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By: Joan D. Gelber
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FILED

OCTOBER 12, 2007

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

EFFECTIVE NUNC PRO TUNC SEPTEMBER 26, 2007

STATE OF NEW JERSEY
DEPT' OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
OAL DKT NO. BDSME 07400-2005N

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF LICENSE OF
STEVEN P. BROWNSTEIN, M.D.
LICENSE #MA 035179
TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY :

ADMINISTRATIVE ACTION

FINAL ORDER
AND AGREEMENT

This matter was presented to the State Board of Medical Examiners by way of an Administrative Complaint filed January 25, 2005, and a Supplemental Complaint filed July 31, 2006, by the Attorney General of New Jersey, by Joan D. Gelber, Deputy Attorney General.

The Complaint, as amended, alleged, in part, negligent misreadings of MRI studies; failure to maintain and produce proper patient records and interpretive reports; misuse of letterhead; employment by unlicensed MRI facilities; omissions of professional affiliations on two biennial registration forms; and billing for medically unjustified 3D reconstructions of imaging studies. Respondent denied all charges.

CERTIFIED TRUE COPY

Ann D. Gelber J-1

The Board recognizes that both parties were prepared to present expert testimony supporting their positions. Both parties, however, being desirous to resolve this matter without recourse to further proceedings, have proposed to resolve the matter by the terms set forth below.

Dr. Brownstein, whose current primary radiology practice location is "Dynamic Medical Imaging," at 950 West Chestnut Street, Union, New Jersey, has agreed to resolve the charges on the following terms, provided that his agreement shall not be construed as an admission or denial of the charges.

The Board, having found the terms to be in the public interest as an adequate resolution of this matter, and for good cause shown,

IT IS, ON THIS 27th DAY OF AUGUST 2007

ORDERED AND AGREED:

1. Dr. Brownstein shall be subject to monitoring for two years commencing with the date of entry of this Order and Agreement. Final dismissal of the charges is specifically conditioned upon respondent's compliance with the following terms and conditions, and the Board shall retain jurisdiction over the matter until the monitoring period has expired or been terminated.

2. During the monitoring period, Dr. Brownstein's practice of diagnostic radiology shall be monitored by a Board-approved New Jersey-licensed radiologist who is certified in the specialty of diagnostic radiology by the American Board of Radiology. The monitor shall not be a friend, relative or anyone with whom Dr. Brownstein has or had a financial relationship of any kind, nor anyone proposed by him as an expert witness in the present administrative proceeding. Dr. Brownstein shall promptly submit to the Board, with a copy to the prosecuting Deputy Attorney General, a curriculum vitae of the proposed monitor, along with a signed agreement of the candidate acknowledging the responsibilities incumbent upon the monitor as set forth herein

and agreeing to accept same, and submitting a proposed plan of monitoring. Approval of the monitor is at the sole discretion of the Board, and shall not be unreasonably withheld.

3. Dr. Brownstein shall cooperate with the Board-approved monitor and shall assure that the monitor reviews at least ten diagnostic MRI studies interpreted by respondent each month.

The monitor shall select a date or dates for each review, and Dr. Brownstein shall then promptly submit the first ten MRI studies interpreted on that date or, if less than ten, from the first MRI studies interpreted on the following business day(s). The studies and reports shall be transmitted to the monitor by any technical or mechanical means agreeable to both Dr. Brownstein and the monitor. Dr. Brownstein shall assure that each interpretive report includes a clinical reason for performance of the study, and each MRI study image shall be labeled to identify the patient, date of birth, date of study, the region of anatomy, and the name of the entity responsible for performing and preserving the study. The cost of the monitor's services shall be borne by respondent and shall not be passed on to patients/third party payors. Dr. Brownstein shall provide appropriate releases to the person who conducts the monitoring program as may be required.

4. Dr. Brownstein shall assure that the monitor submits a quarterly report to the Board of Medical Examiners, listing the patient studies reviewed during the prior quarter (the Board shall preserve patient confidentiality), the nature of the study, the completeness of the MRI and report data, and whether the interpretation meets accepted standards of professional practice in the specialty of diagnostic radiology. In the event that significant deviations are found by the monitor, such shall be reported by the monitor within 48 hours or two business days to the State Board. Dr. Brownstein agrees that the monitor shall incur no liability to respondent as a result of his/her good faith performance of monitoring services.

5. If the monitor reports no significant deviations from accepted standards in the first four quarterly reports, and if all required payments to the Board and monitor have been made, Dr. Brownstein may petition the Board for an earlier termination of the monitoring period, which the Board shall determine at its sole and reasonable discretion.

