

FILED

JANUARY 16, 2008

**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

In the Matter of:

PHILIP B. EATOUGH, D.O.
License No. MB02599600

BOARD ORDER ADOPTING AND
MODIFYING IN PART REPORT AND
ORDER OF HEARING COMMITTEE

This matter was returned to the full Board of Medical Examiners on January 9, 2007, at which time we reviewed the Report and Order of the Board's Hearing Committee and the full record that was considered by the Hearing Committee on the application of the Attorney General for the temporary suspension of the license of Philip B. Eatough. The procedural history of this matter is set forth in detail in the Committee's Report and Order (the Report and Order of the Hearing Committee is appended hereto as Exhibit "A" and incorporated herein).¹

On review of the entire record before the Committee, we are satisfied that an ample predicate exists to fully support all findings and determinations made by the Committee. We thus adopt,

¹ As noted in the Committee's report and at the time that the parties consented to have this matter heard before a Hearing Committee of the Board, the action of the Committee was to be subject to review by the Board on the papers alone. Given that express direction, and given further that an extensive record (to include approximately seventeen hours of testimony ~~over two days~~) was created before the Committee and fully available for review by the Board, we denied an application made by respondent to present additional oral argument to the Board on January 9, 2008.

CERTIFIED TRUE COPY

in their entirety and without modification, all of the findings of fact and conclusions of law set forth within the Committee's Report and Order, to include, without limitation, the Committee's conclusion that respondent's continued unrestricted practice of medicine would present clear and imminent danger to the public health, safety and welfare. We likewise adopt the recommendation of the Committee that conditions and restrictions are to be placed upon Dr. Eatough's practice of medicine, pending the completion of plenary proceedings in this matter. We have concluded, however, that cause exists to modify the provision of the Order specifying that Dr. Eatough is to secure a "general practice monitor" to require that the "general practice monitor" be a physician holding Board certification in internal medicine. Additionally, we herein specify that the approval of any assessment entity is to be secured through the Board's Medical Education Director, Dr. Mary Blanks.²

² Finally, we conclude that it would be inappropriate for Dr. Jeffrey Berman to continue to serve as a monitor for respondent's prescribing for pain management patients, given that Dr. Berman is also serving as respondent's expert witness in this matter, and thus may have a conflict of interest in serving in both capacities. While we will permit Dr. Berman to continue to serve as a monitor for no longer than the next seven days [so that respondent's prescribing practices will continue to be monitored for a reasonable period of time until he can secure a new monitor(s)], respondent must identify and secure Board approval for a replacement monitor not later than January 16, 2008, (the approvals for monitors may be secured through the Medical Education Director of the Board, Dr. Mary Blanks) or thereafter cease and desist from engaging in further medical practice in accordance with the terms of paragraph 6 of this Order.

~~WHEREFORE, it is on this 16TH day of January, 2008~~

ORDERED nunc pro tunc January 9, 2008:

1. The entirety of the Report and Order of the Hearing Committee (appended hereto as Exhibit "A"), with the exception of the Committee's specification of terms and conditions to be placed on respondent's practice pending the completion of plenary proceedings in this matter, is hereby adopted, without modification.

2. Pending the completion of plenary proceedings in this matter, the following terms and conditions shall be placed on respondent's practice:

1) Dr. Eatough shall be prohibited from prescribing any Schedule II Controlled Dangerous Substances.

2) Dr. Eatough's medical practice is to be subject to monitoring by two physicians, both of whom are to be approved by the Board. Respondent shall secure a "general practice monitor," which monitor is to review respondent's general practice of medicine. The "general practice monitor" shall be a physician who holds Board certification in internal medicine. The monitor is to review not less than 10 medical charts of patients seen by respondent in a given month. Respondent shall maintain a list of all patients that he sees in a given month, and shall provide the monitor with said list. The monitor shall then randomly select ten patients, and respondent shall provide the monitor with the medical

~~charts for those selected patients within forty eight hours.~~ The "general practice monitor" shall immediately contact the Board, orally and in writing, in the event that he or she detects any deviations from appropriate standards of care in Dr. Eatough's practice, and shall provide quarterly written reports to the Board detailing his or her findings made upon review of respondent's medical charts. Respondent is solely responsible to bear any expenses for the monitoring.

3) For all pain management patients, Dr. Eatough is to secure a Board approved physician monitor, who shall be required to pre-approve any prescriptions for Schedule III or Schedule IV Controlled Dangerous Substances that respondent proposes to issue to any patient. ~~Dr. Eatough shall provide the physician monitor~~ with a copy of the proposed prescription and a copy of the progress notes for the patient. The physician monitor shall then be required to notify Dr. Eatough that the prescription is approved before the prescription is actually given to the patient.

4) Respondent shall secure an assessment of his medical skills, to be conducted by an assessment program to be approved by the Medical Education Director of the Board. The assessing entity shall evaluate both respondent's ability to practice general medicine and his ability to practice pain management. Arrangements for the assessment to be conducted are to be secured within ninety days of the date of this Order, and the assessment is to be

completed within 180 days of the date of entry of this Order.

