VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: **SARAH E. FORBES, M.D.**
License No.: 0101-012203

AMENDED ORDER

In accordance with Sections 54.1-2400(10), 2.2-4019 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code"), an informal conference was held with Sarah E. Forbes, M.D., on November 12, 2009, in Richmond, Virginia. Members of the Virginia Board of Medicine ("Board") serving on the Special Conference Committee ("Committee") were: Malcolm Cothran, M.D., Chairman; Claudette Dalton, M.D., and Karen Ransone, M.D. Dr. Forbes appeared personally and was represented by legal counsel, R. Barrow Blackwell, Esquire. Emily Field, Adjudication Specialist, was present as a representative for the Administrative Proceedings Division of the Department of Health Professions. The purpose of the informal conference was to inquire into allegations that Dr. Forbes may have violated certain laws governing the practice of medicine in the Commonwealth of Virginia, as set forth in a Notice of Informal Conference dated July 22, 2009.

Mr. Blackwell proposed several modifications to the Findings of Fact in the Order entered December 1, 2009. After review of the information and evidence presented during Dr. Forbes's informal conference, the Chair determined that Findings of Fact Numbers 2 and 4 should be changed. This Amended Order has been entered to reflect this change.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now, having properly considered the evidence and statements presented, the Committee makes the following Findings of Fact and Conclusions of Law:

1. Sarah E. Forbes, M.D., was issued license number 0101-012203 by the Board to practice medicine and surgery in the Commonwealth of Virginia on July 20, 1954. Said license will expire on May 31, 2010, unless renewed or otherwise acted upon.

2. Dr. Forbes violated Sections 54.1-2915.A(1) and (16) of the Code in that from January, 2005, through March, 2006, Forbes, MD, PC (a professional corporation owned by Dr. Forbes) engaged in fraudulent and deceptive insurance billing practices with Patients A-BB. Specifically, Forbes, MD, PC routinely upcoded office visits and falsified medical records to support higher levels of billing and/or billing for services not rendered, specifically using Current Procedural Terminology ("CPT") Code 99354.

3. Dr. Forbes admitted that between 2005 and 2006, her office overbilled for services rendered to Patients A-BB. Dr. Forbes claims that the overbilling was due to being misinformed by staff about the use of a time calculator box to determine level of services. Dr. Forbes stated that she ceased using this method of billing in 2008, and has hired a coding consultant to ensure proper billing.

4. After an investigation and audit was conducted by the U.S. Department of Health and Human Services, Dr. Forbes entered into a Settlement Agreement with the United States, in which she agreed to pay approximately $430,757.36 in settlement of certain civil claims asserted by the United States for the period of July 1, 2003 - June 30, 2006.

5. Dr. Forbes hired Denise Fortner, an independent coding consultant who was formerly a fraud investigator with Anthem Insurance, to review her practice. Ms. Fortner characterized Dr. Forbes' practice as having "severe billing issues." Ms. Fortner noted that

when she initally looked at medical records from Dr. Forbes' practice, there was just a blank page with some free-form writing on the page. Ms. Fortner stated she has done a complete overhaul of Dr. Forbes' office billing and medical record-keeping practices, and conducts random, monthly audits to ensure continued compliance. Ms. Fortner has advised Dr. Forbes to never bill certain CPT codes (99354/99355) again, unless she has Ms. Fortner's consent. Ms. Fortner stated that the nature of Dr. Forbes practice would never warrant use of such high level, complex CPT codes.

6. Dr. Forbes violated Sections 54.1-2915.A(3), (12), and (13) of the Code, and 18 VAC 85-20-26(C) of the Board of Medicine General Regulations in that from approximately November 7, 2006, to December 11, 2007, Dr. Forbes treated Patient CC on multiple occasions, to include prescribing medications and ordering diagnostic studies and laboratory work, but failed to perform or document a physical examination or assessment, note patient complaints or symptoms, formulate a diagnosis or treatment plan, and/or provide appropriate follow-up care. For example:

a. On September 17, 2007, Dr. Forbes ordered laboratory work for Patient CC in response to her complaints of tingling in her arm and other symptoms suggestive of high blood pressure, none of which is documented in Patient CC's chart. By Dr. Forbes' own admission, she never reviewed or discussed with Patient CC the results of this lab work or otherwise appropriately followed up on the lab results. Subsequently, another physician diagnosed Patient CC with, and treated her for, high blood pressure.

