

FILED

June 2, 1989

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

EFFECTIVE

March 17, 1989

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

NEW J
ROBERT A. FOGARI, M.D.

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

Administrative Action

ORDER GRANTING PARTIAL SUMMARY
DECISION ON COUNTS I-XXI AND
REVOKING LICENSE TO PRACTICE
MEDICINE AND SURGERY

NEW
OF

This matter was opened before the New Jersey State Board of Medical Examiners (the "Board") upon the filing on November 22, 1988 of an Administrative Complaint by the Attorney General of New Jersey, by James F. Lafargue, Deputy Attorney General. The Administrative Complaint was plead in 22 Counts; Counts I-XVIII contained allegations concerning specific acts of misconduct which Dr. Fogari was alleged to have committed in connection with his fraudulent performance of drug studies regulated by the Food and Drug Administration ("FDA"). Within said Counts, respondent's conduct was variously alleged to be actionable under N.J.S.A. 45:1-21(c) (gross malpractice, gross negligence or gross incompetence); 45:1-21(d) (repeated acts of malpractice, negligence or incompetence); 45:1-21(e) (professional misconduct); 45:1-21(h) (violation of administrative regulations, particularly failure to maintain accurate medical records in violation of N.J.A.C. 13:35-6.5); and/or 45:1-21(b) (dishonesty, fraud, deception or misrepresenta-

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tion). Count XIX alleged that respondent had been convicted of violating 18 U.S.C. § 371 (conspiracy to defraud the United States) based upon the conduct described in Counts I-XVIII, which conviction was alleged to constitute the conviction of a crime involving moral turpitude and/or a crime relating adversely to the practice of medicine, thus providing a basis for revocation of respondent's license to practice medicine pursuant to both N.J.S.A. 45:9-16(c) and N.J.S.A. 45:1-21(f). Count XX alleged that respondent had been convicted of two counts of violating 18 U.S.C. § 1001 and § 1002 (false statements in a matter within the jurisdiction of a government agency), thus providing a basis for revocation of respondent's license to practice medicine pursuant to both N.J.S.A. 45:9-16(c) and N.J.S.A. 45:1-21(f). Complainant alleged within Count XXI that respondent has been convicted of violating 18 U.S.C. § 1505 (obstruction of justice), thus providing a basis for revocation of respondent's license to practice pursuant to N.J.S.A. 45:9-16(c). Count XXII alleged respondent violated N.J.S.A. 45:1-21(d) in connection with his treatment of patient K.N.

The allegations against Dr. Fogari (with the exception of those in Count XXII) concerned fraudulent actions taken by Dr. Fogari or by his assistants at Dr. Fogari's direction, during the conduct of experimental drug studies. Those actions were the subject of a 20 count federal criminal indictment -- Dr. Fogari in fact plead guilty to four counts thereof and was sentenced to serve a period of four years of incarceration for his crimes.

PROCEDURAL HISTORY

Simultaneously with the filing of said Complaint, complainant filed a notice of motion for partial summary decision, returnable December 14, 1988, seeking entry of partial summary decision on the claims and allegations set forth in Counts I-XXI. Complainant appended the transcript of respondent's Guilty Plea before Honorable Garrett E. Brown in the United States District Court, District of New Jersey, in the matter of United States of America v. Rogert A. Fogari, Criminal Docket No. 88-43 on October 7, 1988, upon which transcript complainant relied in support of its motion.