5) In the event respondent fails to comply with any of the provisions of this Order, or in the event that the assessment program concludes that respondent's practice should be subject to further restriction and/or that respondent should presently cease engaging in practice, then the Board reserves the right to order additional restrictions and/or the full temporary suspension of respondent's license pending plenary hearing in this matter.

6) Respondent must make arrangements for, and secure approval from the Board, for both practice monitors (as specified in paragraphs 2 and 3 above). In the event respondent fails to secure the monitoring required within seven days, then respondent shall cease and desist from engaging in further medical practice until an acceptable monitoring program has been approved by the Board.

STATE BOARD OF MEDICAL EXAMINERS

Mario A. Criscito, M.D.

By: _____

Mario A. Criscito, M.D.
Board President

FILED

January 8, 2008

**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

In the Matter of:

PHILIP B. EATOUGH, D.O.

REPORT AND ORDER OF
HEARING COMMITTEE

This matter was initially opened before the New Jersey State Board of Medical Examiners upon the filing of a Verified Complaint and Order to Show Cause seeking the temporary suspension of the license of respondent Philip Eatough, D.O. The application alleged, *Inter Alia*, that respondent's treatment regarding three patients, to include indiscriminate and grossly negligent narcotic prescriptive practices, demonstrates a profound lack of medical judgment, and disregard for the well-being of his patients. A hearing on the application for temporary suspension was initially scheduled before the Board on December 12, 2007. On that date, Dr. Eatough appeared before the Board represented by DeCotiis, Fitzpatrick, Cole & Wisler, LLP, Alex J. Keosky, Esq. and Susan Fruchtman, Esq., appearing. Deputy Attorney General Siobhan B. Krier appeared for the Complainant Attorney General. The hearing that had been scheduled for December 12, 2007 was adjourned, and the matter was then referred to a Hearing Committee of the Board, upon the condition that Dr. Eatough's prescriptive practices (specifically, his prescribing of Schedule III and/or Schedule

EXHIBIT A

IV Controlled Dangerous Substances) were to be subject to monitoring by Dr. Jeffrey A. Berman, who agreed to review respondent's proposed prescriptions and related patient records before any prescription would be issued to a patient by Dr. Eatough. Both respondent and the Attorney General consented to have this matter heard and ruled upon by a Hearing Committee of the Board, which Committee was vested with all powers that the Board would ordinarily have upon hearing an application for temporary suspension, to include, without limitation, the authority to enter an Order temporarily suspending or otherwise limiting Dr. Eatough's license. The action of the Committee was to be subject to review by the full Board on the papers alone. The Board retained the authority, following review, to adopt, reject or modify any Order entered by the Committee.

Hearings were then held before the Hearing Committee of the Board on two dates, December 19, 2007 and January 2, 2008. Board members Steven Lomazow, M.D., Paul Jordan, M.D., George Cienchanowski, M.D. and Jacqueline DeGregorio, Esq. sat on the Committee.

At the hearing, the Attorney General relied primarily on documentary evidence, to include copies of medical records that were maintained by Dr. Eatough for patients Michael C., Barbara R. and Wayne D. along with sworn statements from each of the three patients. Additionally, statements from five former employees of Dr. Eatough were moved into evidence, as were copies of prescription profiles from pharmacies at which patients Michael C., Barbara R. and Wayne D. filled the

prescriptions written for them by Dr. Eatough and copies of actual prescriptions on file that were filled at each of the pharmacies. Statements were also moved into evidence from two pharmacists, Ashraf Basta and Allan Israel, and a copy of an Investigative Report prepared by the Drug Enforcement Agency was additionally admitted into evidence. The Attorney General called an expert witness, Dr. Jeffrey A. Gudin, who is presently the director of pain management at Englewood Hospital and Medical Center in Englewood, New Jersey, to testify on the practices of Dr. Eatough.

Dr. Eatough presented a defense expert, Dr. Jeffrey Berman, to testify. Additionally, a total of eleven patients, three character witnesses and four members of respondent's office staff were called and testified for Dr. Eatough. Copies of prescriptions and patient records that were monitored by Dr. Berman during the three week period between December 12, 2007 and January 2, 2008 were moved into evidence, as were a series of articles that had been reviewed by Dr. Berman in preparation for his testimony.

On review of the entire record, we have concluded that the Attorney General has sustained her burden of providing a palpable demonstration that Dr. Eatough's unrestricted practice of medicine would present a clear and imminent danger to the public health, safety and welfare. In this case, however, upon considering the testimony offered by the defense witnesses and weighing all evidence presented, we have concluded that any danger to the public that might be presented by Dr. Eatough's

continued practice (prior to the conclusion of plenary proceedings in this matter) can be sufficiently ameliorated by the imposition of conditions and limitations, and the Committee therefore thus does not find it necessary at this time to order that Dr. Eatough's license be temporarily suspended. We set forth below a summary of salient facts that were adduced during the two day hearing, as well as the rationale for our conclusion that Dr. Eatough's unrestricted practice at this time would present a clear and imminent danger to the public health, safety and welfare.

