LICENSE NO. F6612

IN THE MATTER OF §
THE LICENSE OF §
HAROLD HUBBARD FAIN, JR., M.D. §

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 4th day of December, 2015, came on to be heard before the Texas Medical Board (the Board), duly in session, the matter of the license of Harold Hubbard Fain, Jr., M.D. (Respondent).

On September 17, 2015, Respondent appeared in person, with counsel, Jordan M. Parker, J.D., at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from Board Staff. The Board’s representatives were Courtney Mack Townsend, Jr., M.D., and Sharon J. Barnes, M.B.A./H.R.M., members of the District Review Committee (Panel). Margie Johnson represented Board Staff.

BOARD CHARGES

Board Staff charged that Respondent failed to diagnose one patient’s multiple myeloma, resulting in delay of care and treatment.

BOARD HISTORY

Respondent has not previously been the subject of disciplinary action of the Board.

Upon the recommendation of the Board’s representatives and with the consent of Respondent, the Board makes the following Findings and Conclusions of Law and enters this Agreed Order.

FINDINGS

The Board finds the following:

1. General Findings
a. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the Act) or the Rules of the Board.

b. Respondent currently holds Texas Medical License No. F6612. Respondent was originally issued this license on August 24, 1980. Respondent is also licensed to practice in the state of Oklahoma.

c. Respondent is primarily engaged in the practice of family and preventive medicine. Respondent is board certified by the American Board of Preventive Medicine, a member of the American Board of Medical Specialties.

d. Respondent is 61 years of age.

2. **Specific Panel Findings:**

   a. Respondent failed to recognize and work up several years of abnormal laboratory results showing an elevated total protein level and a low albumin level.

   b. Respondent failed to demonstrate that he had implemented a plan to address the abnormalities.

3. **Mitigating Factor:**

   In determining the appropriate sanctions in this matter, the Panel considered that Respondent cooperated in the investigation of the allegations related to this Agreed Order. He neither admits nor denies the information given above. To avoid further investigation, hearings, and the expense and inconvenience of litigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions.

**CONCLUSIONS OF LAW**

Based on the above Findings, the Board concludes that:
1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent’s failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as further defined by Board Rules 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(B), negligence in performing medical services; 190.8(1)(C), failure to use proper diligence in one’s professional practice; and 190.8(1)(D), failure to safeguard against potential complications.

3. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule.

4. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

5. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

ORDER

Based on the above Findings and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. Respondent shall be subject to the following terms and conditions for 8 consecutive monitoring cycles (defined below). Respondent’s practice shall be monitored by a physician (monitor), in accordance with §164.001(b)(7) of the Act. The Compliance division of the Board shall designate the monitor and may change the monitor at any time for any reason. The monitor shall have expertise in a similar specialty area as Respondent. The Compliance
Division shall provide a copy of this Order to the monitor, together with other information necessary to assist the monitor.

a. As requested by the Compliance Division, Respondent shall prepare and provide complete legible copies of selected patient medical and billing records ("selected records"). The Compliance Division shall select records for at least 30 patients seen by Respondent during each three-month period following the last day of the month of entry of this Order ("reporting period"). The Compliance Division may select records for more than 30 patients, up to 10 percent of the patients seen during a reporting period. If Respondent fails to see at least 30 patients during any three-month period, the term of this Order shall be extended until Respondent can submit a sufficient number of records for a monitor to review.

b. The monitor shall perform the following duties:

1) Personally review the selected records;

2) Prepare written reports documenting any perceived deficiencies and any recommendations to improve Respondent’s practice of medicine or assist in the ongoing monitoring process. Reports shall be submitted as requested by the Compliance Division; and

3) Perform any other duty that the Compliance Division determines will assist the effective monitoring of Respondent’s practice.

c. The Compliance Division shall provide to Respondent a copy of any deficiencies or recommendations submitted by the monitor. Respondent shall implement the recommendations as directed by the Compliance Division. If the chart monitor recommends that Respondent restrict or suspend his or her practice of medicine, Respondent shall be required to personally appear before a panel of Board representatives, upon written request mailed to Respondent’s last known address on file with the Board at least 10 calendar days before the
requested appearance date. Such appearance shall be for the purpose of consideration of the chart monitor’s recommendations of restriction or suspension and held in accordance with 22 Tex. Admin. Code, §187.44. Based upon the panel’s findings and recommendations, the Board may modify this Order so that Respondent’s practice is restricted or suspended, in accordance with the chart monitor’s recommendations, or take any other action that may be appropriate to resolve the issues presented.

d. The monitor shall be the agent of the Board, but shall be compensated by the Respondent through the Board. Such compensation and any costs incurred by the monitor shall be paid by Respondent to the Board and remitted by the Board to the monitor. Respondent shall not charge the compensation and costs paid to the monitor to any patients.

e. A “monitoring cycle” begins when the Compliance Division selects patient records for review, and concludes when Respondent receives the monitor’s report for that group of records and has made payment for the costs of that monitoring cycle.