b. Dr. Forbes stated that Patient CC was an employee who she treated until Patient CC left her employment in November, 2007. Dr. Forbes stated that she was a "fool", and "felt pity in her heart" for Patient CC, and claims that Patient CC used that pity to her advantage. Dr. Forbes admitted that her records for Patient CC's care and treatment were minimal and did not accurately reflect the encounters she had with Patient CC. For example, Dr. Forbes stated that she was Patient CC's primary care physician, but that Patient CC also had a group of specialists that she saw. On September 17, 2007, Patient CC stated to Dr. Forbes that she felt "sick, feverish and her heart was giving her trouble," so at the request of Patient CC, Dr. Forbes ordered a lab work-up and claims she contacted Patient CC's cardiologist to facilitate an office visit. However, Dr. Forbes could not point to where such referral was documented or specify when that cardiologist visit occurred. Further, Dr. Forbes did not document any encounter with Patient CC on September 17, 2007, and did not perform or document a physical examination on that date. Dr. Forbes stated she did not think that Patient CC's complaints on September 17, 2007 were significant enough to warrant an emergent visit; however, she had no objective proof of the severity of the illness. Dr. Forbes stated that Patient CC, being an employee of the practice, managed her own medical record by removing lab reports off the computer and later presenting them to Dr. Forbes for interpretation. Dr. Forbes also stated that Patient CC may have removed documentation of the cardiologist's consultation from her chart.

c. When questioned by the Committee about the process for reviewing lab reports, specifically those with alerts or abnormal results, Dr. Forbes stated that she reviews all reports at some point during in the day, but she could not describe any concrete, established office procedure for the handling of such abnormal reports.

d. On December 11, 2007, in response to Patient CC's request for medication for a reported thyroid condition, and without performing any examination of Patient CC, Dr. Forbes prescribed Levothyroxine (Schedule VI) 0.3 mg to be taken three times daily. Said encounter and the foregoing prescription were not documented in Patient CC's chart.

e. After Patient CC had left her employment with Dr. Forbes, Patient CC came into the office just as they were closing, and presented a desperate need to Dr. Forbes for her thyroid medication, stating "you've got to help me." Dr. Forbes claimed to have initially refused CC's request, but after much pleading by Patient CC, Dr. Forbes said she eventually "fell for it", and wrote the prescription for Synthroid. When questioned about her rationale for the unusual dosage on the prescription, Dr. Forbes stated she believed that Patient CC may have altered the original prescription, and claimed that she wrote the prescription for 0.1 mg of Synthroid, 3 tablets, and 1 tablet per day. While the medical chart does not reflect this prescription, the pharmacy label from the prescription bottle states: Synthroid 0.3 mg (300 MCG) tab, take three times per day, #30, with four refills. In addition, there was a notation to "return to doctor in one month". Dr. Forbes claims that the prescription was altered by strength, dose, instructions, notation and refills. Dr.

Forbes also claims she did not receive a phone call from the pharmacist questioning this allegedly altered prescription.

f. The Committee did not find Dr. Forbes' explanation for the many differences in the prescription (as reflected on the bottle label versus what she claimed to have written) to be credible.

7. Dr. Forbes violated Sections 54.1-2915.A(3), (13), (16), and (17) and 54.1-3303.A and 54.1-3408.01 of the Code in that prior to March 11, 2008, Dr. Forbes routinely pre-signed blank prescriptions to be used by her nurse practitioner, often leaving them in unsecured areas in the office.

8. Dr. Forbes admitted that she pre-signed the prescription blanks for a limited time for the nurse practitioner's use only. She stated that the prescriptions were kept secure in the nurse practitioner's pockets. Dr. Forbes stated she wanted to help the nurse practitioner, as she did not have prescriptive authority in Virginia and the use of pre-signed prescriptions made it easier for the patients to get their prescriptions without delay. Upon being informed by a DHP investigator that this was not permitted, Dr. Forbes ceased this practice.

9. By her own admission, Dr. Forbes violated Sections 54.1-2915.A(1) and (16) of the Code, in that she provided the Board with a false birthdate on documents related to her medical license, and also provided a false birthdate on a Reappointment Application for the period of May 2007 – May 2008 for Riverside Regional Medical Center.

