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**FILED**

August 17, 2004

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

By: Sunil Raval  
Deputy Attorney General  
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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 THE LICENSE OF

**Herbert Fichman, D.O.**

TO PRACTICE MEDICINE AND SURGERY  
IN THE STATE OF NEW JERSEY

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: Administrative Action

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: **CONSENT ORDER**

This matter was opened to the New Jersey State Board of Medical Examiners ("Board") upon receipt of allegations that Herbert Fichman, D.O. ("Respondent"), through his prescribing practices, contributed to patient K.P.'s death from a possible drug overdose on December 31, 2000.

Respondent has a prior disciplinary history with the Board. Specifically, respondent entered into a Consent Order dated May 5, 1994, whereby Respondent was reprimanded for record-keeping violations. In addition, Respondent entered a Consent Order dated October 28, 1996, whereby Respondent was reprimanded for engaging

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in dishonest conduct (Respondent failed to disclose the pendency of an administrative disciplinary complaint on application for hospital appointment), assessed a civil penalty of \$5000, and ordered to enroll in and successfully complete an ethics course.

Respondent testified under oath before the Preliminary Evaluation Committee of the Board on July 16, 2003. The Committee questioned Respondent regarding his care, treatment and prescribing practices for patient K.P. The Committee also questioned Respondent regarding his care, treatment and record-keeping practice for patient L.W.

Patient K.P. was first seen by Respondent on 9/1/93 for injuries suffered as a result of a car accident and his last treatment was on 12/27/2000. K.P. had suffered serious shoulder injuries which resulted in severe pain and several surgeries. In addition, K.P. was diagnosed with lumbar disc problems.

In 1999, Respondent assessed K.P. with suffering from side effects due to tranquilizer medications, including depression and lethargy. On July 11, 2000, Respondent recommended that K.P. enter in-patient treatment for possible abuse of prescription medication. In September 2000, Respondent advised patient K.P. to get psychiatric care for possible addiction to Xanax. However, throughout this time, he continued to issue prescriptions (frequently by phone) for Controlled Dangerous Substances.

A review of the patient record revealed that aspects of the general care of patient K.P. failed to meet the standard of care in the area of pain management.

Patient L. W. was initially seen on July 6, 1997. A review of the L.W.'s patient record reveals an incomplete medical history for a patient experiencing back pain, lack of vaccination history, and lack of medication history.

The Board having found the within disposition adequately protective of the public health, safety and welfare and the licensee being desirous of resolving this matter without the need for further formal proceedings,

IT IS ON THIS 17th DAY OF August, 2004;

ORDERED:

1. Respondent, Herbert Fichman, D.O., is hereby reprimanded for poor record-keeping, lack of communication with fellow treating physicians, poor assessment of addictive aspects of his patients and incomplete diagnostic assessment in violation of N.J.A.C. 13:35-7.6 and N.J.A.C. 13:35-6.5, which violation constitute a violation of N.J.S.A. 45:9-22.19 and N.J.S.A. 45:1-21(h).

~~2. Respondent shall, within the twelve months following entry of this Order, enroll in and successfully complete a mini-residency program in pain management and addiction medicine approved in advance by the Board. Successful completion means that all~~

sessions were attended, all assignments were properly and appropriately completed, and a passing grade was achieved which was unconditional and without reservation.

3. Respondent shall submit selected patient charts of those patients who are being treated for chronic pain or pain management to the Medical Director of the Board for review on a quarterly basis, beginning ten (10) days following the execution of this Order. The number of patient records to be submitted for review and the method by which those records are selected shall be determined by the Medical Director of the Board.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

BY: 

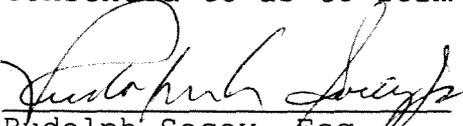
Bernard Robins, M.D.  
President

I have read and understood the above Order and agree to be bound by its terms.

I hereby consent to entry of this Order:

  
Herbert Fichman, D.O.

Consented to as to form and entry:

  
Rudolph Socey, Esq.

Law Offices of Lenox, Socey, Wilgus, Formidoni & Casey  
Attorney for Respondent, Herbert Fichman, D.O.