

**FILED**

April 7, 2004

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

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

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In the Matter of:

ELLIOT HELLER, M.D.

FINAL ORDER

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This matter was returned to the Board of Medical Examiners on March 10, 2004, for consideration of the Report and Recommendations made by a Hearing Committee which conducted a mitigation hearing in this matter on October 30, 2003. That Committee had recommended that the Board suspend Dr. Heller's license to practice medicine and surgery in the State of New Jersey for a period of six years, to include a forty-two month period of active suspension to be followed by a thirty month period of stayed suspension to be served as probation, and had further recommended that the Board assess costs of prosecution in the amount of \$6,172.50 (a copy of the Report and Recommendation of the Board's Hearing Committee is appended hereto). The Board was authorized to ratify, modify or reject the recommendation made by the Hearing Committee.

We have carefully reviewed the Report and Recommendation of the Hearing Committee, as well as the transcript of the hearing before that Committee and the exhibits which were before the Committee. While we adopt all findings of fact and conclusions of

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law made by the Committee, we are unanimously of the opinion that the Committee's recommendation that Dr. Heller be required to serve a forty-two month period of active suspension is inadequate to redress the extensive and egregious misconduct in which Dr. Heller engaged. As the Committee noted, the insurance fraud in which Dr. Heller engaged was "extensive and pernicious," adversely affected all health care consumers, and was supported by conduct -- namely, the falsification of entries in patient records -- which went beyond economic crime alone, and also involved actions which could have placed patients at risk.

We unanimously conclude that the Committee recommendation should be modified so as to increase the period of active suspension from forty-two months to sixty months. While we are fully cognizant, as was the Committee, that Dr. Heller did make a substantial and compelling mitigation showing, and while we, like the Committee, are satisfied that the mitigation showing made militates against affirming the initial proposed sanction in this matter (namely, that respondent's license be revoked), we conclude that the Committee struck the balance between the misconduct in which Dr. Heller engaged and the mitigating factors in a manner that was insufficient to adequately penalize Dr. Heller for the misdeeds he purposefully engaged in. Further, to the extent any penalty we impose must be fashioned not only for the "punitive" purpose of penalizing a licensee for engaging in misconduct, but

also for the "deterrent" effect it may have upon other licensees, we seek by our action herein to send a clear message to other licensees who might, for reasons of greed or otherwise, be tempted to engage in insurance fraud, that this Board will not tolerate such conduct and that any licensees who may engage in insurance fraud will do so at the risk of losing their license to practice in New Jersey. In this case, we are satisfied on the record before us that a forty-two month penalty would be neither sufficiently punitive nor sufficiently deterrent, and instead conclude that the period of active suspension to be served by Dr. Heller should be increased to five years.

WHEREFORE, it is on this 24th day of March, 2004

ORDERED:

1. The Report and Recommendations of the Hearing Committee (appended hereto and incorporated herein) are hereby adopted in their entirety, with the exception that the penalty recommendations of the Committee are modified as follows:

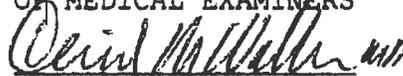
a. The license of respondent Elliot Heller, M.D., to practice medicine and surgery in the State of New Jersey is hereby suspended for a period of six years, retroactive to November 8, 2002 (the date on which Dr. Heller surrendered his license to practice). The first five years of the period of suspension, through November 8, 2007, shall be served as an active period of

suspension. The final one year of the period of suspension shall be stayed and served as a period of probation. Prior to resuming any practice of medicine during the stayed period of suspension or thereafter, Dr. Heller shall be required to appear before a Committee of the Board and then demonstrate to the satisfaction of the Board that he then is fit to resume medical practice. Following said appearance, the Board may impose such conditions or limitations upon Dr. Heller's practice during the period of probation that the Board may then deem appropriate.

b. Dr. Heller is hereby assessed costs sought by the Attorney General of New Jersey in the amount of \$6,172.50.

NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

By:



David M. Wallace, M.D.  
Board President



4, upon admissions that Dr. Heller made when entering his guilty plea and upon Dr. Heller's entry of a Consent Order with the Office of the Insurance Fraud Prosecutor in which he agreed to pay a \$100,000 fine for having submitted statements to various insurance companies containing false and misleading information for reimbursement in violation of N.J.S.A. 17:33A-1, et seq. Within the POD, we preliminarily concluded that Dr. Heller's conviction provided grounds for the suspension or revocation of his medical license pursuant to N.J.S.A. 45:1-21(b), (e) and (f), and we provisionally ordered that his medical license was to be revoked on July 18, 2003, unless, prior thereto, Dr. Heller sought modification of the proposed findings of fact and conclusions of law in the Order, or sought to submit documents or written evidence for the Board to consider in mitigation of the proposed penalty.

Respondent's counsel, Carl D. Poplar, Esq., submitted a letter dated July 3, 2003 in which he requested that Dr. Heller be afforded an opportunity to appear for a mitigation hearing before the Board. Mr. Poplar argued in his letter that the Board should consider the facts of the case, the background of Dr. Heller and the mitigating circumstances, and urged that the Board then modify the proposed sanction within the POD (namely, that Dr. Heller's license be revoked) and instead consider imposing a less severe penalty such as a suspension of license, with the opportunity for reapplication by Dr. Heller on a showing of good cause. Respondent

did not then, and does not now, contest the proposed findings of fact and conclusions of law that were set forth in the POD. Upon review of counsel's letter and the attachments thereto, the Board determined that it would hold in abeyance the finalization of the POD pending the scheduling of a hearing limited solely to the issue of mitigation.

A mitigation hearing was initially scheduled to be heard before the full Board on October 8, 2003. Prior thereto, the parties agreed that the matter would be referred to a Hearing Committee of the Board, which Committee would hold a mitigation hearing and then prepare a report and recommendation to the full Board. The parties agreed that, following said hearing, the full Board would consider the Committee's report and recommendation, along with the record from the Committee hearing, on the papers (without holding any further hearings or entertaining any further argument of counsel) and that the full Board would then be authorized to adopt, reject or modify the Committee's recommendations.

The mitigation hearing was held on October 30, 2003, before a Committee comprised of Board members Bernard Robins, M.D., Edwin Trayner, M.D. and Daniel Weiss. Carl Poplar, Esq., appeared for respondent, and Deputy Attorney General Hakima Bey appeared for the complainant Attorney General. Dr. Heller called ten individuals to testify as mitigation witnesses and then testified

on his own behalf before the Committee. The Attorney General, in turn, relied on documents introduced into evidence to support her argument that the Board should affirm the initial penalty recommendation set forth within the POD that Dr. Heller's license be revoked.

We have carefully reviewed and considered the record, to include all evidence introduced by the Attorney General detailing the criminal conduct in which respondent engaged as well as the mitigation presentation made by respondent. We conclude that the insurance fraud in which Dr. Heller engaged was extensive and pernicious, and is a form of misconduct which unquestionably warrants a stern disciplinary response from this Board. Dr. Heller's thefts not only caused losses (prior to any restitution) to be sustained by the insurance carriers to whom he submitted fraudulent bills, but also adversely effect all health care consumers, who are required to pay insurance premiums inflated by the costs of insurance fraud. To support his fraudulent insurance claims, Dr. Heller fabricated entries in patient records, which false entries could well have been relied upon by subsequent treating physicians in a manner that would adversely effect an individual's health care.

In making a recommendation as to penalty, we have also sought to balance and consider the mitigation presentation made. It is clear not only that Dr. Heller is presently ashamed of his

misconduct and remorseful therefor, but also that Dr. Heller was a physician who garnered the respect and admiration of patients, physician colleagues and community members when he was engaged in the practice of medicine. Upon considering all evidence before us, we recommend that the Board modify the initial proposed penalty within the POD (namely, that Dr. Heller's license be revoked) and instead finalize this matter with the entry of an Order imposing a six year suspension of license against Dr. Heller, to be retroactive to November 8, 2002 (the date on which Dr. Heller was granted leave to surrender his license to practice), and by imposing costs sought by the Attorney General in the amount of \$6,172.50. We further recommend that the Order provide that the first forty-two months of the suspension (i.e., through May 8, 2006) should be required to be served as a period of active suspension, but that the remaining thirty months (from May 9, 2006 through November 8, 2008) be stayed to be served as a period of probation, on such terms and conditions as the Board may, in its sole discretion, determine to be reasonable and necessary following an appearance of Dr. Heller before a Committee of the Board to be conducted within the three month period prior to the date on which the period of probation is to commence. We review below in greater detail the evidence we have considered and discuss the basis for the penalty recommendation that we make herein.

