

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

June 27, 2013

Jonathan Fier, Esq.
Robert A. Flaster, PC
225 Broadway – Suite 1201
New York, NY 10007

Via pdf file attachment only

RE: BPMC Order Number 13-156

Dear Mr. Fier:

I am writing in follow-up of our telephone conversation of this afternoon regarding the above referenced disciplinary order.

I can advise you regarding conduct which my office would or would not consider *reportable* to OPMC as a *possible* violation of the license limitation imposed, precluding the licensee from engaging in any practice as an Independent Medical Examiner. I cannot and will not address the issue of whether the licensee subject to the above referenced order is “available” or “unavailable” to any particular party, as the civil litigation forum is the appropriate forum for resolving that issue. As you can see, the order neither bars all testimony nor permits all testimony.

If the licensee, in the future, testifies about acts performed, observations or findings made, or opinions and/or diagnoses rendered, respectively, at a time that predates the effective date of the Order, we would not consider that to be reportable as a possible violation.

If the licensee performs any further physical examinations as an Independent Medical Examiner subsequent to the Order, we would consider that to be reportable as a possible violation. If, in relation to any Independent Medical Examination occurring at any point in time, the licensee engages in or testifies regarding any *further* act of observation, finding, opinion, and/or diagnosis (including but not limited to providing his opinion on any subsequent and/or supplemental medical information) we would consider that to be reportable as a *possible* violation.

Thank you.

Very truly yours,



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