On December 14, 1988, respondent appeared before the Board of Medical Examiners, represented by Lampf, Lipkind, Prupis & Petigrow, Anthony F. LaBue, Esq., appearing. At that time, Mr. LaBue requested an adjournment of the proceeding until after January 30, 1989, the date on which Dr. Fogari was scheduled to be sentenced before Judge Brown, arguing both that insufficient time had been given to prepare and that any Board action would be premature before sentencing. At its December 14, 1988 meeting, the Board elected to grant Mr. LaBue's request for an adjournment until after January 30, 1989, based upon counsel's argument that there might be circumstances under which Dr. Fogari would withdraw his plea of guilty, or under which the plea would be rejected, in which

case said plea might not be evidential pursuant to Rule 11(6)(A), Federal Rules of Criminal Procedure.*

The hearing upon the motion for partial summary decision was continued on February 8, 1989. On that date, the Board preliminarily entertained argument on two motions raised by counsel for respondent -- namely, a motion in limine both to consolidate the charges within Counts I through XVIII into one count and to consolidate the multiple offenses charged in Counts I-XX into one specific offense on each Count, and a second motion to transfer the matter for hearing before the Office of Administrative Law. Following presentation of argument, the Board found no cause for either motion and both were accordingly denied.** Thereupon, argument was commenced upon the complainant's motion for partial summary decision. Counsel for respondent argued that the matter should again be adjourned on the basis that the complainant had failed to produce either a copy of the judgment of conviction*** of Dr. Fogari or a copy of the transcript of the sentencing of Dr. Fogari, and therefore argued that the Board was not presented with

* Counsel for Dr. Fogari represented at the December 14, 1988 hearing that Dr. Fogari was willing to agree not to accept any new patients and to withdraw any advertisements pending conclusion of the Board's proceeding. Said restrictions were to apply as well to any associates of Dr. Fogari.

** Formal Orders denying said motions were filed on February 21, 1989.

*** The formal judgment of conviction had not yet been entered as of February 8, 1989. Sentence was pronounced by Judge Brown on February 2, 1989 and the judgment of conviction was signed on February 15, 1989.

competent evidence sufficient to prove the fact of Dr. Fogari's conviction. The complainant produced testimony of Diana Kolaitis, a representative of the FDA, who testified that she had been present at the time Dr. Fogari was sentenced and testified as to her observations as to what sentence had been entered by Judge Brown. In order to provide all possible fairness to Dr. Fogari, however, and upon consideration of the fact that the complainant had not introduced any direct evidence of Dr. Fogari's conviction, the Board determined to adjourn the matter again until the next hearing date.

The matter was continued on March 8, 1989 at the regularly scheduled Board meeting. At that time, both parties had supplemented the record before the Board with additional documentation. The Attorney General filed a brief in support of its motion for summary decision, to which were appended the following exhibits:

Judgment of Conviction, dated February 15, 1989, signed by Garrett E. Brown, U.S.D.J., in United States of America v. Robert A. Fogari, Case Number CR88-43. (Order fixing amounts payable as restitution appended thereto.)

Letter dated November 30, 1988 from Robert E. Bartkus (Pinto, Rodgers & Kopf) to Hon. Garrett E. Brown, Jr.

Letter dated January 25, 1989 from Robert E. Bartkus (Pinto, Rodgers & Kopf) to Hon. Garrett E. Brown, Jr.

Government Exhibit 2 -- Document entitled "Payments to Defendant Fogari for Clinical Drug Studies."

Government Exhibit 1 -- Document entitled "Clinical Drug Studies in which Defendant Fogari Took Place."

Copies of complaints in Scrivani v. Fogari, et al.; Nelson v. Fogari, et al., Docket No. L-003683-86; Buensuceso v. Rosner, et al., Docket No. L-081555-86; Antonello, et al. v. Fogari; Bales v. Jersey City Medical Center, et al.; Darcy, et al. v. Fogari.

Transcript of sentencing before the Honorable Garrett E. Brown, Jr., February 2, 1989, (pgs. 53-67).*

Respondent additionally submitted documentation for the Board's consideration, which documentation consisted of:

List of proposed witnesses.

Summation of proposed testimony from potential witnesses.

Document entitled "Freedom of Information Document (Subheadings included "Investigators Agreeing to some Restriction of Investigational Drug Use; Investigators Ineligible to Receive Investigational New Drugs; Assurances for Future Investigational Drug Study Performance Accepted After Regulatory Hearing").

