State of Rhode Island
Department of Health
Board of Medical Licensure and Discipline

IN THE MATTER OF:
Daniel Hochberger, MD
License No.: MD06637
Case Nos.: 190288 and 200837

CONSENT ORDER

Daniel Hochberger ("Respondent") is licensed as a physician in Rhode Island. The Rhode Island Board of Medical Licensure and Discipline ("Board") has reviewed and investigated the above-referenced complaints pertaining to Respondent through its Investigative Committee. The Board makes the following

FINDINGS OF FACT

1. Respondent graduated from Boston University School of Medicine in 1983, and has been a licensed physician in the State of Rhode Island since June 19, 1985. Respondent's primary specialty is Internal Medicine.

2. The Board opened complaint 190288 following receipt of notice of settled litigation against Respondent in favor of Patient A (alias) for failure to diagnose resulting in death.

3. Respondent submitted to the Board a written response to the complaint, in addition to his medical record for Patient A.

4. Respondent was Patient A's attending physician, having evaluated and treated patient A on January 30, 2017.

5. That day, Patient A had presented with shortness of breath. Patient A had a known

history of asthma and was treated for asthma at that visit at the patient's insistence.

6. Respondent's medical record for Patient A accurately reflects the date of the visit was January 30, 2017. Notably, however, the note for that visit was not signed off until June 20, 2017, nearly five months later.

7. In his written response to the complaint, Respondent maintained that he met the standard of care in his care of Patient A, but that he settled the case based on the recommendation of his malpractice carrier. Respondent did not address in his written response why Patient A's medical record was signed nearly 5 months after the encounter, however. The Investigative Committee requested that Respondent appear to address this issue, noting that the documentation for the visit was very detailed, but that, owing to the fact it contained documentation from multiple sources—Respondent and a medical assistant—the documentation was, at times, contradictory.

8. Respondent appeared before the Investigative on Committee November 5, 2020, at which time Respondent explained that there had been a power outage at his practice on the day of the visit and that he had forgotten to complete the medical record. Respondent explained that, when he received a request for medical records from an attorney, he discovered that the note was incomplete and so he completed the documentation at that time.

9. The Investigative Committee reviewed Respondent's medical record for Patient A and Respondent's written response. The Investigative Committee also evaluated Respondent's appearance and assessed his credibility. The Investigative Committee noted that the medical record did not reflect that entry of the note had been interrupted due to a power outage or that it had been ultimately delayed for about five months. Additionally, the Investigative Committee noted that the delayed note—in their opinion—was written in a "defensive" style and appeared to emphasize facts that were more pertinent only after Patient A's death. The Investigative

Committee concluded, therefore, that Respondent's medical record for Patient A was, on balance, not an honest reflection of the actual encounter. Therefore, the Investigative Committee concluded that Respondent had filed a false medical record in the practice of medicine in violation of R.I. Gen. Laws § 5-37-5.1 (8), which defines "unprofessional conduct" as including "*[w]illfully making and filing false reports or records in the practice of medicine.*"

10. Pursuant to a complaint, a RIDOH inspector inspected Respondent's practice for any violations relative to COVID-19.

11. Based on the inspector's inspection of Respondent's practice, RIDOH issued Respondent an Immediate Compliance Order ("ICO") on July 16, 2020 ordering closure of Respondent's practice until he could demonstrate compliance with applicable regulations and executive orders relative to COVID-19, attached hereto as Exhibit A and incorporated herein by reference.

12. The inspector appeared before the Investigative Committee on December 3, 2020, and restated the substance of his inspection report, which information had been included in the ICO.

13. Based thereon, the Director of RIDOH determined that Respondent was in present violation of applicable executive orders and/or the Regulations and that immediate action was necessary to protect the health, welfare, or safety of the public.

