

FILED

JULY 20, 2007

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

NUNC PRO TUNC JULY 11, 2007

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

In the matter of:

CHARLENE DEMARCO, D.O.

ORDER OF TEMPORARY
SUSPENSION OF LICENSE

This matter was opened before the New Jersey State Board of Medical Examiners on June 19, 2007, upon the filing of a seven count administrative complaint against respondent Charlene DeMarco, D.O. The complaint is generally predicated upon respondent's interactions with five patients who had been diagnosed with Amyotrophic Lateral Sclerosis ("ALS"). In each case, it is alleged that respondent falsely promised to provide stem cell procedures for the treatment of ALS, when in fact she had no authorization or approval to provide such treatment, knew she had no authorization or approval to provide the proposed treatments, and knew she was not able to and could not in fact provide the proposed stem cell treatments. She is alleged to have received payments of \$35,000 from two of the patients and \$5,190 from a third; in each case, it is alleged that the payments were deposited into bank accounts opened in Dr. DeMarco's name. It is also alleged that respondent told a fourth patient that she would require an up-front fee of \$35,000 for the proposed stem cell treatments. In all cases, it is alleged that respondent never provided any of the stem cell treatments which she falsely promised she could provide.

Respondent's interactions with the five identified patients are not only the basis for charges set forth in Counts 2 - 6 of the Administrative Complaint, but also were the predicate for criminal charges which were filed against respondent in an eleven count federal Indictment returned by a Federal Grand Jury in and for the District of New Jersey, to include one count of conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. §1371; three counts of mail fraud, in violation of 18 U.S.C. §§1341 and 2; six counts of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2; and one count of money laundering, in violation of 18 U.S.C. §1957. The Administrative Complaint details, within Count 1, that following a jury trial which commenced in November 2006 before the Honorable Joseph H. Rodriguez, United States District Judge, respondent was found guilty on all counts of the federal criminal complaint.¹

The Attorney General seeks the temporary suspension of respondent's license, pending completion of plenary proceedings in this matter, based solely on Count 1 of the Administrative Complaint - that is, based on respondent's having been found guilty following trial on all charges. Respondent filed an Answer to the

¹ Respondent is additionally charged, within a seventh Count in the Administrative Complaint, with having dispensed CDS to patients for a two year and eight month period following the expiration, on October 31, 2004, of her CDS registration. Those allegations are not herein considered by the Board, as the application for the temporary suspension of respondent's license is based solely on the charges set forth in Count 1 of the Administrative Complaint.

charges within Count 1 of the Administrative Complaint on July 5, 2007, and submitted a reply letter brief in opposition to the Attorney General's application for the temporary suspension of her license. Within her Answer, respondent generally did not respond directly to any of the allegations against her, but instead repeatedly took the position that her answer to specific charges was "protected" by the Fifth Amendment, U.S.C.A. and by privileges to include N.J.R.E. §§501 (Privilege of Accused), 503 (Self-incrimination), and 504 (Lawyer-Client Privilege) and, in certain instances, the physician-patient privilege. In her letter brief, respondent argued, *inter alia*, that the Board should forestall action because "the guilty verdicts that form the basis for the Administrative Action resulted from a grave miscarriage of justice."

This matter was scheduled for a hearing on the application for temporary suspension on July 11, 2007. On said date, respondent appeared before the Board, represented by Nancy Lord, M.D., Esq. Deputy Attorney General Siobhan Krier appeared on behalf of complainant Attorney General. Respondent initially moved for an adjournment of the proceedings in this matter, which application was denied by the Board.² Following the announcement

² Respondent advanced a number of arguments in support of her application for an adjournment, to include arguments: 1) that the Board should await sentencing in the criminal matter; 2) should afford respondent additional time to file a motion in the federal court to overturn or vacate the findings of guilt, and then await a determination on said motion by the federal court; and/or 3) should allow defense counsel additional time to prepare

of the Board's decision to deny respondent's motion for adjournment, respondent and her counsel elected to leave the Board meeting, and did not participate, or present any defense, in the subsequent hearing on the Attorney General's application for temporary suspension.

At the hearing on the application for temporary suspension, we received the presentation of evidence and entertained oral arguments of Deputy Attorney General Krier. The Attorney General moved three documents related to the federal criminal trial into evidence:

P-1 Indictment in the matter of United States v.

for a hearing on the application for temporary suspension before the Board (see *infra* for discussion of Board responses to respondent's arguments "1" and "2").