### *Findings of Fact*

We note initially that respondent does not, and indeed could not reasonably, contest any of the proposed findings of fact or conclusions of law within the POD. Said findings of fact and conclusions of law are incorporated herein by reference.

The evidence reveals that a criminal indictment (P-2 in evidence) was filed on August 6, 2002, in State v. Heller, Superior Court Docket No. 02-08-00122-S, wherein respondent was indicted on one count of Conspiracy in violation of N.J.S.A. 2C:5-2, two counts of Theft by Deception in the Second Degree in violation of N.J.S.A. 2C:20-4, and one count of Attempted Theft by Deception in violation of N.J.S.A. 2C:20-4 and N.J.S.A. 2C:5-1. The indictment was generally based on allegations that Dr. Heller had, between on or about April 1, 1996 and on or about April 21, 1998, committed insurance fraud in an amount in excess of \$75,000 by knowingly submitting false bills to numerous insurance carriers<sup>1</sup> which bills did not accurately reflect the sinus surgical procedures that were provided to Dr. Heller's patients (Count 2) and did not accurately reflect the true identity of the surgeon who performed sinus surgery on respondent's patients (Count 3).

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<sup>1</sup> A total of twenty-five various insurance companies and/or other entities were listed by name within the four count indictment, thirteen of which were included in the Count of the complaint to which respondent ultimately pled guilty.

Pursuant to a plea bargain, respondent pled guilty to the charges within Count 2 of the filed indictment. The plea agreement provided that Dr. Heller, although pleading guilty to a second degree crime, was to be sentenced as a third degree offender with any custodial sentence imposed not to exceed three years, agree to make restitution in the amount of \$321,342.96 and to enter a consent judgment with the Office of the Insurance Fraud Prosecutor imposing a fine of \$100,000. The State consented to allow Dr. Heller to make an early application for entry into the Intensive Supervision Program, and to move to dismiss counts 1, 3 and 4 of the indictment upon Dr. Heller's sentencing. (P-3 in evidence; 3:20 - 4:11; 5:23 - 11:20).

We are able to glean from review of the record before us that the extent of the insurance fraud committed by Dr. Heller was vast and widespread. When appearing before Judge DeVesa, the following factual basis for his plea was developed:

Q During the time period listed in the indictment were you a principal of Ear, Nose and Throat Group of New Jersey Plastic Surgery Associates of New Jersey?

A Yes.

Q During that period of time did E.N.T. bill insurance companies mentioned in the indictment for services which were not rendered?

A Yes.

Q Can you tell the Court how that was done?

A My associates and I prepared cards for each of our patients listing the surgical procedures we performed on each patient. I took those cards and added on to them additional surgical procedures that were not performed and I gave the cards to our billing staff and they billed the insurance companies for all the procedures listed on each card including the ones that were not performed.

Q What types of surgical procedures?

A Sinus nose procedures.

Q Was E.N.T. paid for these surgeries?

A Yes.

...

THE COURT: Mr. Heller, when you submitted these bills to the insurance company, you knew that you were submitting information relating to procedures that had not been performed, is that correct?

THE DEFENDANT: Yes.

THE COURT: And your purpose in doing so was to receive compensation from the insurance companies that you knew you therefore were not entitled to, is that correct?

THE DEFENDANT: Yes.

[P-3 in evidence; 12:20 - 14:3].

In addition to the above statements, Dr. Heller conceded, when testifying before this Committee, that he inflated bills for sinus surgery, by stating that he did vastly more complex procedures than he actually performed, and that he also submitted bills to insurance companies under his colleagues' names when in fact his colleagues did not perform the procedures which were

billed for, in order to obtain higher reimbursement for the procedures than Dr. Heller would have been able to obtain had he submitted the bills in his own name. Dr. Heller stated that, in cases where he was asked by an insurance company for a record of a medical visit, he would retrospectively write up a medical note for the patient's medical problem, generally by jotting down something "out of thin air". Dr. Heller further conceded that such notes were generally "padded".