A form (blank) prepared by Berlex Laboratories to be completed by physician investigators conducting drug studies for patients within said studies.

In addition to the foregoing, respondent introduced, at the March 8, 1989 hearing, copies of two responses which defendant Fogari had presented in response to the Government's original and supplemental sentencing memorandums in the criminal matter before Judge Brown.

* Pgs. 53-67 consisted of Judge Brown's comments at the time of sentencing. The record was supplemented by counsel for respondent at the adjourned proceeding on March 8, 1989, at which time respondent introduced into evidence pgs. 68-72 of said transcript.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon consideration of the documentation introduced by the parties and with due regard for the applicable legal standards, the Board has concluded that a grant of summary disposition shall be entered finding respondent guilty of each and every charge within Counts I-XXI. Simply put, the Board finds no genuine issues of material fact with regard to any of the allegations in Counts I-XXI, and finds that the petitioner has adequately met its burden of palpably demonstrating the absence of any genuine issue of material fact. See Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67 (1954). The Board's conclusion is squarely supported by two documents -- the transcript of Dr. Fogari's guilty plea dated October 7, 1988 and the Judgment of Conviction entered February 15, 1989. The Board thus finds that respondent's guilty plea conclusively establishes the factual and legal allegations set forth in the complaint.

Additionally, at the plea hearing, Dr. Fogari was thoroughly questioned by Assistant U.S. Attorney Paul A. Weissman regarding the specific actions in which he engaged, said questioning being conducted so as to establish the requisite factual basis necessary for acceptance of a guilty plea pursuant to Rule 11(f) of the Federal Rules of Criminal Procedure.* Dr. Fogari's testimony

* Rule 11(f) of the Federal Rules of Criminal Procedure states:

(Footnote Continued On Following Page)

unequivocally supports the factual allegations of the Attorney General's Complaint. Indeed, Dr. Fogari was directly asked questions regarding the actions alleged in the Complaint, and in each and every instance affirmed that he indeed committed the actions alleged in the Complaint.* Dr. Fogari has submitted no

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Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court shall not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

* A careful examination of the transcript of Dr. Fogari's guilty plea of October 7, 1988 yields unequivocal and uncontraverted support for the allegations of the Complaint. Specifically, those sections of the transcript which support the allegations of the Complaint (Note: those allegations are only briefly summarized here within parentheticals following Count number; reference is directed to the Complaint for review of precise allegations) are as follows:

<u>COUNT I</u> (Fabrication of "substantially all" data reported in studies relating to physical examination of patients)	12:7-13:9
<u>COUNT II</u> (Fabrication of microscopic urine analysis)	13:10-13:20 13:25-14:4
<u>COUNT III</u> (Fabrication of hemocult test information)	13:21-14:4
<u>COUNT IV</u> (Fabrication of sedimentation rate measurements)	14:5-14:16
<u>COUNT V</u> (Fabrication of measurements so as to indicate the drug being tested was effective)	14:17-15:25
<u>COUNT VI</u> (Breaking double-blind codes so as to fabricate data to show patients)	16:1-16:14

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evidence, by way of affidavit, testimony or otherwise, to refute any of the allegations made by complainant. Although respondent

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taking placebo as doing worse than patients taking drug)

COUNT VII (Intentional failure to report illnesses or complaints as required by drug studies, even when respondent thought the illness or complaint may have been caused by the study drug)

16:15-17:2

COUNT VIII (Fabrication of fictitious patient discharge for patient F.G. who died)

17:3-17:23

COUNT IX (Directing assistant Patrick Cunningham to back date a case report form for M.O. to conceal M.O.'s death)

17:24-18:20

COUNT X (Directing assistants to fabricate medical charts and patient history forms to mislead the FDA)

18:21-19:9

COUNT XI (Failure to report required information concerning additional non-study medications to pharmaceutical companies)

