

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE:

FREDERICK WILLIAM BARKER, MD

Complaint No. 19-84-W

CONSENT ORDER

The West Virginia Board of Medicine (the "Board") and Frederick William Barker, MD ("Dr. Barker"), freely and voluntarily enter into the following Consent Order pursuant to West Virginia Code § 30-3-14, et seq.

FINDINGS OF FACT

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

1. Dr. Barker holds a West Virginia medical license, License No. 15881, which was first issued in 1989. Dr. Barker's address of record with the Board is in Bluefield, Virginia.
2. Dr. Barker's self-identified area of specialty is general surgery.
3. On July 14, 2019, the Complaint Committee of the Board authorized Initiated Complaint No. 19-84-W against Dr. Barker based upon a third-party report from a West Virginia practitioner ("Reporting Practitioner"), alleging that Dr. Barker violated the standard of care by failing to timely initiate available treatment for four separate patients diagnosed with breast cancer.
4. The Reporting Practitioner alleged that Dr. Barker failed to initiate surgical intervention for the breast cancer patients within an acceptable time frame after the patients' initial diagnoses. It is alleged that Dr. Barker delayed surgical intervention for the patients in anticipation of the hospital's purchase of equipment for an alternative treatment known as interoperative breast radiotherapy ("IORT"), and further that Dr. Barker failed to properly advise the patients of the risk associated with delaying treatment.

5. The Complaint Committee conducted an investigation into the allegations set forth in Initiated Complaint No. 19-84-W and obtained an independent physician review of the medical records for each the four breast cancer patients at issue herein.

6. The independent reviewer identified concerns with Dr. Barker's delay in treatment for the four patients, including the lack of documentation in the medical records of discussions with the patients regarding the risks, benefits and alternatives of the treatment options.

7. Dr. Barker contends that he discussed all appropriate treatment options with each patient but acknowledges that he did not adequately document his discussions in the medical record.

8. Dr. Barker obtained an independent physician review of the medical records for each of the four breast cancer patients at issue.

9. The independent review retained by Dr. Barker determined that while Dr. Barker failed to adequately document his discussions in the medical record, the delay did not cause disease progression or compromise the ultimate care of each patient.

10. The Board and Dr. Barker voluntarily enter into this Consent Order to resolve Complaint No. 19-84-W, and to establish appropriate terms and conditions upon Dr. Barker's practice of medicine in West Virginia.

CONCLUSIONS OF LAW

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

1. Dr. Barker's license to practice medicine and surgery in the state of West Virginia is subject to regulation and discipline by the West Virginia Board of Medicine, 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." W. Va. Code R. § 11-1A-12.

4. Probable cause may exist to substantiate disciplinary charges against Dr. Barker pursuant to the West Virginia Medical Practice Act and the Board's legislative rules including, but not limited to, the following provisions:

- a. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.x; and/or
- b. W. Va. Code § 30-3-14(c)(11) and W. Va. Code R. §§ 11-1A-12.1.u and 12.1.jj, relating to the failure to keep written records justifying the course of treatment of a patient.

5. It is appropriate and in the public interest to waive the commencement of proceedings against Dr. Barker and to proceed without the filing of charges, or a formal Complaint and Notice of Hearing, subject to compliance by Dr. Barker with the provisions of this Consent Order.

6. This Consent Order sets forth reasonable and appropriate terms and conditions upon the practice of medicine and surgery by Dr. Barker in West Virginia.

CONSENT

By signing his name to this Consent Order, Frederick William Barker, MD, acknowledges that he understands and agrees with the following:

1. Dr. Barker has read and understands this entire Consent Order;
2. Dr. Barker agrees that he has been given adequate time and opportunity to review and consider the terms set forth in this Consent Order;
3. Dr. Barker understands that he has the right to legal representation in this matter, at his own expense, and that has been afforded adequate time and opportunity to consult with his attorney regarding the legal effect of this Consent Order;
4. Dr. Barker 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. Barker 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-S-1, et seq.;
6. Dr. Barker 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 his right to counsel, which he has exercised, Dr. Barker 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. Barker 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. Barker 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 file with the Board. Matters contained herein will be reported to the National Practitioner Data Bank, and 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. Barker, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. ***Training and Education.*** At his own expense, Dr. Barker shall enroll in and successfully complete **PBI Education's Medical Record Keeping (MR-17 Extended Edition) course**, including all pre-course and post-course requirements. To satisfy this requirement, Dr. Barker must complete all pre-course requirements and virtually attend and successfully complete this course on either **July 24-25, 2021 or August 14-15, 2021.**

a. ***Notification of Enrollment.*** Dr. Barker shall provide the Board with a copy of his enrollment confirmation from the CME provider on or before **July 19, 2021**, and shall submit acceptable documentation from the CME

provider of his successful completion of the course to the Board within **ten days** of his completion.