Facts not in Dispute

Initially, we note that there are certain facts which are not subject to dispute in this matter. It is undisputed that Dr. Eatough is the subject of a federal criminal indictment, wherein it is charged that he engaged in one count of a Conspiracy to Distribute Controlled Substances, in violation of 21 U.S.C. Section 846; nine counts of Distribution of Controlled Substances, in violation of 21 U.S.C. Sections 841(a)(1) and (b)(1)(C), 18 U.S.C. Section 2 and 21 C.F.R. 1306.04; and one count of Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. Sections 1956(a)(1) and 1956(h). Respondent's office manager, Betty Over, is a co-defendant on the charges of conspiring to distribute controlled substances and conspiracy to commit money laundering. The indictment generally accuses Dr. Eatough with prescribing excessive amounts of controlled substances to three specific patients without legitimate medical purpose and outside the usual course of

professional practice in exchange for a fee. It further alleges that respondent did so knowing that the identified patients would subsequently distribute the prescribed substances to others in exchange for money, allowing the patients to return to respondent's office and pay for additional, unlawful prescriptions.

On October 12, 2007, a Bail Order was entered by the Honorable Patricia Schwartz. Among the conditions placed on respondent 's bail was a condition that respondent was to be prohibited from authorizing or writing any prescriptions for Schedule II Controlled Substances, and a condition that any prescription pads that might be obtained by respondent were to show that they are not valid for Schedule II controlled substances. The Bail Order provided that respondent could continue to practice medicine subject to the terms of the Bail Order, "unless a licensing authority or another Court orders otherwise." The terms of the Bail Order remain in effect at this time, as respondent has not yet been tried on the charges set forth in the criminal indictment.

Respondent thereafter entered an Interim Consent Order with the Board on November 7, 2007. That order included a requirement that respondent comply with the terms of the Bail Order, and also expressly precluded respondent from prescribing or authorizing prescriptions for Schedule II Controlled Substances unless or until his Schedule II registration is reinstated by the DEA. The Consent Order included a provision stating that "nothing in this Order shall prohibit the Board or

other law enforcement agency from taking further action in this matter as needed to protect the public health, safety and welfare."

*Findings of Fact regarding Patients Michael C.,
Barbara R. and Wayne D.*

The verified complaint upon which the Attorney General's application for the temporary suspension of respondent's license is predicated is generally focused upon the care provided by respondent to three patients, identified as Michael C., Barbara R. and Wayne D.¹ We set forth below findings we have made regarding each of the three patients.

1) Michael C.

_____ Patient Michael C. was first seen by respondent on October 2, 2001, and thereafter treated by respondent until October 24, 2005. Presumably upon his initial visit, Michael C. completed a medical history form wherein he reported suffering from unexplained weight gain/loss, low back problems and depression. Respondent obtained a history which noted that the patient reported suffering from pain down his spine and right leg as a result of a motor vehicle accident on or about July 31,

¹ A fourth Count of the Complaint contains allegations that respondent failed to comply with certain conditions of the Bail Order and the Interim Consent Order. It is our understanding that, although respondent may initially have not been in compliance with said terms, he is presently in compliance with the terms of both Orders. We therefore did not find it necessary to consider the allegations in Count IV of the Complaint for the limited purpose of deciding whether to grant or deny the Attorney General's application for the temporary suspension of respondent's license.

1998. Respondent's records suggest that he commenced writing prescriptions for controlled substances for Michael C. upon the patient's initial visit, and suggest that he continued to prescribe controlled substances for Michael C. throughout the course of the four year period that he treated Michael C.

Both Michael C.'s patient record and the pharmacy records in evidence suggest that Michael C. was thereafter seen approximately on a monthly basis, and suggest that respondent wrote prescriptions for narcotics for Michael C. on all or virtually all visits. The records show that the amounts of narcotics that Dr. Eatough prescribed for Michael C. escalated during the course of respondent's treatment. Initial prescriptions included prescriptions for Roxycodone 30 mg, #50 and Oxycontin 80 mg, #60. During August, September and October 2005 (the final three months that respondent treated Michael C.), respondent wrote prescriptions for 1,340 dosage units of Oxycodone 80 mg (#480 in August and October, and #360 in September), 720 dosage units of Hydromorphone 8 mg (#240 in August, September and October), 480 dosage units of Xanax 2 mg (#240 in August and September) and 1,080 dosage units of Methadone HCL 40 mg (#360 in August, September and October).

Respondent records do not contain any prior treatment records of Michael C., other than a copy of an MRI report dated July 1, 2001 (the Committee cannot determine, on the limited record that presently exists, when or how Dr. Eatough obtained a copy of said report). There is nothing in Dr. Eatough's records that suggests or evidences that respondent attempted to

perform any pain management modalities other than prescribing narcotics during the entire four year period that he treated Michael C., nor any suggestion or evidence that respondent ever ordered or obtained objective diagnostic tests to evaluate Michael C.'s subjective complaints of pain (other than a report of a CT scan of the brain performed on November 19, 2003). Exhibit D, 153.