Respondent was ultimately sentenced to a custodial term of three years (P-7 in evidence), and served three months of that sentence in prison. The Judgment of Conviction noted that defendant had paid all restitution (in fact the total amount of restitution that Dr. Heller made was approximately \$746,000), and specifically stated that the Court did not object to defendant entering the Intensive Supervision Program. Id. Dr. Heller also paid a civil administrative penalty of \$100,000 to the State after he entered a Consent Order, on October 23, 2002, with the Office of the Insurance Fraud Prosecutor based on a finding that Dr. Heller had "knowingly submitted statements to various insurance companies on medical billings, containing false and misleading information, specifically, billing for services which were never rendered and also for submitting falsified surgical records for reimbursement at a higher 'out of network' compensation rate", which conduct was

found to constitute a violation of N.J.S.A. 17:33A-1 et seq. (P-5 in evidence).<sup>2</sup>

*Evidence in Mitigation*

Dr. Heller has presented substantial mitigation evidence for the consideration of the Board. At the hearing on October 30, 2003, Dr. Heller called ten witnesses to testify on his behalf, to include professional colleagues, patients, friends and his treating psychiatrist. We have also considered a written submission ("Litigation Statement and Exhibits", dated October 6, 2003) offered in mitigation on Dr. Heller's behalf.<sup>3</sup>

Several patients testified on Dr. Heller's behalf before the Committee. James Kerins, who was involved in a traumatic industrial accident and then received emergency care from Dr. Heller, testified that he held Dr. Heller in the highest regard as a physician. Jerome Lieberman testified that he was of the opinion that Dr. Heller was an "excellent" physician who also spent time with him and was able to answer Mr. Lieberman's questions and explain the procedures that were to be performed. A third patient,

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<sup>2</sup> We note additionally that the Consent Order included a provision stating that the Order "may be used against Respondent in any civil or administrative proceeding related to a violation of N.J.S.A. 17:33A-1 et seq., including a license suspension or revocation hearing." (emphasis added).

<sup>3</sup> The statement included copies of numerous letters written by patients, physicians, employees, friends and family members of Dr. Heller to Judge DeVesa, and copies of letters that were submitted by treating physicians.

Martiza Luciano, R.N., testified that Dr. Heller was the only doctor who she saw who took the time to listen and understand what she was going through, and testified that she felt extremely comfortable with Dr. Heller. She testified that after her procedure, she found it extraordinary that Dr. Heller followed up with calls to her home. Lucille Carrelli, a fourth patient, testified that Dr. Heller was competent and compassionate, and expressed an opinion that he was a gifted and talented surgeon and person.

Gary Balsam, a friend of Dr. Heller and member of his synagogue, testified that Dr. Heller was a compassionate and caring person who ran a burial society, which involved washing bodies and preparing bodies for burial. Mr. Balsam stated that Dr. Heller immediately acknowledged that he had done wrong and expressed remorse over what he had done, and suggested that prison had a devastating impact on Dr. Heller. Norman Kinel, an attorney and also a member of Dr. Heller's synagogue, testified that he visited Dr. Heller often during the three months he was incarcerated, and suggested that Dr. Heller was a caring man who "lives to be a doctor." Mr. Kinel offered his opinion that Dr. Heller has tremendous contrition and remorse and suggested that he has already been severely punished.

Colleagues who testified on Dr. Heller's behalf included Irwin Keller, M.D., Howard Novek, M.D. and Andrew Miller, M.D. Dr.

Keller, a neuro-radiologist, testified that he found Dr. Heller to be an extremely caring and concerned physician who would go to great lengths to follow-up on the care of his patients. Dr. Keller conceded that he thought what Dr. Heller had done was terrible, but beseeched the Committee not to take Dr. Heller out of practice for a prolonged time period that might have the effect of precluding Dr. Heller from ever using his skills again. Dr. Novek testified that Dr. Heller's medical abilities were never questioned. Dr. Novek conceded that he too was shocked by Dr. Heller's unprofessional conduct, but believes justice has been served and that Dr. Heller has been publicly humiliated. Dr. Miller testified that he went to work for Dr. Heller in July 1999. Dr. Miller opined that the medical care provided by Dr. Heller was top notch, and stated that Dr. Heller was "always available" and related well with patients. Dr. Miller detected no hint of any billing improprieties during the time he worked with Dr. Heller (which was after the time period that the fraudulent billing occurred).