19:10-20:1

COUNT XII (Fabrication of ophthalmological examinations and forgery of signature of ophthalmologist)

20:2-20:13

COUNT XIII (Fabrication of hearing tests and forgery of signature of audiologist)

20:14-20:20

COUNT XIV (Instructing assistant to fabricate many salicylate reports)

20:21-21:6

COUNT XV (Instructing untrained assistant to operate x-ray equipment without supervision and to fabricate x-ray reports;

21:7-22:16

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offered "explanations" of his actions when testifying on March 8, 1989, those explanations in no way compromise the facts which he admitted when entering his criminal guilty plea. Given the absence of any genuine issue of material fact, and the specific, unequivocal and uncontroverted support for complainant's motion found directly in the guilty plea and the judgment of conviction, the Board has determined that a grant of summary decision is warranted.

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substitution of patient's x-rays by altering names on films)

COUNT XVI (Enrollment of patients in drug studies where patients not qualified for study, disqualified from study, or enrolled under fictitious names; instructing assistants to continue to fill out forms for patients who dropped out of studies)

22:17-23:25

COUNT XVII (Fabrication of laboratory or blood tests for patients enrolled in studies who did not take study drugs, including persons not patients of respondent; substitution of x-rays for said patients; taking of extra blood from patients not in study and submitting said blood to laboratory under other names; mislabelling electrocardiogram strips; enrollment of R.H. in study and knowing preparation of false form for R.H., when R.H. was never a patient of respondent)

24:1-25:11
30:14-31:15

COUNT VIII (submission of perjurious affidavit of assistant Patricia Cunningham at FDA hearing, with knowledge that affidavit was false)

32:2-34:7

The judgment of conviction conclusively establishes Dr. Fogari's conviction, and thus amply supports the allegations of Counts XIX-XXI.

Respondent has argued in its legal brief submitted to this Board that the motion for summary disposition should be denied on the basis that a guilty plea to a prior federal conspiracy indictment cannot be the sole basis for a summary disposition in this civil proceeding. The Board finds such argument to be without merit. Dr. Fogari was afforded a full and fair opportunity to litigate the criminal charges. Indeed, Dr. Fogari vigorously defended himself for several days of trial before electing to enter a guilty plea. Dr. Fogari's guilty plea was thus not a spur of the moment means of disposing of charges against him, but a deliberate and calculated resolution of serious criminal charges, which had he been found guilty thereof could have resulted in the imposition of a far harsher sentence.

The fact that Dr. Fogari's conviction was entered pursuant to a guilty plea is of no moment. Pursuant to N.J.S.A. 45:1-18(f), a plea of guilty is to be deemed a conviction for purposes of that section. Case law similarly supports the proposition that a conviction in a prior criminal action, even if entered by guilty plea, should be given collateral estoppel effect in subsequent civil litigation. U.S. v. Accardo, 113 F. Supp. 783 (D.N.J.), aff'd per curiam 208 F.2d 632 (3d Cir. 1953), cert. den. 347 U.S. 952 (1954), see also Matter of Coruzzi, 95 N.J. 555, 571 (1984) (in attorney disciplinary proceedings, Supreme Court applies rule that a criminal conviction conclusively establishes the underlying facts in a subsequent professional disciplinary proceeding); Matter of Tanelli, 194 N.J. Super. 492 (App. Div. 1984), certif.

den. 99 N.J. 181 (1984) (collateral estoppel applied in administrative removal hearing before the State Board of Education to establish misconduct previously determined in court proceedings, even for nonindictable offense) Appley v. West, 832 F.2d 1021, 1026 (7th Cir. 1987) ("[A] guilty plea may be used to establish issue preclusion in a subsequent civil suit"); Bershaw v. Altman, 473 N.Y.S.2d 72 (N.Y. App. Div. 1984). Although the Board is not bound by the Rules of Evidence, the Board takes notice that those rules provide that "evidence is admissible of a final judgment against a party adjudging him guilty of an indictable offense ... as against that party to prove any fact essential to sustain the judgment." Evid. R. 63(20).