The Attorney General opposed respondent's request, but D.A.G. Krier did state that she was willing to consent to an adjournment were Dr. DeMarco willing to voluntarily agree to cease and desist from engaging in any medical practice until the application for temporary suspension was heard. During the course of argument on respondent's motion, respondent was asked whether she would voluntarily consent to refrain from practice until any adjourned date of a hearing on the application for temporary suspension; respondent replied that she would not so voluntarily consent. Given respondent's position, we rejected her request for an adjournment to afford additional time to prepare for the hearing. While we are not insensitive to counsel's request for additional time to prepare, we note that our paramount obligation is our obligation to the public to hear applications for temporary suspension in a timely fashion, and that obligation is particularly acute where it is alleged that a licensee's continued practice presents clear and imminent danger to public health, safety and welfare exists. Finally, we note that in this case, there was a period of over three weeks between the filing of the application for temporary suspension and the actual return date of the Order to Show Cause, which should have afforded counsel an adequate opportunity to prepare any defense to the application for temporary suspension.

Charlene Cynthia DeMarco and Elizabeth Lerner, a/k/a "Elizabeth Cooperman," a/k/a "Liza", Criminal No. 06-240 (JHR), filed September 25, 2006.

P-2 Transcript of Jury instructions in the matter of United States v. Charlene Cynthia DeMarco and Elizabeth Lerner, a/k/a "Elizabeth Cooperman," a/k/a "Liza", Criminal No. 06-240 (JHR), dated December 7, 2006

P-3 Verdict sheets in the matter of United States v. Charlene Cynthia DeMarco and Elizabeth Lerner, a/k/a "Elizabeth Cooperman," a/k/a "Liza", Criminal No. 06-240 (JHR), filed December 8, 2006.

Deputy Attorney General Krier urged that the Board should find, based on the gravity of the misconduct which underlies respondent's federal conviction, that a palpable demonstration of clear and imminent danger has been made, and further urged that the Board should temporarily suspend respondent's license.

Upon consideration of the evidence before us, we unanimously conclude that cause exists to order the temporary suspension of respondent's license to practice medicine and surgery in the State of New Jersey, pending the completion of plenary proceedings in this matter. We set forth below the specific findings we have made to support our action. Although respondent elected not to participate in the temporary suspension hearing, we nonetheless address below arguments that respondent advanced in her letter brief in opposition to the application for temporary suspension, and set forth our basis for rejecting those arguments.

Findings of Fact and Conclusions of Law

The facts upon which we act are clear-cut and not subject

to reasonable dispute. Respondent DeMarco was indicted by a federal grand jury on eleven counts of criminal conduct (P-1), and she was, following a jury trial, found guilty of one count of conspiracy to commit mail and wire fraud, three counts of mail fraud, six counts of wire fraud and one count of money laundering (P-3). The jury's verdict necessarily was predicated on findings that respondent knowingly and willfully engaged in conduct that was intended to defraud or obtain money from persons suffering from ALS and their families by false pretenses, representations or promise, and related findings that respondent willfully participated in the scheme to defraud with the knowledge of its fraudulent nature and with a specific intent to defraud. (See Jury Instructions, P-2 in evidence).

Given the absence of any factual dispute, the sole question for our determination is whether the findings of guilt are of such weight and magnitude to support a finding that respondent's continued practice of medicine at this time would present clear and imminent danger to public health, safety and welfare. See N.J.S.A. 45:1-22.³ We unanimously conclude that such a predicate exists in

³ N.J.S.A. 45:1-22 provides that

A board may, upon a duly verified application of the Attorney General that either provides proof of a conviction of a court of competent jurisdiction for a crime or offense involving moral turpitude or relating adversely to the regulated profession or occupation, or alleges an act or practice violating any provision of an act or regulation administered by such board, enter a temporary order suspending or limiting any license issued by the board pending plenary hearing on an

this case. Respondent stands convicted of brazen and appalling offenses which, at their core, are antithetical to fundamental precepts of medical practice. She has repeatedly used her medical license not to cure, but as a conduit to engage in fraudulent acts. Respondent held out false hope to five patients suffering from a debilitating and horrific illness. She knowingly promised those patients that she could treat and/or perhaps cure their disease, when in fact she knew she could not do so. The jury necessarily found that respondent knew that the representations that she made were false and fraudulent, and necessarily found that she acted with the intent to defraud. In short, respondent preyed on the weaknesses and frailties of patients suffering from a devastating disease, and offered those patients an illusory elixir in a scheme aimed ultimately at doing nothing more than lining her own pocket.

Although the acts which undergird respondent's conviction may have occurred prior to the date of her indictment on March 29, 2006, we conclude that her conduct, and the immorality that is a pervasive component of those actions, is of a sufficiently egregious nature to support a determination today that respondent's

administrative complaint; provided, however, no such temporary order shall be entered unless the application made to the board palpably demonstrates a clear and imminent danger to the public health, safety and welfare.

