represented by counsel and have consulted with counsel before entering into this Consent Order. By this Consent and for the sole purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

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 own behalf, and to all other substantive and procedural protections provided by law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of Disciplinary Panel A to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am

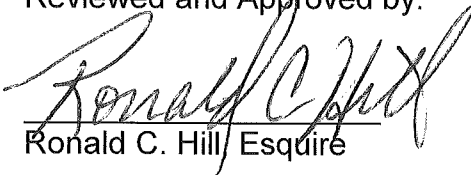
waiving my right to appeal any adverse ruling of a disciplinary panel of the Board that I might have filed after any such hearing.

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

4/8/14  
Date

  
Harold O. Alexander, M.D.

Reviewed and Approved by:

  
Ronald C. Hill Esquire

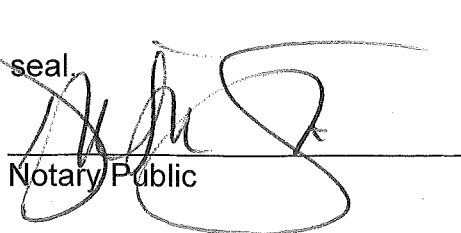
STATE OF: MD

CITY/COUNTY OF PG

I HEREBY CERTIFY that on this 8th day of April, 2014, before me, a Notary Public of the foregoing State and City/County personally appeared Harold O. Alexander, M.D, License Number D22219, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Commission expires: 6/28/15

  
Notary Public