Michael Liebowitz, M.D., Dr. Heller's treating psychiatrist, was also called to testify at the mitigation hearing. Dr. Liebowitz testified that he initially treated Dr. Heller in July 1993 for a history of panic disorders. Dr. Liebowitz testified that although Dr. Heller was initially difficult to treat because of difficulties in tolerating medications that were prescribed, by mid-1995 Dr. Heller was on a therapeutic dose of

medication and was being successfully treated on a maintenance basis with Zoloft, a Selective Serotonin Reuptake Inhibitor. Thereafter, however, Dr. Heller ceased seeing Dr. Liebowitz (an act which Dr. Liebowitz described as the "first poor judgment" Dr. Heller made), however continued to self-medicate on Zoloft. Dr. Liebowitz testified that, during this period, Dr. Heller started getting "overstimulated" from the Zoloft and started feeling hypomanic. Dr. Liebowitz theorized that, during this time period, Dr. Heller's ethical and business judgment became impaired by the unmonitored Zoloft treatment, which treatment continued until after Dr. Heller's arrest.

Dr. Liebowitz has seen Dr. Heller on sporadic occasions since 1998. He stated that Dr. Heller has been off of all medications since that time without return of the panic disorders. Dr. Liebowitz offered his opinion that Dr. Heller's misconduct may have been caused by a medication induced disinhibited state, and offered his opinion that, at this time, Dr. Heller could conduct himself in an honest and ethical manner if he were to return to practice.

Dr. Heller then testified on his own behalf. He stated that he was contrite and remorseful for his acts, and conceded that he had exercised bad judgment and acted foolishly. Dr. Heller stated that he has been publicly humiliated, and pointed out that he had made full restitution for his acts, and that, in some cases,

he paid back all sums that were requested by insurance carriers, even to the point of paying restitution for sums he legitimately received that were not related to the insurance fraud he had committed.

Dr. Heller also testified about the health care issues which led him to initially see Dr. Liebowitz. Dr. Heller stated that, after he had started to feel better under Dr. Liebowitz' care, he didn't follow up with Dr. Liebowitz after December 1995 or early 1996. Dr. Heller testified that he took samples of Zoloft from his office after the refills prescribed by Dr. Liebowitz ran out, and stated that he didn't stop taking Zoloft until December 2, 1997, at which point he cut back drastically over a week period and has since never used the medication again. Dr. Heller believes that his actions during the 1½ year period he was self-medicating were completely aberrational and abnormal. He testified that he believes Zoloft distorted his judgment, but concedes that he was aware of what he was doing. Dr. Heller asked that the Board consider some of the good things he has done -- such as treating patients without fee, emergency room visits at all hours, working with the benevolent society in his temple on bodies of the deceased to ensure that the deceased were treated with dignity in accordance with Jewish law, and treating all patients with respect and compassion -- when imposing sanction.

Mr. Poplar argued that, while he was not trying to justify or excuse what Dr. Heller did, the Board should nonetheless consider that the criminal sentence which was imposed by the Superior Court was the "most optimum" sentence that could have been meted out given the offenses to which Dr. Heller had pled guilty. Mr. Poplar pointed out that, although the crimes carried a presumption of incarceration, Dr. Heller had been accepted into the Intensive Supervision Program without objection from the prosecutor or Judge DeVesa. Mr. Poplar suggested that Dr. Heller is a good physician who could be a contributing member of the health care community if allowed to resume practice.

Deputy Attorney General Bey relied on the documents in evidence to support her argument that the Board should affirm the initial recommendation within the POD that Dr. Heller's license be revoked.<sup>4</sup> DAG Bey noted that Dr. Heller had billed for services

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<sup>4</sup> The following documents were moved into evidence without objection:

- P-1 Provisional Order of Discipline filed by the New Jersey State Board of Medical Examiners on June 18, 2003
- P-2 Indictment filed in State v. Heller, Docket Number 02-08-00122-S, in the Superior Court of New Jersey, Law Division, on August 6, 2002.
- P-3 Transcript of the plea colloquy before Judge Frederick P. DeVesa in State v. Heller on September 26, 2002.
- P-4 Interim Consent Order entered into between the Board and Dr. Heller filed on November 7, 2002.
- P-5 Consent Order entered into between the Office of

that were not performed so as to receive compensation from insurance companies to which he was not entitled. DAG Bey also pointed out that there were implications to patient care given Dr. Heller's admission that he "padded" patient records and that Dr. Heller thus prepared individual patient records with false and inaccurate information. DAG Bey suggested that all people who pay health care costs, and not just insurance carriers, were victimized by Dr. Heller's fraud, and urged the Committee to revoke Dr. Heller's license both to deter others who might be tempted to engage in insurance fraud and so as to restore public confidence in the medical community as a whole.

