STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MARK F. ROTTENBERG, M.D.
License No. 43-01-042031,
Respondent.__________________________________________

CONSENT ORDER

On March 2, 2018, the Department of Licensing and Regulatory Affairs executed an Administrative Complaint charging Respondent with violating the Public Health Code, MCL 333.1101 et seq.

The parties have stipulated that the Disciplinary Subcommittee of the Michigan Board of Medicine may enter this Consent Order. The Disciplinary Subcommittee of the Michigan Board of Medicine has reviewed this Consent Order and Stipulation and agrees that the public interest is best served by resolution of the outstanding Complaint.

Therefore, IT IS FOUND that the facts alleged in the Complaint are true and constitute a violation of MCL 333.16221(a). Count II alleging a violation of MCL 333.16221(b)(l), and Count III alleging a violation of MCL 333.16221(c)(iv) are dismissed with prejudice. Accordingly,

IT IS ORDERED that for the cited violations of the Public Health Code, Respondent is FINED $1,500 to be paid by check, money order or cashier's check made
payable to the State of Michigan (with complaint number 43-18-149534 clearly indicated on the check or money order) and shall be payable within 60 days of the effective date of this order. The timely payment of the fine shall be Respondent's responsibility. Respondent shall mail the fine to: Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, Enforcement Division, Compliance Section, P.O. Box 30189, Lansing, Michigan 48909.

IT IS FURTHER ORDERED that if Respondent fails to comply with the terms and conditions of this Order, Respondent shall be in violation of Mich Admin Code, R 338.1632 and MCL 333.16221(h) of the Public Health Code.

IT IS FURTHER ORDERED that this Order shall be effective 30 days from the date signed by the Board, as set forth below.

MICHIGAN BOARD OF MEDICINE
By: [Signature]
Chairperson, Disciplinary Subcommittee

Dated: 11/19/19
STIPULATION

The Department of Licensing and Regulatory Affairs and Respondent stipulate as follows:

1. Respondent does not contest the allegations of fact and law in Count I of the Complaint. Counts II and III are dismissed with prejudice. Respondent understands that, by pleading no contest to Count I, he does not admit the truth of the allegations but agrees the Disciplinary Subcommittee of the Michigan Board of Medicine may treat the allegations as true for the resolution of the complaint and may enter an order treating the allegations as true. Therefore, the Disciplinary Subcommittee of the Michigan Board of Medicine finds that the facts alleged in Count I of the Complaint are true and constitute a violation of MCL 333.16221(a).

2. Respondent understands and intends that by signing this Stipulation Respondent is waiving the right, pursuant to the Public Health Code, the rules promulgated thereunder, and the Administrative Procedures Act, MCL 24.201 et seq., to require the Department to prove the charges set forth in the Complaint by presentation of evidence and legal authority, and Respondent is waiving the right to appear with an attorney and such witnesses as Respondent may desire to present a defense to the charges.

3. This matter is a public record required to be published and made available to the public pursuant to the Michigan Freedom of Information Act, MCL 15.231
of seq., and this action will be reported to the National Practitioner Data Bank and any other entity as required by state or federal law.

4. This Order is approved as to form and substance by Respondent and the Department and may be entered as the final order of the DSC in this matter.

5. The parties took the following factors into consideration in agreeing to the above resolution:

   a. During a compliance conference with a Bureau representative, Respondent outlined corrective practices designed to ensure that all drugs are purchased from approved sources only.

   b. Respondent proactively completed 7 hours of CE courses including, but not limited to, courses in the areas of: 1) avoiding legal conflict with the FDA, 2) pain and symptom management, 3) medical ethics, and 4) legal responsibility in pharmacy practice.

   c. Respondent stated that all foreign and non-approved medications were removed from his inventory and properly disposed of immediately after being informed of their status by the FDA.

   d. Evidence was presented to support Respondent’s assertion that he never authorized or approved his office’s purchase of any medication outside the U.S.

   e. There is no direct proof that Respondent used any of the foreign and non-approved medications on any patient.

   f. Respondent has fully cooperated with LARA’s investigation of the subject matter and proposed resolution of the Administrative Complaint.