10. Dr. Forbes admitted that she provided the wrong birthdate and "treated it as a joke." She stated it was her way of kidding, but she also felt that she looked younger

and felt younger than her age. Dr. Forbes claims she does not misrepresent her age any more, and noted she is 83 years old and proud of it.

11. Dr. Forbes violated Sections 54.1-2915.A(3), (13), and (16) of the Code in that during her care and treatment of Patients DD and EE, from February, 2005, through December, 2008:

a. She prescribed controlled substances, including narcotics, benzodiazepines, barbituates, antidepressants, and sleep aids, to Patients DD and EE without first performing a proper physical examination, evaluation, or assessment. Further, Dr. Forbes regularly prescribed narcotics to Patients DD and EE on dates when the patients did not present to her office for an examination, often in response to telephonic requests from the patients. By her own admission, Dr. Forbes sometimes provided prescriptions for pain medication to Patient DD when she saw him "out and about." Dr. Forbes regularly failed to document these prescriptions or the reasons for them in the patients' medical records.

b. Prior to prescribing medications to Patients DD and EE, Dr. Forbes did not discuss or document discussing with them information concerning the risks and benefits of the medications being prescribed, nor did she document her reasons for selecting the types and doses of medications prescribed.

c. On a continuous basis from in or about May, 2007, through August, 2008, Dr. Forbes prescribed Vicoprofen (Schedule III) to treat Patient DD's reports of "back pain" without performing diagnostic tests to determine the etiology of the pain.

d. Dr. Forbes failed to develop a comprehensive treatment plan and/or to review and monitor the efficacy of treatment for patients, including monitoring and managing Patient DD and EE's usage of narcotic medications. Specifically:

i. Dr. Forbes did not employ pain rating scales or other appropriate measures to determine the effect of prescribed medications on patients' activities of daily living.

ii. Dr. Forbes did not have a pain management or similar contract in place with Patients DD and EE, for whom she regularly prescribed narcotic medications.

iii. Dr. Forbes failed to order any drug urine/serum screens, conduct pill counts, or take other appropriate measures to determine whether her patients were taking their medications as prescribed and were otherwise compliant with their medication regimen.

e. Dr. Forbes prescribed controlled substances to Patient EE, who she knew or should have known had become addicted to or dependent upon her medications. Further, Dr. Forbes failed to address or document that she had addressed signs and symptoms of escalation or abuse of medication therapies, nor did Dr. Forbes appropriately treat or refer Patient EE for treatment of substance abuse. For example:

i. Dr. Forbes authorized a replacement of Percocet (Schedule II) for Patient EE in January, 2008,when she claimed that she had lost her prior prescription.

ii. Dr. Forbes continued to prescribe narcotics for Patient EE even after she was alerted by a pharmacy in January, 2006, that the patient was filling prescriptions for narcotic medications from another physician.

iii. Between February, 2005, through December, 2008, Dr. Forbes increased the dosage of Xodol (Schedule III) for Patient EE, and continuously added new medications to the patient's regimen, to include butalbital (Schedule VI), Vicoprofen (Schedule III), Dilaudid (Schedule II), and Norco (Schedule III).

f. While Dr. Forbes stated that she referred Patients DD & EE to other physicians, she failed to coordinate treatment and follow-up with other physicians or consistently obtain medical records from other physicians involved in the care of Patients DD and EE.

g. Dr. Forbes failed to appropriately recommend or prescribe treatment modalities to Patient DD other than the prescription of controlled substances.

12. Dr. Forbes admitted that she did not utilize pain scales, drug screens or pain management contracts.

13. When questioned by the Committee regarding her prescribing of Xodol, Dr. Forbes could not describe the components of the drug, stating "I don't know what's in it."

14. Dr. Forbes acknowledged there are issues involved in treating employees and their family members. She admitted that she had not kept proper records and that she regrets it. Her counsel noted that these mistakes all occurred with employees, with whom she interacted on a daily basis and felt she knew well.

15. Dr. Forbes has self-restricted her practice by not writing any prescriptions for Schedule II medications, and states that she does not plan to write any Schedule II prescriptions in the future.

16. Dr Forbes rationalized that the above events were frequently attributable to mistakes or errors by others. However, she now recognizes her responsibility for guidance and oversight of her practice.