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Insurance Fraud Prosecutor and Dr. Heller, on December 18, 2002.

- P-6 Transcript of the sentencing of Dr. Heller by Judge Frederick P. DeVesa on December 18, 2002
- P-7 Certified copy of the Judgment of Conviction of Dr. Heller entered on December 18, 2002.
- P-8 Certification of Hakima Bey, Deputy Attorney General, dated October 7, 2003, attesting to counsel fees incurred for the investigation and prosecution of this matter.

*Conclusions of Committee and  
Recommendations as to Penalty*

This Committee initially notes that the misconduct in which Dr. Heller engaged is a species of misconduct which necessarily demands a forceful disciplinary response by the Board. The Attorney General aptly and correctly points out, and we find, that Dr. Heller's crimes were crimes which caused losses to be sustained not only by individual insurance companies, but ultimately by all consumers of health care services. Dr. Heller engaged in a particularly large-scale -- both in terms of the amount of time he perpetrated his fraud and the amounts of payments which he fraudulently received -- fraudulent scheme. He committed crimes serious enough to carry with them the presumption of imprisonment.

We further find that Dr. Heller's misconduct had an element - namely, the falsification of information in patient records - which went beyond sheer economic crime, to include acts which could have adversely effected patient care. Dr. Heller's actions were thus anything but innocuous in terms of the consequences to his patients. In order to further his fraudulent scheme, Dr. Heller created false progress notes and altered patient records. A board licensee who prepares a patient record which includes information which is grossly inaccurate or is fabricated or altered, poses a risk to the patient as of that moment, since a covering doctor or subsequent treating doctor would be expected to

rely upon the accuracy of the patient record when deciding upon a course of professional health care management for the patient.

While Dr. Heller testified that he accepted full responsibility for his actions, there was testimony offered, both by Dr. Liebowitz and by Dr. Heller, which suggested that Dr. Heller's actions could be explained by the fact that he was then suffering from impairment of judgment traceable to the effects from self-medicating with Zoloft. We reject the speculative testimony, and note that, rather than being exculpatory, the hypothesis offered is inherently troubling because it demonstrates that Dr. Heller exercised extremely poor medical judgment by self-medicating with a powerful psychotropic drug without being followed by a treating physician. In so doing, Dr. Heller necessarily displayed a lack of the level of appreciation this Board would expect a licensed physician to have for the dangers inherent with self-prescribing.

Based on the above findings, we conclude that a stern disciplinary sanction should be meted out by this Board, both for punitive and deterrent purposes. As Judge DeVesa aptly pointed out, when sentencing Dr. Heller, Dr. Heller engaged in a particularly serious economic crime that demands redress with a significant sanction:

There is no question that insurance fraud is an enormous societal problem. And, particularly, a problem in the State of New

Jersey. And its not just about money. Although, there are enormous losses to the insurance companies. And, ultimately, the insureds, the policyholders, as a result of the fraud.

...

And so, probably more than most other criminal offenses, imprisonment really is necessary as a deterrence, encouragement, in this type of offense.

...

... I think that this medical insurance fraud is one that really is of an enormous, enormous significance to the State. And the need to deter, as an aggravating factor, I think, is a very, very weighty aggravating factor.

[P-6 in evidence; 49:3-8; 49:21-23; 53:22 - 54:1].

While it is thus clear, from the record before us, that the Board's initial proposed sanction of licensure revocation is a recommendation that could be supported on this record, we are convinced, based on the mitigation presentations made, that there is cause to temper the initial proposed sanction. Upon review of the evidence presented in mitigation, to include the many letters that were submitted by patients and colleagues to the Superior Court, it is clear that Dr. Heller is a physician who garnered the respect of patients and colleagues alike by his professional actions. It is further seemingly the case that, but for his criminal acts, Dr. Heller was a generous and compassionate physician who devoted himself to his patients and to the community.