- b. *Successful Completion of CME.* Successful completion of the CME course required by this Order shall be determined solely by the CME provider. A determination by the CME provider that Dr. Barker has failed to successfully complete any program requirement, including pre or post program requirements, shall constitute clear and convincing evidence for the Board to take further action with respect to Dr. Barker's West Virginia medical license, including the imposition of additional discipline.
- c. *Limitation on Use of CME hours.* Dr. Barker may not utilize any CME hours he earns pursuant to his participation in the CME course required by this Order to satisfy his biennial continuing medical education obligation pursuant to W. Va. Code R. § 11-6-3.1 or any superseding enactment of the Board's legislative rule governing continuing medical education requirements and reporting for physicians.

2. *Medical Record Documentation Audit.* One year following Dr. Barker's completion of the CME course required by this Consent Order, and without prior notice to Dr. Barker, the Board shall conduct a chart review of Dr. Barker's medical records. Upon request, Dr. Barker shall immediately provide the Board's Investigator with on-site access to all of his medical records/charts for active patients. Upon request, Dr. Barker shall also produce a complete and legible copy of up to five medical records/charts selected by the Board's Investigator for offsite review by the Board within five business days of such request.

3. Dr. Barker shall at all times fully comply with all of the professional practice requirements of the West Virginia Medical Practice Act as set forth in W. Va. Code § 30-3-1 et seq., and in the Board's legislative rules, including but not limited to W. Va. Code R. § 11-1A-1 et seq.

4. Dr. Barker's medical record documentation practices shall comport with the standard of care, and shall include proper documentation of his discussions with patients regarding appropriate treatment options and the risks and benefits associated therewith.

5. Dr. Barker agrees that he may be subject to additional disciplinary processes, as permitted by law, for any violation of the terms of this Consent Order.


6. 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: July 23, 2021

WEST VIRGINIA BOARD OF MEDICINE


Kishore K. Challa, MD, FACC
President

Date: 7/23/21


Quartel-Ayne Amjad, MD, MPH
Secretary

Date: 7/20/2021

ACCEPTANCE

I, FREDERICK WILLIAM BARKER, 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, AND I HAVE BEEN PROVIDED WITH AMPLE TIME TO CONSULT WITH MY ATTORNEY AND OBTAIN LEGAL ADVICE REGARDING MY ACCEPTANCE OF THIS CONSENT ORDER.

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


Frederick William Barker, MD

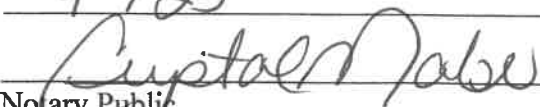
Date: 7/12/2021

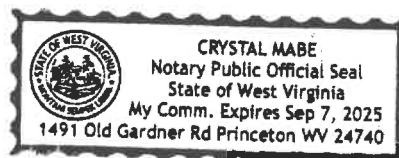
STATE OF West Virginia

COUNTY OF Mercer, to-wit:

I, Crystal Mabe, a Notary Public for said county and state do hereby certify that Frederick William Barker, MD, whose name is signed herein above has this day acknowledged the same before me.

Given under my hand this 12 day of July, 2021.

My Commission expires 9-7-25

Notary Public





State of West Virginia *Board of Medicine*

ASHISH P. SHETH, MD
PRESIDENT

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JONATHAN P. LILLY, MD
VICE PRESIDENT

MATTHEW Q. CHRISTIANSEN, MD, MPH
SECRETARY

July 10, 2023

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

Frederick William Barker, MD
2216 West Cumberland Road
Bluefield, VA 24605

**Re: July 23, 2021 Consent Order
West Virginia Board of Medicine**

Dear Dr. Barker:

This letter will confirm that the West Virginia Board of Medicine ("Board") considers you to have fulfilled all obligations set forth in the Consent Order which you entered into with the Board on July 23, 2021. As of the date of this letter, the Board 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 have your attorney contact the Board's counsel, Greg S. Foster, at (304) 558-2921 Ext. 49863.

Sincerely,

Mark A. Spangler

MAS/jal

cc: C. William Davis, Esq.