14. Respondent again appeared before the Investigative Committee on December 3, 2020, after submitting a written response to the complaint and ICO. Respondent denied a vast majority ofthe contents of the ICO. The Investigative Committee did not accept Respondent's account and determined that Respondent had violated Section 7.4.1(A)(3) of the Regulations, which requires each covered entity to instruct any person entering an establishment to wear cloth face coverings except when physical distancing from others in the establishment is easily, continuously, and measurably maintained or an exception applies, and to deny access to any

employee who refuses to wear a cloth face covering when required; Section 7.4.1(A)(4) of the Safe Regulations, which requires each covered entity to ensure the placement of posters or signs at entry to its establishments educating any individual at the establishment concerning entry screening, required physical distancing, use of cloth face coverings, and other subjects as provided in guidance issued by the Rhode Island Department of Health ("RIDOH"); and R.I. Gen. Laws § 5-37-5.1(24), which defines "unprofessional conduct" as including "*[v]iolating any provision or provisions of [Chapter 5-37 of the R.I. Gen. Laws] or the rules and regulations of the board or any rules or regulations promulgated by the director or of an action, stipulation, or agreement of the board.*"

Based on the foregoing, the parties agree as follows:

1. Respondent admits to and agrees to remain under the jurisdiction of the Board.

2. Although Respondent does not agree with the Findings of Fact of the Investigative Committee, Respondent has agreed to enter into this Consent Order and understands that it is subject to final approval of the Board and is not binding on Respondent until final ratification by the Board.

3. If ratified by the Board, Respondent hereby acknowledges and waives:

a. The right to appear personally or by counsel or both before the Board;

b. The right to produce witnesses and evidence on his behalf at a hearing;

c. The right to cross examine witnesses;

d. The right to have subpoenas issued by the Board;

e. The right to further procedural steps except for those specifically contained herein;

f. Any and all rights of appeal of this Consent Order;

g. Any objection to the fact that this Consent Order will be presented to the Board for consideration and review; and

h. Any objection to the fact that this Consent Order will be reported to the National Practitioner Data Bank and Federation of State Medical Boards and posted to the RIDOH public website.

4. Respondent agrees to pay, within five days of the ratification of this Consent Order, an administrative fee of $2200.00 for costs associated with investigating the above-referenced complaint. Such payment shall be made by certified check, made payable to "**Rhode Island General Treasurer**," and sent to Rhode Island Department of Health, 3 Capitol Hill, Room 205, Providence, RI 02908, Attn: Lauren Lasso. Respondent will send notice of compliance with this condition to DOH.PRCompliance@health.ri.gov within 30 days of submitting the above-referenced payment.

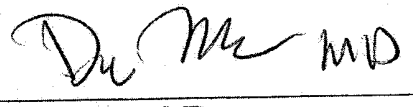
5. Respondent hereby agrees to this reprimand on his physician license and shall be on probation for two years.

6. Within 180 days of the ratification of this Consent Order, Respondent shall, at his own expense, complete and unconditionally pass the Center for Personalized Education of Physicians Problem Based Ethics Course (CPEP Probe). Results shall be sent to DOH.PRCompliance@health.ri.gov no later than 15 business days after notification of result.

7. If Respondent violates any term of this Consent Order after it is signed and accepted, the Director of RIDOH ("Director") shall have the discretion to impose further disciplinary action, including immediate suspension of Respondent's medical license. If the Director imposes further disciplinary action, Respondent shall be given notice and shall have 20 days from the suspension and/or further discipline to request an administrative hearing. The Director shall also

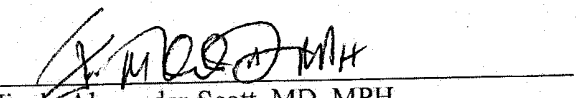
have the discretion to request an administrative hearing after notice to Respondent of a violation of any term of this Consent Order. The Administrative Hearing Officer may suspend Respondent's license, or impose further discipline, for the remainder of Respondent's licensing period if the alleged violation is proven by a preponderance of evidence.

Signed this 26th day of February, 2021.



Daniel Hochberger, MD

Ratified by the Board of Medical Licensure and Discipline on the 10th day of March, 2021.



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