6. This proposal is conditioned upon acceptance by the DSC. Respondent and the Department expressly reserve the right to further proceedings without prejudice should this Order be rejected.
AGREED TO BY:

Cheryl Wykoff Pezon, Director
Bureau of Professional Licensing
Department of Licensing and Regulatory Affairs
Dated: 11/28/18

AGREED TO BY:

Mark F. Rottenberg, M.D.
Respondent
Dated: 11-27-18

APPROVED BY:

Robert S. Iwrey (P48688)
Attorney for Respondent
Dated: 11/27/18
STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
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In the Matter of

MARK F. ROTTENBERG, M.D.
License No. 43-01-042031,
Respondent. File No. 43-18-149534

ADMINISTRATIVE COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs, by Cheryl Wykoff Pezon, Acting Director, Bureau of Professional Licensing, complains against Respondent as follows:

1. The Michigan Board of Medicine is an administrative agency established by the Public Health Code, MCL 333.1101 et seq. Pursuant to MCL 333.16226, the Board's Disciplinary Subcommittee is empowered to discipline persons for violations of the Public Health Code.

2. Respondent is currently licensed to practice medicine in the state of Michigan. Respondent also holds an active controlled substance license and active drug control-location licenses.

3. Botulinum toxin type A products (e.g. Botox) are prescription medications regulated by the federal Food and Drug Administration (FDA) and used to treat a variety of medical and cosmetic conditions.
4. Euflexxa (hyaluronate) is a fluid that is injected into the knee joint to treat knee pain caused by osteoarthritis. It requires a prescription and is regulated by the federal Food and Drug Administration (FDA).

5. Foreign, unapproved medical products may pose a threat to the health, safety, and welfare of Michigan residents.

6. For historical purposes, the following events occurred:

   a. On November 10, 2010, the Michigan Department of Community Health executed an Administrative Complaint against Respondent based on his failure to install adequate shielding on a room that had a radiation producing c-arm fluoroscope. Respondent had been given 19 months to make the required corrections, but failed to do so, nor did he respond in any way. On February 10, 2011, the Board executed a Final Order, suspending Respondent’s medical license for 6 months and 1 day.

   b. On June 2, 2011, the Board vacated the previous Final Order and granted Respondent’s Request for Reconsideration. This matter was remanded to the Department to resume the administrative process.

   c. On April 26, 2012, Respondent and the Board entered into a Consent Order and Stipulation. Respondent neither admitted nor denied the allegations but agreed that the Board should treat them as true. Respondent was fined $500.

7. At all relevant times, Respondent practiced medicine in Farmington Hills, Michigan, dba Pain Management and Rehabilitation Associates. The Respondent is the owner and sole shareholder of this corporation.
8. On July 25, 2016, Respondent and several employees were interviewed about ordering Botox and Euflexxa through foreign, unapproved channels. The employees stated that they placed the orders under the authority of the Respondent. The Respondent stated he did not select any of the vendors that provided the products in his stock. Respondent’s employees were able to find several boxes of Euflexxa in stock that were not approved by the FDA. Respondent indicated that he administered the unauthorized products but would not be able to identify who received them. At the time of the interview, Respondent had not notified patients that they received non-FDA approved or cleared medical products and did not plan on notifying these individuals.

COUNT I

Respondent’s conduct, as set forth above, evidences a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, in violation of MCL 333.16221(a).

COUNT II

Respondent’s conduct departs from, or fails to conform to, minimal standards of acceptable and prevailing practice for the health profession in violation of MCL 333.16221(b)(i).

COUNT III

Respondent’s conduct constitutes obtaining, possessing, or attempting to obtain or possess a controlled substance or drug without lawful authority, and/or selling,
prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes, in violation of MCL 333.16221(c)(iv).

RESPONDENT IS NOTIFIED that, pursuant to MCL 333.16231(8), Respondent has 30 days from the date of receipt of this Complaint to answer this Complaint in writing and to show compliance with all lawful requirements for licensure. Respondent shall submit the response to the Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, MI 48909.

Respondent's failure to submit an answer within 30 days is an admission of the allegations in this Complaint. If Respondent fails to answer, the Department shall transmit this Complaint directly to the Board's Disciplinary Subcommittee to impose a sanction, pursuant to MCL 333.16231(9).

Dated: 3/1/2018

Cheryl Wykoff Pezof, Acting Director
Bureau of Professional Licensing

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