The legislature thus clearly authorized this Board to act upon applications for temporary suspension brought solely on proof of conviction of courts of competent jurisdiction for crimes or offenses involving moral turpitude or relating adversely to the regulated profession.

continued practice would present clear and imminent danger to the public health, safety and welfare. Respondent repeatedly deceived and misled patients, and did so in a manner that fundamentally shattered the trust that any patient must be able to place in a physician licensee. That trust remains shattered today, and we unanimously find that respondent's continued practice would pose grave risks to any patients she may treat.

Respondent, in her letter brief in opposition to the application for temporary suspension, argues that the Board may not or should not act on the Attorney General's application for temporary suspension, because she claims that she is presently unable to present a defense in this matter based on her rights under the Fifth Amendment of the United States Constitution. We reject respondent's claim, and note that it is settled law that, while individuals who are the subject of State civil and criminal actions arising out of the same transactions have a right to assert their privilege against self-incrimination in the civil proceeding, that assertion does not operate to bar the State from proceeding in the civil context. See State v. Kobrin Securities, Inc. 111 N.J. 307, 310, 315 (1988) (holding that there is no constitutional inhibition against requiring a civil litigant who fears indictment or is already under indictment to decide whether or not to claim the privilege in the civil case; "[i]f the defendants are unqualified to serve in [their] profession, as the State alleges, the licensure proceedings against them cannot be stayed.").

Further, it is permissible for a trier of fact in civil and administrative proceedings to draw adverse inferences from a party's reliance on his privilege against self-incrimination. Mahne v. Mahne, 66 N.J. 53, 60 (1974), see also Attor. v. Attor., 384 N.J. Super. 154, 166 (App. Div. 2006).

We similarly reject respondent's argument that we should refrain from acting at this time because respondent has yet to be sentenced by the Federal District Court, and/or because respondent anticipates filing a motion to vacate the verdict (we note, however, that respondent had not, as of the date of the hearing, filed such a motion). While it may be the case that respondent's sentencing has not yet occurred, it is clearly the case that she has been found guilty of all charges of the federal complaint. As it is the guilty findings which are the predicate for the application for temporary suspension of her license, we are aware of nothing that would legally preclude the Board from acting based on said findings. We refuse to engage in any speculation as to whether respondent would have any chance of succeeding on a motion to vacate the verdicts entered in this case. We note, however, that even were such motions filed, the filing of the motion would in no way preclude us from being able to act on the verdicts, absent an Order of the federal Court granting the motion to vacate or otherwise staying the effects of the verdicts. We also point out that, were respondent to ultimately file such motions and be successful, she could then return to this Board and seek

reconsideration of the action that we herein order.

Finally, respondent argues that the application for temporary suspension is premature, because there has been no judgment of conviction yet entered by the Court. While it is the case that a judgment of conviction will only be entered following respondent's sentencing, a broad reading of the Federal Rules of Criminal Procedure suggests that respondent's conviction in fact occurred at the time that the jury returned its verdict of guilt. Thus, although Fed. R. Crim. P. 32(k) details what must be set forth within a "judgment of conviction," which document can only be entered after sentencing (given that the sentence is a component that must be set forth within the document), that rule is but one of eleven subparts of Rule 32 ("Sentencing and Judgment"), which Rule details actions and procedures that are to occur between the time that a defendant is found guilty and the subsequent pronouncement of sentence. Significantly, Rule 32 itself is situated within Title VII of the Federal Rules, which Title details "Post-Conviction Procedures" (emphasis added). The federal rule on which respondent relies, thus, is one which clearly is considered and defined to be a post-conviction rule, and we thus are satisfied that the Board may properly consider respondent to have been convicted at the time that the jury verdicts were returned finding her guilty of all charges. See also United States v. Adams, 771 F. 2d 783 (3rd Cir 1985) (in a sentencing proceeding under the Dangerous Special Offender Act, district court properly considered as one of

predicate convictions verdict of guilty on which sentence had not yet been imposed).

Conclusion and Order

We unanimously conclude that the criminal acts that respondent has been convicted of bespeak conduct upon which a conclusion can be based that any continued practice of medicine by respondent would pose a clear and imminent danger to the public health, safety and welfare.

WHEREFORE, it is on this 20TH day of July, 2007

ORDERED: nunc pro tunc July 11, 2007

The license of respondent Charlene DeMarco, M.D. to practice medicine and surgery in the State of New Jersey is hereby temporarily suspended, pending the completion of all administrative proceedings. The temporary suspension shall be effective as of the close of business July 16, 2007.

NEW JERSEY STATE
BOARD OF MEDICAL EXAMINERS

By:



Mario Criscito, M.D.
Board President

**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.

**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.

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 Number¹: _____

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.