

FILED

July 26, 2006

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

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

IN THE MATTER OF THE SUSPENSION	:	Administrative Action
OR REVOCATION OF THE LICENSE OF:	:	
	:	
JOSEPH BERGER, D.O.	:	FINAL ORDER
	:	
TO PRACTICE MEDICINE AND SURGERY	:	
IN THE STATE OF NEW JERSEY	:	
	:	

WHEREAS an Initial Decision was entered in this matter on May 9, 2006, which was mailed to the parties on May 17, 2006 incorporating a settlement previously approved by the Board, and

WHEREAS Respondent and the State have filed no exceptions and have agreed that the Initial Decision of the Administrative Law Judge accurately embodies the settlement reached by the parties and approved by the Board, and

WHEREAS the Board at its meeting of June 14, 2006 considered the Initial Decision and the document submitted by the parties, and found the Initial Decision sufficiently incorporated the terms of settlement of this matter previously approved by the Board, and agreed to by the parties, the Board voted to adopt the Initial Decision in its entirety.

IT IS THEREFORE ON THIS *25th* DAY OF JULY 2006,

ORDERED:

CERTIFIED TRUE COPY

The Initial Decision is adopted in its entirety. This Final Order of the Board, and the provisions of the settlement of this matter, shall be effective upon service of this Final Order.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: *Sindy Paul, MD*
Sindy Paul, M.D., Board President



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
9 Quakerbridge Plaza
P.O. Box 049
Trenton, New Jersey 08625-0049
(609) 588-6545

A copy of the administrative law judge's
decision is enclosed.

This decision was mailed to the
MAY 17 2006
parties on _____.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. BDS 10736-04

AGENCY DKT. NO. N/A

**IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF
JOSEPH BERGER, D.O., TO PRACTICE
MEDICINE AND SURGERY IN NEW JERSEY.**

Mary Kate Simmons, Deputy Attorney General, on behalf of petitioner State Board of Medical Examiners (Zulima V. Farber, Attorney General of New Jersey, attorney)

Timothy P. O'Brien, Esq., on behalf of respondent, Joseph Berger, D.O. (Crammer, Bishop, Marczyk and O'Brien, attorneys)

Record Closed: May 2, 2006

Decided: May 9, 2006

BEFORE ISRAEL D. DUBIN, ALJ:

This matter arises out of a Complaint filed by the New Jersey State Board of Medical Examiners against respondent Joseph Berger, D.O., alleging that Dr. Berger (1) engaged in a course of treatment of patient C.M. that exposed her to the risk of harm and constituted gross negligence in violation of N.J.S.A. 45:1-21(c), repeated acts of negligence in violation of N.J.S.A. 45:1-21(d), and professional misconduct in violation of N.J.S.A. 45:1-21(e); (2) failed to prepare proper and contemporaneous treatment records that accurately reflected the treatment or services rendered as required by N.J.A.C. 13:35-6.5, in violation of N.J.S.A. 45:1-21(h), and altered medical records prior

to the Preliminary Evaluation Committee meeting, which constituted dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in violation of N.J.S.A. 45:1-21(b); and (3) failed to adhere to the requirements of N.J.A.C. 13:35-6.6, concerning the supervision of lesser licensees, in violation of N.J.S.A. 45:1-21(e) and N.J.S.A. 45:1-21(h).