2. Within one year from the date of the entry of this Order, Respondent shall enroll in and successfully complete at least 24 hours of continuing medical education (CME) approved for Category I credits by the American Medical Association, divided as follows: 16 hours in the topic of family practice and diagnosis, and 8 hours in the topic of risk management; each approved in writing, in advance by the Executive Director or designee. To obtain approval for the course, Respondent shall submit in writing to the Compliance Department information on the course, to include at least a reasonably detailed description of the course content and faculty, as well as the course location and dates of instruction. Respondent shall submit documentation of attendance and successful completion of this requirement to the Compliance Department on or before the expiration of the time limit set forth for completion of the course. The CME
requirements set forth in this paragraph shall be in addition to all other CME required for
licensure maintenance.

3. Respondent shall pay an administrative penalty in the amount of $3,000 within 60
days of the date of the entry of this Order. The administrative penalty shall be paid in a single
payment by cashier’s check or money order payable to the Texas Medical Board and shall be
submitted to the Board for routing so as to be remitted to the Comptroller of Texas for deposit in
the general revenue fund. Respondent’s failure to pay the administrative penalty as ordered shall
constitute grounds for further disciplinary action by the Board, and may result in a referral by the
Executive Director for the Board for collection by the Office of the Attorney General.

4. At all times while Respondent is under the terms of this Order, Respondent shall
give a copy of this Order to all hospitals, nursing homes, treatment facilities, and other health
care entities where Respondent has privileges, has pending an application for privileges, applies
for privileges, or otherwise practices. Within 30 days of being first contacted by the Compliance
Division of the Board following entry of this Order, Respondent shall provide to the Compliance
Division of the Board documentation, including proof of delivery, that the Order was delivered
to all such facilities.

5. The time period of this Order shall be extended for any period of time that: (a)
Respondent subsequently practices exclusively outside the State of Texas; (b) Respondent’s
license is subsequently cancelled for nonpayment of licensure fees; (c) this Order is stayed or
enjoined by Court Order; or (d) for any period of time longer than 60 consecutive days that
Respondent does not actively practice medicine. If Respondent leaves Texas to practice
elsewhere or ceases active practice for more than 60 consecutive days, Respondent shall
immediately notify the Board in writing. Upon Respondent’s return to active practice or return
to practice in Texas, Respondent shall notify the Board in writing. When the period of extension
ends, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension or tolling.

6. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent’s practice.

7. Respondent shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent’s compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Respondent pursuant to the Act.

8. Respondent shall inform the Board in writing of any change of Respondent’s office or mailing address within 10 days of the address change. This information shall be submitted to the Registration Department and the Compliance Department of the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that 10 days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent waives the 30-day notice requirement provided by §164.003(b)(2) of the Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

9. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, or to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.
10. Respondent shall be permitted to supervise and delegate prescriptive authority to physicians assistants and advanced practice nurses and to supervise surgical assistants.

11. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for one year following the date of the entry of this Order. If, after the passage of the one-year period, Respondent wishes to seek amendment or termination of these conditions, Respondent may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition without further appeal or review. Petitions for modifying or terminating may be filed only once a year thereafter.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

SIGNATURE PAGES FOLLOW
I, HAROLD HUBBARD FAIN, JR., M.D., HAVE READ AND UNDERSTAND THE
FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE
CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER
CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF
ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED:  

October 29, 2015.

HAROLD HUBBARD FAIN, JR., M.D.
Respondent

STATE OF Texas  
COUNTY OF Tarrant

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public,
on this 29th day of October, 2015.

Signature of Notary Public

(Notary Seal)
SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 4th day of December, 2015.

Michael Arambula, M.D., Pharm.D., President
Texas Medical Board