The respondent's argument that the Board should limit the collateral estoppel effect of Dr. Fogari's plea because part of that plea was to a crime of conspiracy, is similarly misplaced. The collateral estoppel effect of a finding of guilt on a general conspiracy count is limited to the essence of the conspiracy only when it cannot be determined which means were used to carry out the unlawful purpose of the conspiracy. Unlike those cases cited by respondent's counsel, in this matter respondent did not make a naked guilty plea unadorned by specific admissions regarding those actions which were necessary to effectuate the conspiracy. Review of the record below unquestionably reveals that Dr. Fogari admitted the facts which are alleged in the complaint with specificity. Thus, that review clearly establishes what acts were undertaken by Dr. Fogari to effectuate the conspiracy. See Emich Motors v. Gen-

eral Motors, 340 U.S. 558, 569, 71 S.Ct. 408, 95 L.Ed. 534 (1951); United States v. Podell, 572 F.2d 31, 36 (2d Cir. 1978); United States v. Ben. Grunstein & Sons Co., 127 F. Supp. 907, 908-10 (D.N.J. 1955).

Complainant has adequately met its burden of showing that no genuine issue of material fact is present. Even giving every deference to respondent's papers opposing the motion and closely scrutinizing complainant's papers (indeed, on the question of summary disposition, the Board has found it necessary only to rely upon the transcript of Dr. Fogari's guilty plea and the judgment of conviction), there simply are no issues of material fact, and the Board finds that summary disposition is therefore appropriate.

Not only does the Board find that the record amply supports the allegations of the complaint, but also the Board has concluded that the actions committed by respondent, in each and every case, support each and every statutory violation alleged within the complaint. Thus, the Board enters a grant of summary disposition on each and every charge set forth inclusively within Counts I-XXI of the Administrative Complaint.

PENALTY

Upon entering a grant of summary disposition upon Counts I-XXI of the Complaint, the Board thereafter proceeded to hold a hearing on the question of mitigation of penalty. At said hearing, Dr. Fogari produced five witnesses who testified favorably about Dr. Fogari (the witnesses were Melvina Miller, Sister Gina Maria Amico, Anthony Aliperti, Theresa Greco and Sister Alice McCoy) and

the complainant produced one witnesses, Mary DiBari, who testified regarding Dr. Fogari's care of her mother. The Board was cognizant of the large number of people who attended the proceeding (counsel for respondent estimated that 90 people attended said proceeding to demonstrate their support for Dr. Fogari), all seemingly devout supporters of Dr. Fogari. The witnesses produced by respondent spoke of his good character and general effectiveness as a physician, his tireless devotion to his patients, and his many good acts and charitable deeds. Collectively, they conveyed a sense of a caring physician who would go to great lengths for his patients, regardless of their ability to pay or of the time required to treat the patient. The witness produced by complainant testified regarding difficulties her mother experienced while a patient of Dr. Fogari.

In addition to the actual testimony adduced, the Board has carefully reviewed the proffers of testimony submitted by counsel for respondent, which echo the sentiments expressed above. Although said proffers were not offered in the form of affidavits, the Board did consider said proffers in its deliberations as to penalty.* Respondent testified thereafter; his statements included an acknowledgement that he had done wrong and transgressed and a statement that no patients were harmed as a result of his actions.

* Consistent with Board procedure and policy, respondent was limited to twenty minutes to present mitigation witnesses (only time consumed during direct examination of said witnesses was counted). See Matter of Cole, 194 N.J. Super. 237 (App. Div. 1984).