ORDER

WHEREFORE, based on the above Findings of Fact and Conclusions of Law, it is hereby ORDERED that the license of Sarah E. Forbes, M.D., be, and hereby is, placed on INDEFINITE PROBATION subject to the following terms and conditions:

1. Dr. Forbes is prohibited from prescribing, dispensing, or administering Schedule II or III controlled substances. Further, she shall notify the United States Drug Enforcement Administration ("DEA") and have her current DEA registration amended to reflect such restriction.

2. Within six (6) months of entry of this Order, Dr. Forbes shall submit a certificate or other evidence satisfactory to the Board demonstrating that she has successfully completed ten (10) hours of Board-approved continuing medical education ("CME") in the subject of proper prescribing. Such CME hours shall be approved in advance of registration by the Executive Director of the Board and shall be completed through face-to-face, interactive sessions (i.e. no home study, journal, or internet study courses). Any CME hours obtained through compliance with this term shall not be used

toward compliance with the Board's continuing education requirements for license renewal.

3. Within six (6) months of entry of this Order, Dr. Forbes shall submit a certificate or other evidence satisfactory to the Board demonstrating that she has successfully completed twelve (12) hours of CME in the subject of medical recordkeeping. Such CME hours shall be approved in advance of registration by the Executive Director of the Board and shall be completed through face-to-face, interactive sessions (i.e. no home study, journal, or internet study courses). Any CME hours obtained through compliance with this term shall not be used toward compliance with the Board's continuing education requirements for license renewal.

4. Within nine (9) months of completing the requirements set forth in Terms #2 and #3, Dr. Forbes' practice shall be subject to an unannounced inspection by an inspector/investigator of the Department of Health Professions. The inspection shall be conducted during normal business hours and include an overall review of Dr. Forbes' medical practice, to include a review of her office, staffing, medical records, and drug records. The inspector/investigator shall also randomly select and obtain copies of twelve (12) complete patient records, to include billing records, for review by the Board in order to determine her compliance with the Board's laws and regulations. Dr. Forbes shall cooperate with the inspector/investigator in the inspection of her practice.

5. Within thirty (30) days of completion of the unannounced inspection, Dr. Forbes shall submit an inspection fee to the Board in the amount of five hundred dollars ($500).

6. Within six (6) months of entry of this Order, Dr. Forbes shall submit evidence of passing the Special Purpose Examination ("SPEX") administered by the Federation of State Medical Boards. Dr. Forbes shall ensure that a copy of the results of the SPEX examination is submitted to the Board within thirty (30) days of such examination.

7. Within thirty (30) days of entry of this Order, Dr. Forbes shall provide the Board with a written statement certifying that she has read, and will comply with: (i) the laws governing the practice of medicine and surgery (Title 54.1, Chapter 29 of the Code); (ii) the Regulations Governing the practice of Medicine, Osteopathy, Podiatry, and Chiropratic (18 VAC 85-20-10 *et. seq.*); and the Drug Laws for Practitioners.

8. Within thirty (30) days of entry of this Order, Dr. Forbes shall submit notification to all federal, state, and local agencies, and any hospital and/or medical staff with which she is affiliated of her correct birth date of May 4, 1926. Further, she shall submit a certified copy of her birth certificate to the Board.

9. Upon receipt of evidence that Dr. Forbes has fully complied with the requirements of this Order or upon receipt of evidence that Dr. Forbes' failed to pass the SPEX examination, a compliance report shall be prepared for review by the Board. In its discretion, the Board may terminate the probation and terms imposed on Dr. Forbes' license, or may notice Dr. Forbes for an administrative proceeding.

Violation of this Order may constitute grounds for suspension or revocation of Dr. Forbes' license. In the event that Dr. Forbes violates this Order, an administrative proceeding may be convened to determine whether such action is warranted.

Pursuant to Sections 2.2-4023 and 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

Pursuant to Section 54.1-2400(10) of the Code, Dr. Forbes may, not later than 5:00 p.m., on January 4, 2010, notify William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233, in writing that he desires a formal administrative hearing before the Board. Upon the filing with the Executive Director of a request for the hearing, this Order shall be vacated.

Therefore, this Order shall become final on January 4, 2010; unless a request for a formal administrative hearing is received as described above.

FOR THE BOARD

Jennifer L Deschene

FR William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

ENTERED: 1/6/2010
Nunc Pro Tunc: December 1, 2009