BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE: ALBERT JAMES PAINE, JR., MD

Complaint No. 19-127-W

CONSENT ORDER

The West Virginia Board of Medicine ("Board") and Albert James Paine, Jr., MD ("Dr. Paine"), freely and voluntarily enter into the following Consent Order pursuant to West Virginia Code § 30-3-1, *et seq.*

FINDINGS OF FACT

The Board and Dr. Paine stipulate to the truthfulness and accuracy of the facts, as set forth herein below:

1. Dr. Paine holds a West Virginia medical license, No. 13309, which was first issued in 1982.

2. On June 12, 2019, Dr. Paine submitted an application for medical licensure renewal to the Board for the licensure period of July 1, 2019 through June 30, 2021.

3. In association with his license renewal application, Dr. Paine made the following certifications:

   I understand that as a licensee, I am required to personally complete this application, and I am solely responsible for the accuracy and completeness of the information provided, including all information regarding my practice in the last two years and my certification of successful completion of all required continuing medication education.

***
I have carefully read and understood all the questions included on each page of this renewal and have answered all the questions completely, without reservations of any kind. I declare that my answers and all statements made by me herein are true and correct.

I understand that any license issued based upon this renewal application is based on the truth of the statements contained herein. Should I furnish false or misleading information in this renewal application, I hereby agree and understand that any such act shall constitute good cause for disciplinary action and/or the subsequent revocation of my license.

I understand that regardless of the date of my electronic signature, all statements in the online renewal application relate to the entire period of July 1, 2017 to June 30, 2019. If, after I provide my electronic signature and prior to July 1, 2019, any answer should change for any reason, I have a duty to notify the Board and amend my renewal application.

4. As part of the renewal process, all renewal applicants answer a series of Professional Practice, Character and Fitness Questions which seek information regarding the preceding two-year period. For the 2019 physician renewal cycle, these questions sought information from the applicant for the period of July 1, 2017 through June 30, 2019.

5. On his application, Dr. Paine answered “No” to Professional Practice Question No. 12, which asked whether, at any time from July 1, 2018 through June 30, 2019, he had “had any judgments or settlements arising from medical professional liability rendered or made against” him.

6. On or about November 30, 2017, a settlement was reached with respect to a medical malpractice claim filed against Dr. Paine in the Circuit Court of Raleigh County, West Virginia, Docket No. 16-C-759K. A payment was made on the behalf of Dr. Paine.

7. Dr. Paine’s negative response to Professional Practice Question No. 12 was incorrect.
8. Dr. Paine failed to disclose the November 30, 2017, medical malpractice settlement on his 2019 renewal application. Moreover, he did not act to supplement or correct his original response at any time prior to July 1, 2019.

9. On September 8, 2019, the Complaint Committee of the Board initiated a complaint against Dr. Paine based upon his failure to disclose a medical malpractice settlement on his 2019 renewal application.

10. In response to the complaint, Dr. Paine avers that his failure to answer the Professional Practice Question No. 12 accurately was inadvertent and an honest mistake.

11. The Board and Dr. Paine voluntarily enter into this Consent Order to resolve Complaint No. 19-127-W.

CONCLUSIONS OF LAW

The Board and Dr. Paine stipulate to the following conclusions of law:

1. Dr. Paine’s license to practice medicine and surgery in the state of West Virginia is subject to regulation and discipline by the Board, the “regulatory and disciplinary body for the practice of medicine and surgery” for physicians, podiatrists and physician assistants in West Virginia. W. Va. Code § 30-3-5 and § 30-3-7(a).

2. The Board has a mandate to ensure “a professional environment that encourages the delivery of quality medical services” to protect the public interest. W. Va. Code § 30-3-2.

3. The West Virginia Medical Practice Act sets forth conduct which may render an individual unqualified for licensure or subject to discipline or other restrictions upon
licensure. W. Va. Code § 30-3-14. Pursuant to W. Va. Code § 30-1-8(c), the Board has promulgated legislative rules that “delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct and/or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.” See W. Va. Code R. § 11-1A-12.

4. Probable cause may exist to substantiate disciplinary charges against Dr. Paine pursuant to W. Va. Code §§ 30-3-14 (c)(1) and (17), W. Va. Code R. §§ 11-1A-12.1.a and 12.1.e and 12.1.j, relating to his inaccurate response to a licensure renewal application question.

5. As Dr. Paine has indicated that his inaccurate response was inadvertent, it is appropriate and in the public interest to waive the commencement of proceedings against Dr. Paine and to proceed without further investigation, the filing of charges, or a formal Complaint and Notice of Hearing, subject to compliance by Dr. Paine with the provisions of this Consent Order.

6. This Consent Order sets forth reasonable and appropriate discipline upon Dr. Paine in the form of an administrative fine.

7. The discipline imposed by this Consent Order does not relate to the delivery of health care services by Dr. Paine.

CONSENT

By signing his name to this Consent Order, Albert James Paine, Jr., MD, acknowledges that he understands and agrees with the following:

1. Dr. Paine has read and understands this entire Consent Order;
2. Dr. Paine agrees that he has been given adequate time and opportunity to review and consider the terms set forth in this Consent Order;

3. Dr. Paine understands that he has the right to legal representation in this matter, at his own expense, and agrees that he has been afforded adequate time and opportunity to exercise his right to consult with counsel regarding the legal effect of this Consent Order;

4. Dr. Paine understands that this Consent Order is a legally binding Order of the West Virginia Board of Medicine that affects his rights and privileges;

5. Dr. Paine acknowledges that he is fully aware that, without his consent, no permanent legal action may be taken against him except after a hearing held in accordance with West Virginia Code § 30-3-14(h) and § 29A-5-1, et seq.;