In a statement provided to DEA investigators (see Exhibit H), Michael C. stated that Dr. Eatough "would never examine me." Michael C. stated that he diverted over three-quarters of the medications that Dr. Eatough prescribed for him and either gave the medications to friends or sold them, making between \$2,000 and \$3,000 per month. Michael C. stated that Dr. Eatough "instructed" him to "go to Keansburg Pharmacy" initially, and later "let it be known that I should use Lincoln Pharmacy." Michael C. stated that Dr. Eatough first sent him for a urine test some three years after he began treatment, and claimed that "Eatough specifically told me that he was sending me because DEA was watching him." Michael C. also stated that he "detoxified [him]self" when he was dismissed from Dr. Eatough's practice. Michael C. described his office visits with Dr. Eatough as follows:

Your [Sic] called into the office. And when he came in I would have a list on a note pad of the medications I would want him to prescribe with the dosages and the frequency of taking it. He would proceed to take the note pad. He would take out his prescription pad and verbatim copy from my pad the drugs that I wanted and the dosages onto his prescription pad. He would not look into my medical

file. There was no physical examination. No questions about how I was doing or if there were any problems. He would hand me my scripts. All of this happened in a three to five minute period. Then he would say good-bye.

We find it significant that Michael C.'s patient record does include numerous copies of what appear to be handwritten lists of drugs (said handwriting appearing to be different from Dr. Eatough's handwriting), which would seemingly corroborate Michael C.'s statement that he provided Dr. Eatough with lists of drugs (see Exhibit D at 120, 122, 123, 124, 139, 140, 141, 149, 155, 186, 192). The lists appear to all be undated. In several instances, the notes include requests that Dr. Eatough "post date" prescriptions, provide possible alternatives for prescriptions (i.e., MS-Contin IR ... and/or Diludid [Sic], with the word "and" circled), see Exhibit D at 186; in other instances, the notes included questions "can I have a Rx for ..."), Exhibit D, 149.

Finally, we point out that Dr. Eatough's patient record for Michael C. includes a three page consultant's report prepared by Dr. Jacqueline DelValle, M.D., dated November 1, 2002, which reported Dr. DelValle's assessment of Michael C. Exhibit D, 182-184.² Dr. DelValle's report included a statement

² Dr. Del Valle's report is written on letterhead for "Healthcare Pain & Rehabilitation" and suggests that she is a Diplomate of the American Board of Medicine and Rehabilitation, a Diplomate of the American Board of Anesthesiology and a Diplomate of the American Board of Pain Management. It appears that Dr. Eatough received Dr. DelValle's report on November 14, 2002, as the report bears a date stamp of November 14, 2002 in Dr. Eatough's records.

that Michael C. was then on "Dilaudid, Zanaflex, ambutone and Toradol for pain," and included a list of Michael C.'s present medications. Significantly, the list included no mention of Methadone, which Michael C. had filled prescriptions for in June, July and August 2002 (said prescriptions having been written by Dr. Eatough) and which Dr. Eatough prescribed for Michael C. On November 5, 2002. Dr. DelValle's report included, in a section entitled "plan," her comment that "I will not prescribe any narcotics for this patient and I discussed with the patient he should be off narcotics including sedatives such as Xanax." While DelValle's report is included in Michael C.'s record, Dr. Eatough never addressed or commented on the report in his patient record.

2) Barbara R.

_____ Patient Barbara R. was first seen by respondent on February 20, 2004, and thereafter treated until May 12, 2005. Respondent initially diagnosed Barbara R. with "chronic intractable pain" and wrote prescriptions for Controlled Substances on her first office visit. Respondent's medical record includes notations suggesting that Barbara R. was seen approximately once every two weeks (a total of 24 visits are recorded), and the medical records and prescription profiles suggest that prescriptions were written on all or virtually all visits. It appears that respondent initially prescribed, among other items, Roxicodone 30 mg, #400 and Oxycontin 80 mg, #240 for Barbara R. The evidence reveals that the quantity of narcotics that Dr. Eatough prescribed for Barbara R.

continuously escalated during the course of treatment, to a point where, in the last two and one-half months in 2005 that Barbara R. was seen, respondent wrote prescriptions for a total of 2,400 Oxycodone, 30mg and 3,000 Roxicodone, 30 mg. (prescriptions for #500 Oxycodone, 30 mg were filled by Barbara R. on March 5, 2005, March 17, 2005, March 31, 2005, April 13, 2005, April 26, 2005 and May 12, 2005; prescriptions for #500 Roxicodone, 30mg were filled by Barbara R. on the same dates). Respondent thus wrote prescriptions for a total of 5,400 dosage units of Roxicodone and Oxycodone for four office visits (March 4, 2005, March 31, 2005, April 26, 2005 and May 12, 2005, and apparently wrote post-dated prescriptions for March 17, 2005 and April 13, 2005, as there are no office visits that appear to correlate to the prescriptions that were filled on those dates).

Respondent's records do not contain any prior treatment records of Barbara R. There is nothing in Dr. Eatough's records that suggests or evidences that respondent attempted to perform any pain management modalities other than prescribing narcotics during the entire period that he treated Barbara R., nor any suggestion or evidence that respondent ever ordered or obtained objective diagnostic tests to evaluate Barbara R.'s subjective complaints of pain. Barbara R.'s record does include a copy of a termination letter dated May 19, 2004 stating that her appointment for May 26, 2005 was cancelled (as a result of a urine test conducted on May 12, 2005 which was, among other items, positive for cocaine).

