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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
DOCKET NO.

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF	Administrative Action
ERNEST HITON PHIPPS, JR., M.D. LICENSE NO. MA 71208	**CONSENT ORDER**
TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY	

This matter was opened to the New Jersey State Board of Medical Examiners ("Board") upon receipt of information that on or about January 3, 2003, Ernest Hiton Phipps, Jr., M.D. ("Respondent") was arrested and charged with Criminal Trespass-Peeping Tom and Resisting Arrest by Physical Force. On August 11, 2003, Respondent pled guilty to Criminal Trespass-Peeping Tom, a fourth degree crime, for entering upon the property of another and peering through a sliding glass door into the bedroom of a 14-year old female resident, and observing both the 14-year old female and her 15-year old female visitor in a state of undress. Respondent also pled guilty to Resisting Arrest by Physical Force, a third degree crime, for engaging in resistive conduct which created a

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substantial risk of harm to the arresting police officers. On October 31, 2003, Respondent was sentenced to three years probation.

In addition to these criminal actions, Respondent solicited and engaged in sexual intercourse with a forty-seven year old female patient whom he was treating for pain management. This illicit sexual contact with a patient with whom he maintained a patient-physician relationship is in direct contravention of the Sexual Misconduct Regulation, N.J.A.C. 13:35-6.3.

On June 5, 2003 an Order to Show Cause and Verified Complaint were filed with the Board. On the same day, the Order to Show Cause and Verified Complaint were properly served on Respondent. On June 11, 2003, Respondent entered into a Consent Order Granting Voluntary Surrender of his license to practice medicine and surgery in the State of New Jersey. To date Respondent has not filed an Answer to the allegations contained in the Verified Complaint. On July 15, 2005 a Notice of Motion for Default and Default Judgment was filed with the Board.

The parties being desirous of resolving this matter without the necessity of further proceedings, and it appearing that Dr. Phipps has read the terms of the within Order and understands their meaning and effect and consents to be bound by same, and it further appearing that the Board finds that the within Order is adequately protective of the public health, safety, and welfare,

IT IS, therefore, on this 10th day of August, 2005,

ORDERED THAT:

1. The license of Respondent, Ernest Hiton Phipps, Jr., M.D., to practice medicine and surgery in this State is hereby suspended for a period of five (5) years. Four (4) years of the period of suspension shall be served as a period of active suspension retroactive to the date of the Consent Order Granting Voluntary Surrender of Licensure dated June 11, 2003. One (1) year of the suspension shall be stayed and served as a period of probation.

2. Respondent shall maintain continuous compliance with Professional Assistance Program ("PAP") and submit to psychological, psychiatric, and/or substance abuse evaluation(s) under their supervision. Respondent shall maintain continuous compliance with any and all treatment recommendations of the PAP. Respondent waives all applicable privileges with regard to the release of the PAP reports and underlying evaluations to the Board and the Attorney General's office. All costs associated with the treatment program shall be paid directly by Respondent.

3. Respondent shall immediately submit to a comprehensive evaluation by the Joseph J. Peters Institute (the "Peters Institute"), 100 South Broad Street 17th Floor, Philadelphia, PA 19110, 215-701-1560. Respondent shall actively participate in any and all treatment recommendations of the Peters Institute. Respondent shall provide appropriate releases to any and all parties who are participating in the treatment program as may be required in order that all reports, records, and other pertinent information may be provided to the Board and the Attorney General's office in a timely manner. All costs associated with the treatment program shall be paid directly by Respondent.

4. Respondent shall pay investigative costs and attorneys fees in the amount of $11,574.38 which shall be memorialized by a Certificate of Debt duly recorded in the State of New Jersey. The Board will stay the payment of these costs until June 11, 2007. All certified checks or money orders shall be made payable to New Jersey State Board of Medical Examiners, 140 E. Front Street, 2nd Floor, P.O. Box 183, Trenton, New Jersey 08625-0183. Any failure by Respondent to make payments under the terms of this Order shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e), thereby subjecting Respondent to any and all remedies available to the Board pursuant to N.J.S.A. 45:1-21 and 22.

5. Respondent shall not be permitted to commence the period of stayed suspension and return to active licensure until he appears before the Board or a committee of the Board to demonstrate his fitness to practice medicine and surgery in the State of New Jersey. Respondent shall provide a report from the Peters Institute which includes a recommendation for the circumstances, if any, under which he is able to safely practice medicine and surgery in the State of New Jersey. Respondent shall also provide a report from the PAP which includes a recommendation for the circumstances and monitoring, if any, under which he is able to safely practice medicine and surgery in the State of New Jersey.

6. Respondent shall comply with the attached directives for physicians whose surrender of licensure has been accepted by the Board, which are incorporated herein by reference.

7. Respondent shall immediately advise the DEA of this Order.

8. The parties hereby stipulate that entry of this Order is without prejudice to further action by this Board or other law

enforcement entities resulting from Respondent's conduct prior to the entry of this Order.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: _____
Bernard Robins, M.D., F.A.C.P.
President

I have read and understand the within Consent Order and agree to be bound by its terms. I understand that this Order has serious legal consequences and have decided to enter into this agreement with the Board without counsel. Consent is hereby given to the Board to enter this Order.

_____
Ernest Hilton Phipps, Jr., M.D.

8/8/05
Date

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 provider 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 licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

NAME
NJ License #

ADDENDUM

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 Number[1]:_____

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

_____

_____

_____

_____

List the Names and Address 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.

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.