6. Respondent shall pay to the State Board of Medical Examiners costs and fees totaling \$35,000.00, and an aggregate civil penalty of \$25,000.00 in settlement of all charges, totaling \$60,000.00, pursuant to N.J.S.A. 45:1-25. Payment of \$20,000.00 shall be made within 10 days of the entry of this Order. The remaining amount shall be paid in equal quarterly installments, each due on the first day of that month commencing with October 1, 2007, to be completed within the monitoring period. All payments shall be submitted by certified check or money order payable to the State of New Jersey, at the Board office, P.O. Box 183, Trenton, NJ 08625-0183. A Certificate of Debt shall be filed to protect the judgment pursuant to N.J.S.A. 45:1-24, and shall be promptly discharged upon payment in full.

7. During the monitoring period and thereafter, Dr. Brownstein shall assure for himself and on behalf of any professional practice including "Dynamic Medical Imaging" and all other corporate practices that he owns or controls, that all professional medical work performed for any health care practice entity shall be for one or more of the following categories of practice: one or more individual health care practitioners duly licensed to practice in the State where the professional practice is located; one or more entities incorporated as a professional association, professional corporation, or limited liability company duly authorized to practice in the State where the professional practice is located; or a general business corporation duly licensed by the New Jersey State Department of Health and Senior Services to offer radiologic imaging services.

In the event that Dr. Brownstein is employed by any of the above persons or entities as an independent contractor for the interpretation of MRIs, his interpretive report of the imaging study shall identify him, along with his own office address, as the reader performing the interpretation as contractor for the entity performing and/or billing for the imaging study.* As to other types of imaging studies, the parties agree to confer in good faith as to appropriate provider identification. Dr. Brownstein shall assure that a copy of his interpretive reports is promptly available to him, in compliance with N.J.A.C. 13:35-6.5.

8. Dr. Brownstein shall be responsible for assuring that billing by him, his individual employees, and his corporate entities and employees meets all criteria for the billed CPT code as defined in the applicable Current Procedural Terminology Manual and as may be interpreted as appropriate in American Medical Association publications (e.g., "CPT Assistant"). There shall be no billing for 3D reconstructions of any MR studies other than MRAs under 76377 or any successor codes, unless and until a Board-approved authoritative source (which may include the American College of Radiology) issues final guidelines defining professionally appropriate circumstances for such performance and billing. In addition, each such report shall document the medical justification for the 3D study, the study shall be performed in accordance with the requisite accepted technique for such 3D studies, and the interpretive report shall document the information learned from the 3D study. Delegation of billing services to another person or billing management company shall not relieve respondent of the responsibility to assure truthful billing and coding. This provision shall continue beyond the monitoring period.

9. During the monitoring period and thereafter, Dr. Brownstein shall assure that all documents submitted to the State Board of Medical Examiners in connection with biennial

* Dr. Brownstein may seek modification of the foregoing provision on submittal to the Board of proctors regarding practice in the relevant community.

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renewal of license registration accurately identify all of his “professional affiliations” and “financial interests” as requested on the form. For the purposes of this settlement, the term “professional affiliations” shall mean the names and addresses of all professional practices and/or other physicians with which Dr. Brownstein is affiliated by ownership interest, or written contract of employment, or regular engagement as an independent contractor (*i.e.*, ten or more patient-case interpretations of diagnostic radiology studies within a 30-day period), with notice to the Board supplemented during the year as may be necessary, to comply with N.J.A.C. 13:35-6.19. The term “financial interests” means any financial interest in any health care related business entities (other than his primary practice or any publicly traded stocks) owned by Dr. Brownstein or any members of his immediate family.

10. Prior to the end of the monitoring period, whether as directed herein or as may earlier be permitted, Dr. Brownstein shall appear, on notice, before a designated Committee of the Board of Medical Examiners to review his status and his compliance with accepted standards of professional practice in all areas of concern alleged in the Administrative Complaint. Prior to such appearance, Dr. Brownstein shall submit to the Board proof of the following: timely submission of all quarterly reports with no adverse reports by the monitor, and payment of all monies due to the Board.

11. The parties agree and recognize that this resolution and agreement shall be treated as a reportable event under 45 CFR Subtitle A, Sections 60.8 and 61.7, and N.J.S.A. 45:9-19.13.

12. Subject to the Board’s continuing jurisdiction as set forth above, this Order shall resolve all administrative and license charges raised by the Attorney General in the Administrative Complaint with regard to Dr. Brownstein’s responsibility to the State Board of

Medical Examiners in connection with Professional Board law and rules The entry of this Order shall not limit the authority of any other person or agency to initiate any further action permitted by law in any court or other forum of competent jurisdiction in connection with any matters coming within that jurisdiction.

THIS ORDER IS EFFECTIVE UPON ENTRY

STATE BOARD OF MEDICAL EXAMINERS

BY: *Karen Criss*
Karen Criss, C.N.M., Vice-President and
President *pro tempore*

I have read and understood the within Order and agree to be bound by its terms. I consent to the entry of the Order by the Board of Medical Examiners.

Steven F. Brownstein
Steven F. Brownstein, M.D.

SB 8/28/07

Witness:

DeCotiis, Fitzpatrick, Cole & Wisler, LLP

By: *Benjamin Clarke*
Benjamin Clarke, Esq.