Notwithstanding the considerable cumulative testimony in support of Dr. Fogari, however, the Board has unanimously concluded that Dr. Fogari's license to practice medicine and surgery in the State of New Jersey must be revoked.* The actions taken by Dr. Fogari in connection with the drug studies truly are actions inimical to the practice of medicine. The Board strongly echoes the sentiments of Judge Brown stated at Dr. Fogari's sentencing:

It is a case of massive proportions, wholly aside from the perjury and the obstruction of justice, we have more than six years of lies, of fraud, deceit. Indeed, I felt it was one of the worst cases I had seen, including drug conspiracies and murder cases....

There seemed to be a total contempt for the law, an abuse of public trust, education and position by a man ... who committed crimes that tear at the fabric of our society, the public health, respect for both the law and the medical profession. I found his conduct to be an insult to the many dedicated health professionals working daily for the public good.

The subordination of perjury and obstruction of justice were equally shocking. Our system of law, our system of drug testing, which rely upon honesty. The dimensions of the fraud here, of the dishonesty and the fabrication, the blatant lying, I find shocking.

* The Board determined that its Order was to be effective on March 17, 1989. Following pronouncement of penalty, Mr. LaBue orally requested that the Board allow Dr. Fogari an extension of two weeks until March 31, 1989, noting that Dr. Fogari was scheduled to surrender to federal authorities on that date. The Board denied Mr. LaBue's application, on the basis that the gravity of Dr. Fogari's conduct required that the revocation be effective in short order. Indeed, the Board's courtesy in granting Dr. Fogari until March 17, 1989 to conclude his practice was extended so as to afford Dr. Fogari an opportunity to make arrangements for his patients.

Judge Brown found Dr. Fogari's conduct egregious enough to warrant a sentence of a total of four years of imprisonment (three years on the conspiracy count, three years on the count of making and using false documents, said sentence to run concurrent with the sentence on the conspiracy count, and one year on the obstruction of justice count, to be served consecutive to the three-year sentence), five years probation, and Judge Brown assessed monetary penalties in excess of two million dollars. Just as did Judge Brown, the Board finds Dr. Fogari's conduct shocking to its collective conscious. Dr. Fogari's chilling recantation of his actions evidences a massive web of fraud, dishonesty and deceit. Dr. Fogari's actions shamelessly undermine the trust and confidence reposed within the medical profession.

The Board directly takes issue with Dr. Fogari's testimony regarding the absence of any patient harm. First, to the extent any data fictitiously created by Dr. Fogari was relied upon by drug companies or the F.D.A., that data could have effected incalculable harm on consumers of drug products, who may have used medications with great potential for harm which drugs may otherwise not have been approved had proper data regarding the drug been obtained. The entire network of drug testing depends on accurate statistical reporting of test data; one's imagination could barely fathom the potential harm that could be exacted upon drug consumers if other investigators adopted the cavalier and indifferent attitude exhibited by Dr. Fogari, and similarly crafted their data to

show favorable product results in order to create favorable impressions with drug companies.

With regard to the individual patients involved, the Board also finds that those patients may indeed have been harmed and that the harm likely was of great magnitude. Necessary tests to monitor side-effects of experimental drugs were never performed; x-rays were often not taken, and, even more terrifyingly, were sometimes taken by employees of Dr. Fogari, at his direction, notwithstanding the fact that said employees had absolutely no training with x-ray equipment. Additionally, in order to stock files of often nonexistent patients with appropriate x-rays and tests, Dr. Fogari admitted that he took x-rays of non-study patients, thereby subjecting those patients to completely unnecessary radiation. The potential harm which could result from therefrom has been well documented in the medical literature, and need not be repeated here. The simple point is that it is very likely that those patients may indeed have been directly harmed by Dr. Fogari's actions. The above illustrations are only meant to be exemplary -- the Board finds that virtually all of the activities engaged in by Dr. Fogari had the potential to harm patients and unquestionably in fact harmed those patients -- both Dr. Fogari's own patients and patients unknown to Dr. Fogari. The Board thus finds Dr. Fogari's statement regarding absence of patient harm to be short-sighted and self-serving; the Board indeed concludes that the fact Dr. Fogari could even make such a statement evidences a medical naivete which further supports the Board's action.