In a statement provided to DEA investigators (Exhibit N in evidence), Barbara R. stated that her motivation in going to Dr. Eatough was "to get massive quantities of Oxycontin, roxycodone [Sic], and anything else that I could get off of him." Barbara R. claimed that she sold the drugs Dr. Eatough prescribed, "making over \$20,000 a week." Barbara R. stated that she was examined by Dr. Eatough "maybe 5 times, if that" during the time Dr. Eatough treated her, and claimed that the examinations with Eatough were "10 minutes. Tops." Barbara R. claimed that, when she saw Dr. Eatough, she gave Dr. Eatough a "laundry list" "every time"; she described the laundry list as: "write down on a piece of paper exactly what you want. How you want it prescribed. And the amount of pills you want. Hand it to him. And he would write out the scripts. I would get doubles, cause I had the post dated prescriptions." Barbara R. claimed that Dr. Eatough gave her exactly what she wanted every time. Barbara R. also stated that, on one occasion, she asked Dr. Eatough "about going into rehab", and that Dr. Eatough told her that "if [she] took [her] prescriptions as directed for pain [she] would never get addicted to the pain meds." Barbara R. acknowledged that her whole purpose of going to Eatough was that she would provide respondent with handwritten "laundry lists" of drugs that she wanted, to include quantity and dose, and that Dr. Eatough would thereafter simply write the prescriptions. Barbara R.'s medical record did include copies of handwritten lists of drugs, which would seemingly corroborate

Barbara R.'s claims about having provided Dr. Eatough with such lists (Exhibit I, 228, 238).

3) Wayne D.

_____ Patient Wayne D. was first seen by respondent on December 9, 2002, and thereafter treated until April 7, 2005. Respondent's record suggests that Wayne D. reported suffering from pain in his neck, back, right leg, head and jaw as a result of a motor vehicle accident that occurred over twenty years prior in 1982, and the record details that respondent wrote prescriptions for controlled substances at the first office visit. Respondent's records suggest that Wayne D. was thereafter seen approximately once a month, and the records in evidence support a finding that respondent wrote prescriptions for narcotics for Wayne D. at all or virtually all visits. The records show that the amounts of narcotics that Dr. Eatough prescribed for Wayne D. continuously escalated during the course of treatment, to a point where, in the last three months that Wayne D. was seen, respondent wrote prescriptions for not less than 3,420 dosage units of controlled substances to include Dilaudid 8 mg, #600 on one occasion (February 2005), Oxycontin 40mg, #180 on three occasions (February, March and April 2005), Roxicodone, 30 mg, #360 on three occasions (February, March and April 2005) and Methadone HCL, 40 mg, #600 on two occasions (March and April, 2005).

Respondent's records do not contain any prior treatment records of Wayne D. There is nothing in Dr. Eatough's records that suggests or evidences that respondent attempted to

perform any pain management modalities other than prescribing narcotics during the entire period that he treated Wayne D., nor any suggestion or evidence that respondent ever ordered or obtained objective diagnostic tests to evaluate Wayne D.'s subjective complaints of pain (there is a copy of an August 19, 2004 letter from Robert Grossman, M.D., that suggests the orthopedist had recommended that Wayne D. have his knee reconstructed), Exhibit O, 459. Wayne D.'s record includes a copy of a termination letter dated April 7, 2005, stating that Dr. Eatough would no longer treat Wayne D.

In a statement provided to DEA investigators (Exhibit T), Wayne D. stated that his office visits with Dr. Eatough were "maybe ... 5 minutes in duration." He claimed that he did not take the Roxicodone that Dr. Eatough prescribed, and instead sold the medication for \$8 per pill, or approximately \$3,000 per prescription. Wayne D. claimed that Dr. Eatough never did anything to confirm whether Wayne was telling him the truth, nor did he ever recommend any other therapies. Wayne D. also claimed that Dr. Eatough had a reputation of "cater[ing] to the drug addicts."

4) Statements of Former Employees

_____ The statements made by the three patients regarding the general nature of Dr. Eatough's practice find corroboration in other documents in evidence in the record. Specifically, the observations made by former employees of Dr. Eatough are consistent with the statements made by the patients. Kimberly Bosso, an LPN, worked for Dr. Eatough for three weeks in January

2005. Ms. Bosso provided a certified statement wherein she stated that Dr. Eatough was "running a pritty [Sic] quacky practice. It's not a real practice. It's just people coming in to get drugs." Ms. Bosso claimed that Dr. Eatough would spend "between two and three minutes" with his patients, estimated that "about 80%" of Dr. Eatough's patients were "drug abusers," and stated that "numerous patients came in with track marks." Ms. Bosso further claimed that Dr. Eatough told her that "he knows the only way [his patients on welfare] can afford to come to him and to pay for their prescriptions is to sell half the prescription and keep the rest for themselves."

Laura Gleason, a certified medical assistant, stated in her certification that she worked for Dr. Eatough in 2003 for three or four months. Ms. Gleason stated that Dr. Eatough would see approximately 30 patients in his Keansburg office in an afternoon, and would spend approximately five minutes with "monthly" patients and 10 minutes with "new" patients. Ms. Gleason stated that she was of the opinion that Dr. Eatough's practice of medicine at his Keansburg office was "a fraud. He's just giving out medication." Ms. Gleason also stated that Dr. Eatough would "just [write] out pain prescriptions" and not send his "pain patients for any tests," that he would instruct his patients to go to only one pharmacy, and that Dr. Eatough's had a reputation in the community as a "nut" "known for passing out prescriptions for narcotics."

