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NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
OAL DOCKET NO.: BDSME 0383-02N

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

Administrative Action

Donald A. Sgroi, M.D.
LICENSE NO. MA 032756

CONSENT ORDER

TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY

This matter was opened to the State Board of Medical Examiners ("Board") upon filing of an Administrative Complaint alleging that Donald A. Sgroi, M.D. ("Respondent"): (1) misrepresented that he personally examined patient A.L. when, in fact, he did not; and (2) inappropriately billed patient A.L. under CPT code 99273 for a second opinion/consultation. Respondent filed an Answer denying the allegations.

The Complainant alleges that Patient A.L. consulted Respondent on March 26, 1999 after being diagnosed with an ovarian cyst by her OB-GYN. Respondent ascertained her chief complaint and

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gynecological history but did not conduct a **physical exam**. He did, however, **discuss** options to surgery with A.L.

Since Respondent was not a **participating** provider under A.L.'s insurance company, he accepted One Hundred Seventy-Five Dollars (\$175.00) from A.L. as **payment** in full rather than his usual fee of Three Hundred Dollars (\$300.00) for a **second opinion**. His billing statement referenced CPT code 99273 which corresponds to a confirmatory consultation for a new or **established** patient. Thereafter, A.L. submitted a claim for the One Hundred-Seventy Five Dollars (\$175.00) to her **insurance** company for her out of pocket expense. Her **insurance company** then sent a payment of One Hundred Twenty-Two Dollars Fifty Cents (\$122.50) to Respondent. A.L. **requested** that Respondent return the One Hundred Twenty-Two Dollars Fifty Cents (\$122.50) to her but Respondent did not and kept the monies as **payment of** what he considered **the balance of his** usual fee of Three Hundred Dollars (\$300.00).

Respondent **denies** the allegations and contends that the patient consulted with him, not for a second **opinion** but rather to be advised as to what her options were. He admits that he did not physically examine the patient but asserts it was not necessary in order to tell her what options there were. He billed her One Hundred Seventy-Five Dollars (\$175.00) based upon her representation that she had no coverage with the provider. In Respondent's opinion, when it **was** determined that she had coverage, the Three Hundred Dollar (\$300.00) fee became **appropriate**. He

asserts that under Code 99273 (for a second opinion), a detailed examination would have been appropriate but again asserts that the patient did not seek a "second opinion" but rather the patient wanted to know what options there were and a physical examination is not needed to advise of available options. Respondent provided the patient with his form entitled "Second Surgical Opinion Program," however, he did not recommend that the contemplated surgical procedure "should" or "should not be performed." Additionally, he did not recommend "postpone surgery to a later date" nor "alternate surgical procedure (procedure name)" nor "alternate form of treatment suggested." The additional comments section specifically stated "discuss all options of patient." Respondent does not dispute that the printed form contains a representation that he personally examined the patient. The Board finds that Respondent engaged in acts violative of N.J.S.A. 45:1-21(b) and (e) evidenced by billing A.L. under CPT code 99273 for a second opinion/consultation when he did not perform a physical examination of A.L. and by submitting a form stating that he performed an examination of A.L. when he did not. Respondent, while neither admitting nor denying the allegations, but being desirous of resolving the within matter without formal proceedings and the Board finding the within disposition to be adequately protective of the public health, safety and welfare,

IT IS, therefore, on this 14th day of May, 2003,

ORDERED THAT:

1. Respondent Donald A. Sgroi, M.D. is hereby reprimanded for acts violative of N.J.S.A. 45:1-21(b) and (e).

2. Respondent shall pay a penalty of One Thousand Five Hundred Dollars (\$1,500.00) to the New Jersey State Board of Medical Examiners upon filing of the within Order. The Board reserves the right to file a Certificate of Debt in the event payment is not submitted in a timely manner.

3. Respondent shall pay One Hundred Seventy-Five Dollars (\$175.00) in restitution to patient A.L. and shall provide proof to the Board of said payment within thirty (30) days of the entry of this Order.

4. Respondent shall pay One Hundred Twenty-Two Dollars Fifty Cents (\$122.50) in restitution to A.L.'s insurance company and shall provide proof to the Board of said payment within thirty (30) days of the entry of this Order.

5. Respondent shall comply with the attached "Directives" which are incorporated herein by reference.

6. This Order shall serve to fully resolve the allegations of the pending Complaint before A.L.J. Stephan Weiss in the Office of Administrative Law.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By:

William V. Harrer M.D. B.L.D.

William V. Harrer, M.D., B.L.D.
President

I have read and understood
the within order and agree
to be bound by its terms.
Consent is hereby given to
the Board to enter this Order.

Donald A. Sgroi, M.D.
Donald A. Sgroi, M.D.

DATED: March 14 2002

Consented to as to form:

By: James V. Segreto, Esq.
James V. Segreto, Esq.

DATED: March 14 2002

Donald A. Sgroi, M.D.
#MA32756

ADDENDUM TO THE DIRECTIVES

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is **signed**, if it is entered by consent, or immediately after **service** of a fully executed order **entered** after a hearing. The information required here **is** necessary for the Board to fulfill its reporting obligations:

Social Security Number¹: _____

List the name **and** address of any and all Health Care Facilities **with** which you are affiliated:

List the names and addresses of any and all Health Maintenance Organizations with which you are affiliated:

Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

¹ Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to *the* National Practitioner Data Bank **and** the HIP Data Bank.

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10,2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information **provided** will be maintained separately and will not be part of the public document filed with the **Board**. Failure to provide the information required **may** result in further disciplinary action for failing to cooperate **with** the Board, as required by N.J.A.C. 13:45C-1 et seq: Paragraphs **1** through **4** **below shall apply** when a license **is suspended or** revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees **who** are **the subject** of an order which, while permitting continued practice, contains a probation **or** monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the **Board** office at Post Office **Box** 183, 140 East Front Street, 2nd floor, Trenton, **New** Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, **he** or **she** **shall** promptly **advise** the DEA of the licensure action. (With respect to **suspensions** of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice **and** to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition **not** only bars a licensee from rendering professional **services**, but **also** from providing an opinion as to professional practice or its application, or representing him/herself **as** being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her **provides** number **by** any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee **is** suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, **suspended** for one (1) year or more or permanently surrendered must remove **signs** and **take** affirmative action to **stop advertisements** by which his/her eligibility to practice is represented. The licensee must **also take steps to** remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name *is* utilized in a **group practice title**, it shall be deleted. Prescription **pads** bearing the licensee's name **shall be** destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee **is** providing services at the location, all medications must **be removed** and returned to the manufacturer, if **possible, destroyed** or safeguarded. (In situations where a license has been suspended for **less** than one year, prescription pads and medications need not **be** destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee **shall not** charge, receive or **share** in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may **be** compensated for the reasonable value of **services lawfully rendered** and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license **is** revoked, surrendered or suspended for a term of one (1) year or more shall **be deemed to be** disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A **disqualified** licensee shall divest him/herself of all financial interest **in** the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee **who is** a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 **days** following the the entry of the Order rendering the licensee **disqualified** to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee *is* the sole shareholder in a professional service corporation, the corporation must **be** dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective **date** of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may **be** obtained. The message should inform patients of the names **and** telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name **and** telephone number of the contact person who will **have** access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record **be** forwarded to another health care provider, the

**NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners *are available* for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.