Dr. Berger filed his Answer on November 1, 2004 and the matter was transmitted to the Office of Administrative Law for hearing as a contested case on December 21, 2004. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Following a lengthy period of discovery, the hearing was scheduled for January 17, 2006, at which time the parties entered into meaningful negotiations and agreed upon the following terms in settlement of the matter:

1. Dr. Berger's license to practice medicine and surgery shall be suspended for a period of four years, which term of suspension shall be suspended.
2. One year of the suspended suspension shall be served with a proctor approved by the Board of Medical Examiners, who shall review ten medical charts chosen at random each week and submit quarterly reports to the Board to the attention of Joseph Gluck, M.D., Medical Director, Board of Medical Examiners, 140 East Front Street, 2nd Floor, P.O. Box 183, Trenton, New Jersey 08625-0183.
3. Dr. Berger shall be prohibited from prescribing psychotropic medications for one year or until such time as he successfully completes, at his own expense, two Board-approved courses – one on depression and/or prescribing for depression, and a second on recordkeeping.
4. Dr. Berger agrees to pay \$15,000 in costs payable to the Board of Medical Examiners upon the issuance of the Board's Final Decision in this matter.

The Deputy Attorney General submitted the terms of this Settlement Agreement, as agreed to by Dr. Berger and separately approved by the Board, to the undersigned Administrative Law Judge, copy to Dr. Berger's counsel, Mr. O'Brien, by letter dated April 27, 2006. No objections having been heard, I **FIND** the terms of the settlement are reasonable and fully dispose of all issues in controversy. I therefore **CONCLUDE** that this settlement meets the requirements of N.J.A.C. 1:1-19.1 and should be approved. Accordingly, I hereby approve the settlement, direct the parties to comply with its terms, and declare that these proceedings are concluded. It is so **ORDERED**.

I hereby **FILE** my initial decision with the **BOARD OF MEDICAL EXAMINERS** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF MEDICAL EXAMINERS**, which by law is authorized to make a final decision in this matter. If the Board of Medical Examiners does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

May 9, 2006
DATE

Israel D. Dubin
ISRAEL D. DUBIN, ALJ

Receipt Acknowledged:

May 16, 2006
DATE

Maureen Klosecki
BOARD OF MEDICAL EXAMINERS

MAY 17 2006

Mailed To Parties: Maureen Klosecki
OFFICE OF ADMINISTRATIVE LAW
OFFICE OF ADMINISTRATIVE LAW

DATE

IDD/mh

EXHIBITS

Jointly submitted:

J-1 Simmons Correspondence dated April 27, 2006

J-1



JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
PO Box 45029
NEWARK, NJ 07101

ZULIMA V. FARBER
Attorney General

April 27, 2006

The Honorable Israel Dubin, ALJ
Office of Administrative Law
9 Quakerbridge Plaza
Trenton, New Jersey 08625-0049

Re: Joseph Berger, D.O.
OAL Docket No. BDS-010736-2004

STATE OF NEW JERSEY
OFFICE OF ADMIN LAW

2006 MAY -21 A 10:43

RECEIVED

Dear Your Honor:

I am writing to request that you enter the following settlement order reflecting the agreement that was reached on January 17, 2006.

The settlement agreement: Dr. Berger will serve a four year stayed suspension, one year of which will be served with the Board of Medical Examiners' approved proctor who will review ten medical charts chosen at random per week and will send quarterly reports to the Board of Medical Examiners to the attention of:

Joseph Gluck, M.D., Medical Director
Board of Medical Examiners
140 East Front Street, 2nd Floor
P.O. Box 183
Trenton, New Jersey 08625-0183

Dr. Berger will be prohibited from prescribing psychotropic medications for one year or until he successfully completes at his own expense two Board approved courses: (1) on depression and/or depression prescribing and (2) on recordkeeping. Dr. Berger also agrees to pay \$15,000 in costs payable to the Board of Medical Examiners upon signing of this order.

This is my understanding of the settlement agreement. Thank

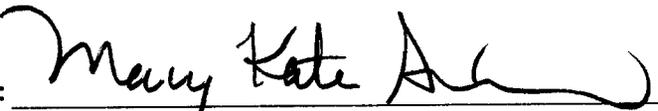


April 27, 2006
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you for your assistance in helping us resolve this matter.

Respectfully submitted,

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY

By: 
Mary Kate Simmons
Deputy Attorney General

MKS/naz
cc: Timothy P. O'Brien, Esq.