Finally, in making a recommendation as to penalty, we are also mindful that Dr. Heller has already paid a heavy price for his acts, as a result of his criminal sentencing and associated notoriety, his serving of three months in jail, and his paying restitution of over \$700,000 and a \$100,000 civil fine.

We conclude that the appropriate penalty to impose should be a six year licensure suspension (to be imposed from the date on which Dr. Heller was granted leave to surrender his license). We further recommend that the Board require that the first forty-two months of any period of suspension be required to be served actively, so that the active period of suspension continue through May 8, 2006.<sup>5</sup>

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<sup>5</sup> In making the above recommendation as to penalty, we note that we have sought to engage in a balancing analysis not altogether dissimilar from that in which the Superior Court engaged in when meting a criminal sentence. We thus note that we have considered many of the aggravating and mitigating factors that were set forth in the "statement of reasons" included in the Judgment of Conviction to have applicability in this setting:

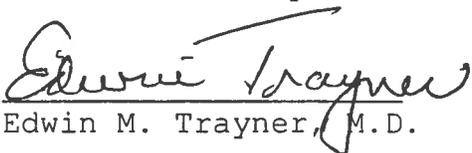
This was a negotiated plea agreement. The deft has pled guilty to a second degree offense and the presumption of imprisonment applies. The aggravating factors are: Imprisonment is necessary to deter this deft and others from this type of fraudulent activity. This deft and others would perceive the imposition of only a fine or monetary penalty without also imposing a term of imprisonment as simply an operating expense associated with insurance fraud. Mitigating factors are: The deft did not contemplate that his conduct would cause or threaten serious harm. The deft has no history of prior delinquency and criminal activity. The deft has made substantial restitution. The deft's conduct resulted from circumstances unlikely to recur. The deft is likely to respond to probationary treatment. The court finds that the agg/mit factors are in equipoise. The deft should ordinarily be sentenced to term of imprisonment as a second degree offender but the Atty Gen and the deft have entered into an

At the conclusion of the period of suspension, we recommend that Dr. Heller should have leave to petition the Board for the reinstatement of his license during the period of probation. At that time, Dr. Heller shall need to demonstrate that he has the capacity to practice medicine, and, at such time, the Board may impose such conditions or limitations upon any resumed practice by Dr. Heller that the Board may see fit.

Finally, we recommend that the Board impose those costs of prosecution which are detailed in the Certification of Hakima Bey submitted into evidence without objection by respondent. The Committee recommends, however, that the Board decline to impose monetary fines against Dr. Heller, given that Dr. Heller has already paid \$846,000 in fines and restitution in connection with the civil insurance fraud proceedings that were brought by the Office of the Insurance Fraud Prosecutor.

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Bernard Robins, M.D.  
Committee Chairperson

  
Edwin M. Trayner, M.D.

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Daniel Weiss

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agreement that will avoid protracted litigation and has resulted in a substantial amount of restitution to the victims.

[P-7 in evidence; "Statement of Reasons"]

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Bernard Robins, M.D.  
Committee Chairperson

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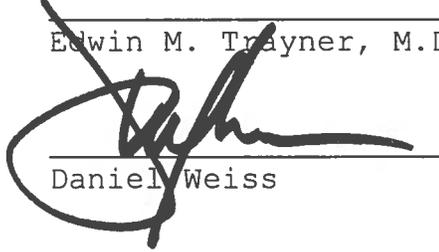
Finally, we recommend that the Board impose those costs of prosecution which are detailed in the Certification of Hakima Bey submitted into evidence without objection by respondent. The Committee recommends, however, that the Board decline to impose monetary fines against Dr. Heller, given that Dr. Heller has already paid \$846,000 in fines and restitution in connection with the civil insurance fraud proceedings that were brought by the Office of the Insurance Fraud Prosecutor.

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Bernard Robins, M.D.  
Committee Chairperson

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Edwin M. Trayner, M.D.



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Daniel Weiss

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agreement that will avoid protracted litigation and has resulted in a substantial amount of restitution to the victims.

[P-7 in evidence; "Statement of Reasons"]