Mary Beth Conley worked for Dr. Eatough as a medical assistant in the Keansburg office between June 14 and June 18,

2001. She claimed that Dr. Eatough's Keansburg office was overcrowded, that he would simply "[give] out prescriptions" for drugs to include "valiums, percocet, ocycotin (sic)" and "a lot more." Ms. Conley claimed that Dr. Eatough would see 50 or more patients a day at his Keansburg office, and would spend "maybe five minutes" with each patient. Ms. Conley stated that Dr. Eatough's reputation in Keansburg was as "the pill doctor," and noted that "nobody was sent for tests."

Dorothea McDowell, a licensed nurse, worked for Dr. Eatough between September 2001 and December 2002. She provided a lengthy statement, wherein she stated Dr. Eatough would see "mostly pain management" patients at his Keansburg office, and would spend "3 to 5 minutes" with patients "if they were there for medication refills" and "a little longer if they were there for the first time." In a similar vein, Letizia March, an LPN who worked for Dr. Eatough in the summer months of 2003 as a medical technician, claimed that Dr. Eatough ran an "unorthodox, unethical, criminal and obscene" practice and that he was "absolutely" a drug dealer.³

³ The Committee notes that the general claims about curt office visits find further support in the Investigative Report of the DEA (Exhibit V). Therein, it is noted that the DEA had observed that the DEA investigators had observed "that the average number of afternoon patients was closer to 50" and that "patients were timed from the time they entered the office through the front door, to the time they left. The average logged time from entry to exit of the patients was five minutes. ... patients were then followed to Keansburg Drugs where they were observed getting their prescriptions filled." See also statements of pharmacists Ashraf Basta (Exhibit W) and Allan Israel (Exhibit X), which suggest that both pharmacists called

Dr. Jeffrey Gudin, the State's expert witness, opined that Dr. Eatough's practices constituted deviations from accepted standards of care. He noted, among other items, that Dr. Eatough prescribed "astronomical" quantities of controlled substances to each of the three patients, and was particularly critical of the apparent failure of Dr. Eatough to attempt any concomitant therapies or modalities to address pain other than opioid therapy, of Dr. Eatough's failure to obtain prior treatment records or otherwise seek to confirm histories that were given to him, and of Dr. Eatough's failure to adequately monitor patients, such as by conducting lab tests and urine tests on said patients on a regular basis. Dr. Gudin was thus of the opinion that Dr. Eatough's assessment of his patients was suboptimal and that his overall care was negligent.

Dr. Eatough's Witnesses and Defense Presentation

As noted above, a total of eleven patients, three character witnesses and four members of respondent's office staff were called and testified for Dr. Eatough. All witnesses who testified portrayed Dr. Eatough as a compassionate and skilled caregiver. All of the patients testified that he was the only doctor who they had been to who was able to provide relief for unrelenting pain, and many testified that Dr. Eatough had literally saved their lives, as they had contemplated or even attempted suicide before finding Dr. Eatough and before being able to obtain relief for their daily unrelenting pain.

Dr. Eatough's office to voice concerns over the prescriptions that Barbara R. was seeking to fill.

The patient witnesses generally claimed that office visits were comprehensive, and all stated that the visits would last substantially longer than the five minute visits claimed by the State's witnesses. The character witnesses presented also spoke of Dr. Eatough in the most praiseworthy of tones, and it was apparent to the Committee that all patient and character witnesses who testified were genuine in their expressions of the esteem and regard in which they held Dr. Eatough.

The office employees who testified, all of whom are current employees of Dr. Eatough, painted a picture of a current practice which is nothing akin to the claims made regarding the practices that existed before 2005 (that is, the time that Dr. Eatough may have become aware of the DEA's investigation and may have instituted substantial changes to his practice methodologies). Several employees testified that Dr. Eatough was constantly attending seminars on pain management, and that he often would add new forms to be included in patient records after attending seminars.

Dr. Jeffrey Berman, the expert witness for respondent, testified that, in his opinion, the quantities of opioids that were prescribed by Dr. Eatough for Michael C., Barbara R. and Wayne D. were not excessive. Dr. Berman suggested that there are certain patients for whom high dosages of opioids are appropriate, if not necessary, to relieve intractable pain. On questioning by Committee members, however, Dr. Berman conceded that, of some 1200 patients he had treated for pain in the past four years, perhaps two such patients had been prescribed

opioids at levels akin to the levels that Dr. Eatough had prescribed to the three patients at issue, and he also made it clear that his practice would have included random urine screening of such patients at a frequency greater than that which had been conducted by Dr. Eatough.⁴

Committee Determinations

The Committee has concluded, on review of the record before us - most particularly, Dr. Eatough's own records detailing the care and treatment he provided to patients Michael C., Barbara R. and Wayne D. - that Dr. Eatough's actions in those three cases do palpably demonstrate that his continued, unrestricted practice would present clear and imminent danger to the public health, safety and welfare. While the Committee does express substantial concern about the sheer quantity of controlled substances that Dr. Eatough prescribed to each patient, ultimately the Committee's conclusion does not hinge on the quantity of drugs prescribed, but rather on the absence of any evidence to suggest that Dr. Eatough otherwise appropriately treated or monitored these three patients. Initially, the Committee notes that it is not in a position, at this stage of