In conclusion, the record of Dr. Fogari's massive fraud and utter mockery of established drug testing procedures, coupled with the above-cited conclusions, leave the Board with no viable option other than to revoke Dr. Fogari's license.

WHEREFORE, it is ORDERED this 17th day of March, 1989:

1. A grant of summary decision finding respondent guilty of all actions and charges in Counts I-XXI is hereby entered.

2. The license of Dr. Robert Fogari to practice medicine and surgery in the State of New Jersey is hereby revoked. Said revocation shall be effective on March 17, 1989.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By Michael B. Grossman, D.O.
Michael B. Grossman, D.O.
Vice-President Pa. Ten
Rec'd & Signed 3-17-89 1:30 PM

FUTURE ACTIVITIES OF MEDICAL BOARD LICENSEE WHO HAS BEEN DISCIPLINED

a) A practitioner whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the Board:

1) Shall desist and refrain from the practice of the licensed profession in any form either as principal or employee of another.

2) Shall not occupy, share or use office space in which another licensee practices the profession.

3) Shall desist and refrain from furnishing professional services, giving an opinion as to the practice or its application, or any advice with relation thereto; or from holding himself or herself out to the public as being entitled to practice the profession or in any way assuming to be a practicing professional or assuming, using or advertising in relation thereto in any other language or in such a manner as to convey to the public the impression that such person is a legal practitioner or authorized to practice the licensed profession.

4) Shall not use any sign or advertise that such person, either alone or with any other person, has, owns, conducts or maintains a professional office or office of any kind for the practice of the profession or that such person is entitled to practice, and such person shall promptly remove any sign indicating ability to practice the profession.

5) Shall cease to use any stationery whereon such person's name appears as a professional in practice. If the practitioner was formerly authorized to issue written prescriptions of medication or treatment, such prescriptions shall be destroyed if the license was revoked; if the license was suspended, the prescriptions shall be stored in a secure location to prevent theft or any use whatever until issuance of a Board Order authorizing use by the practitioner. Similarly, medications possessed for office use shall be lawfully disposed of, transferred, or safeguarded.

6) Shall promptly notify by telephone or mail all patients who have been under such practitioner's care within the preceding six months of his inability to provide further professional services and shall advise said patients to seek health care services elsewhere. When a new professional is selected by a patient, the disciplined practitioner shall promptly deliver the existing medical record to the new professional, or to the patient if no new professional is selected by the patient, without waiving any right to compensation earned for prior services lawfully rendered.

7) Shall not share in any fee for professional services performed by any other professional following this suspension, revocation or surrender of license, but the practitioner may be compensated for the reasonable value of the services lawfully rendered and disbursements incurred on the patient's behalf, prior to the effective date of the suspension, revocation or surrender.

8) Shall promptly deliver to the Board the original license and current biennial registration and, if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances registrations.

b) A practitioner whose license is surrendered, revoked, or actively suspended for one year or more:

1) Shall promptly require the publishers of any professional directory and any other professional list in which such licensee's name appears, to remove any listing indicating that the practitioner is a licensee of the New Jersey State Board of Medical Examiners in good standing.

2) Shall promptly require any and all telephone companies to remove the practitioner's listing in any telephone directory indicating that such practitioner is a practicing professional.

c) With respect to all Board licensees whose practice privileges are affected by sections (a) or (b) above, such practitioner:

1) Shall within 30 days after the effective date of the practitioner's suspension, revocation or surrender of license, file with the Secretary of the Board of Medical Examiners a detailed affidavit specifying by correlatively lettered and numbered paragraphs how such person has fully complied with this directive. The affidavit shall also set forth the residence or other address and telephone number to which communications may be directed to such person; any change in the residence address or telephone number shall be promptly reported to the Secretary.