6. Dr. Paine is aware of his legal rights in this matter, in addition to his right to be represented by counsel at his own expense, including: the right to a formal hearing, after reasonable notice, before the West Virginia Board of Medicine on the disciplinary charges before the Board; the right to confront and cross-examine witnesses against him; the right to present evidence and testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to appeal under Chapter 29A of the West Virginia Code in the event of a final order or decision adverse to him;

7. With the exception of the right to legal counsel, which he has exercised, Dr. Paine knowingly and voluntarily waives all such additional rights, and agrees to the entry of this Consent Order relative to his practice of medicine in the state of West Virginia;

8. Dr. Paine acknowledges that if he violates any of the terms of this Consent Order, further action may be taken against his license by the Board, as permitted by law; and
9. Dr. Paine understands that this Order is a public document which will be available for public inspection, will be accessible through the Board’s website, and will be a permanent part of his historical record with the Board. Matters contained herein may be reported to other jurisdictions, the Federation of State Medical Boards and as otherwise required by law.

ORDER

WHEREFORE, on the basis of the foregoing stipulated Findings of Fact and Conclusions of Law, and with the consent of Dr. Paine, the West Virginia Board of Medicine hereby ORDERS as follows:

1. Dr. Paine is hereby assessed a CIVIL FINE in the amount of four hundred dollars ($400.00) for providing an inaccurate response to Professional Practice Question No. 12 on his 2019 license renewal application. Dr. Paine’s payment of the fine must be received by the Board on or before December 27, 2019.

2. Dr. Paine agrees to comply fully with the requirements of the West Virginia Medical Practice Act and the legislative rules of the Board at all times while he is licensed to practice medicine in West Virginia, and further agrees to comply with the terms of this Consent Order.

3. This Consent Order imposes disciplinary action upon Dr. Paine’s West Virginia medical license which Dr. Paine is obligated to disclose in association with his 2021 application for the renewal of his West Virginia medical license.

4. In the event that Dr. Paine fails to comply with the terms of this Order by the established deadlines, the Board may elect to take any other action with regard to Dr. Paine’s license which is authorized by law.
5. This Consent Order shall be deemed entered on the date that this Order, with all required signatures affixed hereupon, is received in the Board’s 101 Dee Drive, Charleston, West Virginia, office. The Executive Director of the West Virginia Board of Medicine is hereby authorized to denote the date of entry on behalf of the Board in accordance with this paragraph.

ENTERED ON: January 2, 2020

WEST VIRGINIA BOARD OF MEDICINE

Kishore K. Challa, MD, FACC
President

Date: 11/19/2019

Catherine C. Slemp, MD, MPH
Secretary

Date: 12/20/19
ACCESSION

I, ALBERT JAMES PAINE, JR., MD, HAVE READ AND UNDERSTAND THE FOREGOING CONSENT ORDER. I HAVE BEEN GIVEN SUFFICIENT TIME AND OPPORTUNITY TO CONSIDER THIS CONSENT ORDER, AND I UNDERSTAND THE EFFECT IT WILL HAVE UPON MY LICENSE TO PRACTICE MEDICINE AND SURGERY IN WEST VIRGINIA.

BY SIGNING THIS CONSENT ORDER, I HAVE WAIVED CERTAIN RIGHTS, BUT I DO SO KNOWINGLY AND VOLUNTARILY, AND I DO NOT WISH TO ASSERT THOSE RIGHTS IN THIS MATTER.

I UNDERSTAND THAT I HAVE THE RIGHT TO LEGAL COUNSEL, THAT I HAVE EXERCISED MY RIGHT TO COUNSEL, AND I HAVE BEEN PROVIDED WITH AMPLE TIME TO SEEK LEGAL ADVICE REGARDING MY ACCEPTANCE OF THIS CONSENT ORDER FROM MY ATTORNEY.

I AM SIGNING THIS CONSENT ORDER VOLUNTARILY, AND I UNDERSTAND THE POTENTIAL CONSEQUENCES OF VIOLATING THIS CONSENT ORDER.

Albert James Paine, Jr., MD

Date: 12/17/19

STATE OF West Virginia
COUNTY OF Raleigh, to-wit:

I, Teresa Lilly, a Notary Public for said county and state do hereby certify that Albert James Paine, Jr., MD, whose name is signed herein above has this day acknowledged the same before me.

Given under my hand this 17th day of December, 2019.

My Commission expires September 4, 2023

Teresa Lilly
Notary Public
State of West Virginia  
Board of Medicine  

101 Dee Drive, Suite 103  
Charleston, WV 25311  
Telephone 304.558.2921  
Fax 304.558.2084  
www.wvbom.wv.gov  

January 6, 2020  

VIA US MAIL  
Albert James Paine, Jr., MD  
84 Brookshire Lane  
Beckley, WV 25801  

Re: West Virginia Board of Medicine  
Complaint No. 19-127-W  

Dear Dr. Paine:  

Enclosed please find for your records a copy of the fully executed Consent Order in the above-reference matter. This letter will confirm that the Board of Medicine considers you to have fulfilled all obligations set forth in the Consent Order which you entered into with the West Virginia Board of Medicine on January 2, 2020. As of the date of this letter, the West Virginia Board of Medicine considers the above-referenced matter to be closed.  

In accordance with the statute, the Consent Order, with a copy of this letter attached, remains a permanent part of your historical record maintained by the Board.  

Should you have any questions or concerns please feel free to contact me at (304) 558-2921 ext. 70005.  

Sincerely,  

Mark A. Spangler  

MAS/jal  
cc: Tamela J. White, Esq.