⁴ The Committee notes that Dr. Berman also testified at some length about the chilling effect that criminal prosecutions of physicians for prescribing controlled dangerous substances has had on the willingness of physicians to prescribe adequate opioid therapy to intractable pain patients. Indeed, many articles from periodicals and medical journals addressing that very subject, addressing the divergent schools of thought that exist regarding the appropriateness and necessity of high dose opioid therapy to treat pain, and addressing the difficulties physicians generally have in detecting deceptive patients, were introduced into the record.

the proceedings, to make a determination as to the credibility of the three patient witnesses - most particularly, with regard to their claims that Dr. Eatough simply prescribed whatever they asked him to prescribe or whatever substances they may have handwritten on a list before visiting his office. Obviously, if those claims are ultimately found to be credible (and the Committee is constrained to point out that there is certain evidence, most particularly the handwritten lists that appear in the records of Michael C. and Barbara R., which support those claims), then Dr. Eatough's practice was a sham, his medical treatment nothing more than the blatant selling of drugs, and it is beyond reasonable dispute that his actions would support not only the temporary suspension, but indeed the most severe sanction against his license.

Focusing instead on the care provided to the three patients as evidenced by the medical record and the prescription profiles, however, it is still the case that the medical treatment Dr. Eatough provided in each case fell far below minimum appropriate standards of care, and that the deficiencies are of sufficient magnitude to support a finding today that his continued unrestricted practice would present clear and imminent danger. There is simply nothing in Dr. Eatough's records that suggests that he consistently sought to monitor blood levels of his patients, even at critical times where he greatly escalated the doses of medications he was prescribing to those patients. That failure did place each of Dr. Eatough's patients at risk, because the patients were then in peril of suffering dangerous

side effects, to include mental cloudiness and lethargy (that could place the patients in jeopardy when performing daily functions, in particular operation of motor vehicles).

The Committee also finds Dr. Eatough's failure to obtain prior treatment records to corroborate the claims made by each of the three patients on their initial visit to his office to be particularly disturbing. Indeed, given the claims made by each of the patients of histories of long periods of substantial pain, the Committee is of the opinion that it was incumbent on Dr. Eatough to obtain prior treatment records, if not at the first visit, then in a short time frame thereafter. To do less was to ignore a potential "red" or "yellow" flag, as a licensee should be suspicious of a patient who comes to an office on the first visit on an already substantial dosage of opioids, and then is unable to produce any prior treatment records to verify the claims that are made.

The Committee also finds Dr. Eatough's failure to attempt other modalities or therapies in any of the three patients to be disturbing, as it suggests that the only treatment that he considered to address the pain of each patient was opioid therapy. The Committee suggests that, in doing so, Dr. Eatough substantially deviated from an acceptable standard of care, and notes that there simply is no indication, in Dr. Eatough's record, that he ever even considered any other treatment options or modalities.

The Committee also expresses grave concern over Dr. Eatough's failure to document in his record the reasons why, in

the case of patient Michael C., he simply ignored the opinion expressed by consultant Dr. Del Valle. While it appears entirely appropriate for Dr. Eatough to have referred Michael C. for a consultant's opinion, it is entirely inappropriate for him to have simply ignored the consultant's opinion that narcotic prescribing for Michael C. should have been discontinued, or, at a minimum, to have made clear in his patient record any rationale he may have had for not following the consultant's advice. Further, the Committee suggests that an additional "red flag" should have been raised in Michael C.'s case, as Dr. Eatough should have been aware, on reading Dr. DelValle's report, that Michael C. had failed to give a complete history, to include the controlled substances that Dr. Eatough had been prescribing, to the consultant.⁵

Other findings which support the Committee's determination that Dr. Eatough's continued unrestricted practice would present a clear and imminent danger include the finding that Dr. Eatough, in each of the three cases, failed to order diagnostic testing to evaluate the patient's subjective complaints of pain, failed (for the majority of time he treated two of the patients) to conduct regular urine screens to attempt to detect possible drug diversion or use of other illicit substances, and failed, in each instance, to adequately or appropriately taper or wean the patient's from the drugs that he

⁵ Indeed, it is logical to conclude that Dr. Del Valle's concerns over the need to wean Michael C. from narcotics would have been even more acute had she known the full extent of medications that Michael C. was then being prescribed.

had prescribed at the time that he discharged each patient (indeed, in each case, Dr. Eatough terminated the physician-patient relationship without offering an appropriate referral, and without taking any other action which would constitute anything beyond abject patient abandonment).⁶

In making the above determinations, the Committee is aware that there are divergent schools of thought in the medical community regarding the appropriateness of using large quantities of opioids to alleviate pain, and is sympathetic and

⁶ With regard to patient Wayne D., the Committee noted that included in records maintained by Dr. Robert Grossman (Exhibit U), which records were in turn sent to Dr. Eatough on July 19, 2007 (for reasons which are not clear on the record as it exists at this time), is a consultant's report from Alex Levin, M.D.), which report was prepared shortly after the date that Wayne D. was terminated from Dr. Eatough's practice. Dr. Levin, the founder of acute and chronic pain services at Robert Wood Johnson Medical Center, noted that Wayne D. had been managed pharmacologically by his pain management physician Dr. Eatough, and was then on methadone 200 mg every 6 hours, roxicodone 90 mg four times a day and oxycontin 40 mg twice a day. Dr. Levin's conclusion on the regimen of opioids prescribed by Dr. Eatough was as follows:

[The] amount of medications that he is getting from his current pain management physician in my judgment is outrageously high. If that were the solution to his problems, he wouldn't be having any pain whatsoever being on so much of controlled class II substances. However, it's not the case. Clearly, he has to be detoxified in inpatient facility because amount of pain control substances that he is taking is enormous. . . . I do not know who Dr. Eatough is but clearly in my judgment he is doing a great disservice to this young man.

Exhibit U, 370-72.

understanding of the need to assure that individuals who suffer from chronic intractable pain receive appropriate care from physicians, to include sufficiently aggressive opioid therapy. Opioids clearly have essential uses for the relief of pain, and the Committee is not herein seeking to suggest that the simple prescribing of high doses of opioid therapy is inappropriate. Clearly, however, there is no debate in the medical community, nor any suggestion in any of the articles that were submitted as defense exhibits, that a physician prescribing high dose opioid therapy may appropriately do so without seeking to monitor his patients, without exploring other potential modalities, and without attempting to detect patients that might be engaging in diversion. In this case, by failing to seemingly take any of the adjunct steps which are integrally related to the decision to prescribe, Dr. Eatough abrogated his fundamental responsibilities as a medical licensee, and it is that abrogation which ultimately supports our conclusion that his continued practice must presently be restricted.

We point out that, in concluding that something short of a full temporary suspension will be sufficient, we have given careful consideration to the testimony presented about the manner in which Dr. Eatough's practice is conducted today, and considered the compelling testimony offered by the many patients who testified on his behalf. It appears, based thereon, that Dr. Eatough has apparently made modifications to his practice methodology since the time that he treated Michael C., Barbara R. and Wayne D., and that he may today be practicing in a manner

far different from the manner he practiced when treating those individuals. In order to attempt to provide Dr. Eatough an opportunity to continue to practice, at least until the facts in this matter can be more fully developed at a plenary hearing, we have concluded that Dr. Eatough 's practice can continue (at least pending an assessment of his current skills to practice general medicine and pain management) if there are sufficient checks on that practice by Board-approved practice monitors.

WHEREFORE, it is on this 7th day of January, 2008,

ORDERED:

1) Dr. Eatough shall be prohibited from prescribing any Schedule II Controlled Dangerous Substances.

2) Dr. Eatough's medical practice is to be subject to ~~monitoring by two physicians, both of whom are to be approved by~~ the Board. Respondent shall secure a "general practice monitor," which monitor is to review respondent's general practice of medicine. The monitor is to review not less than 10 medical charts of patients seen by respondent in a given month. Respondent shall maintain a list of all patients that he sees in a given month, and shall provide the monitor with said list. The monitor shall then randomly select ten patients, and respondent shall provide the monitor with the medical charts for those selected patients within forty-eight hours. The general practice monitor shall immediately contact the Board in the event that he or she detects any deviations from appropriate standards of care in Dr. Eatough's practice, and shall provide quarterly written reports to the Board detailing his or her

findings made upon review of respondent's medical charts. Respondent is solely responsible to bear any expenses for the monitoring.

3) For all pain management patients, Dr. Eatough is to secure a Board approved physician monitor, who shall be required to pre-approve any prescriptions for Schedule III or Schedule IV Controlled Dangerous Substances that respondent proposes to issue to any patient. Dr. Eatough shall provide the physician monitor with a copy of the proposed prescription and a copy of the progress notes for the patient. The physician monitor shall then be required to notify Dr. Eatough that the prescription is approved before the prescription is actually given to the patient.

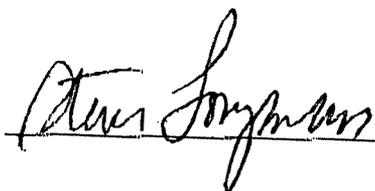
4) Respondent shall secure an assessment of his medical skills, to be conducted by a Board approved assessment program. The assessing entity shall evaluate both respondent's ability to practice general medicine and his ability to practice pain management. Arrangements for the assessment to be conducted are to be secured within ninety days of the date of this Order, and the assessment is to be completed within 180 days of the date of entry of this Order.

5) In the event respondent fails to comply with any of the provisions of this Order, or in the event that the assessment program concludes that respondent's practice should be subject to further restriction and/or that respondent should presently cease engaging in practice, then the Board reserves the right to order additional restrictions and/or the full

temporary suspension of respondent's license pending plenary hearing in this matter.

6) Respondent must make arrangements for, and secure approval from the Board, for both practice monitors (as specified in paragraphs 2 and 3 above). In the event respondent fails to secure the monitoring required within seven days, then respondent shall cease and desist from engaging in further medical practice until an acceptable monitoring program has been approved by the Board.

STATE BOARD OF MEDICAL EXAMINERS
HEARING COMMITTEE



By:

Steven Lomazow, M.D.
Chairman
