

FILED

MAY 22, 2008

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS
EFFECTIVE**

NUNC PRO TUNC JUNE 13, 2007
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 THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF	:	Administrative Action
	:	
	:	
STEVEN C. NIELSON, D.P.M.	:	ORDER
	:	
	:	
TO PRACTICE PODIATRY IN THE	:	
STATE OF NEW JERSEY	:	

This matter was opened before the New Jersey State Board of Medical Examiners upon the filing of a Notice of Motion for Summary Decision and for the imposition of sanctions regarding a Verified Complaint filed by Zulima Farber, then Attorney General of New Jersey, by Kevin Jespersen, Deputy Attorney General. Respondent represented by Lee Goldsmith, Esq., filed a response to the motion.¹ The motion was argued before the Board of Medical Examiners on June 13, 2007 with consideration given by the Board to all documents

¹ Respondent Nielson was previously represented by Alma Saravia, Esq., of Flaster, Greenberg, P.C., who filed an answer to the complaint.

CERTIFIED TRUE COPY

submitted:². The Verified Complaint in this matter alleged as to ten patients that respondent performed abdominal tumescent liposuction, which constitutes abdominal surgery that is beyond the scope of practice of a podiatrist. It was alleged inter alia that respondent administered excessive dosages of Lidocaine to at least five liposuction patients increasing the risk of anesthesia toxicity, did not properly evaluate two patients pre-operatively, exposed patients to the risk that severe complications would not be recognized or appropriately treated, and exposed patients to the risk of serious injury or death. Respondent's actions were alleged

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In support of its motion the State submitted and relied upon documents including but not limited to the following:

- EX. A. - Investigative Report - Jan. 31, 2006 and exhibits including patient statements, advertisements, billing statements and certification of Executive Director
- Exs. B/C - Diagram of residence and office and photographs
- EX. D - Affidavit of undercover investigator, price list, Botox and laser literature.
- EX. E - Affidavit of undercover investigator, literature on liposuction
- EX. F - Board Minutes
- EX. G - Affidavit of James Ricketti, D.P.M.
- EX. H - Certification of Steven Nielsen, D.P.M.
- Exs. I through R- Patient Records
- EX. S - Certification of Paul J. Loverme, M.D., and C.V.

to constitute gross or repeated malpractice, negligence or incompetence, professional misconduct, the unlicensed practice of medicine, and repeated violations of the statutes administered by the Board, all in violation of N.J.S.A. 45:21 and N.J.S.A. 45:9-6.

Following the filing of the Verified Complaint, respondent voluntarily surrendered his license in May of 2006 pending plenary proceedings. The state's Motion for Summary Decision was subsequently filed and argument on the motion was adjourned several times prior to the hearing date of June 13, 2007. The parties advised that they had stipulated to facts to include the following facts as of the time of oral argument and hearing:

Respondent is licensed to practice podiatry in the State of New Jersey and does not have a license to practice medicine. He performed abdominal tumescent liposuction on ten patients from July 1, 2005 through February 4, 2006, which is abdominal surgery and beyond the scope of his practice as a podiatrist. Between April 25, 2005 and February 21, 2006, he administered botox injections to 3 patients' faces, on six separate occasions. He also administered laser therapy to the faces, necks, arms and torsos of 6 patients on 48 separate occasions. Both the administration of botox and laser therapy to patients as indicated is beyond the scope of podiatry. The conduct of Dr. Nielson created the potential of serious harm to those patients. Respondent published advertisements in the Courier Post, by which he offered, among other things, services that were the practice of general cosmetic medicine and surgery, and stated "treatments performed by certified physician." The advertisements nowhere stated that Respondent Nielson's only license was as a podiatrist.

Respondent Nielson maintained a website for his practice that offered Botox treatments and laser therapy for "scars and wrinkles, unwanted hair removal by laser, latest treatment for varicose and spider veins anywhere on the body and treatment of sun damage," and that stated a "Board Certified Laser Physician and Surgeon" performed the procedures. The website nowhere stated that Respondent Nielson's only license was as a podiatrist. The Board entered an Interim Consent Order on

May 10, 2006 with Respondent Nielson which provided, among other things, that the Respondent would cease and desist from the practice of podiatry in the State of New Jersey pending the outcome of this case.

Respondent requested that the record reflect that none of the potential risks indicated in the Verified Complaint occurred and no patient was harmed. Dr. Nielsen acknowledged that he was in violation of the Board's statute and regulations as asserted in the Verified Complaint, agreed to the revocation of his license and that he shall be ineligible to apply for a license to practice any healthcare profession in New Jersey until he undergoes a complete psychiatric evaluation by a Board approved psychiatrist who submits a written report including an unqualified opinion that respondent suffers from no psychiatric condition that would render him a threat to the health, safety, or welfare of patients or the public, that respondent has fully complied with recommendations for the treatment and agrees to comply with the psychiatrist's recommended treatment plan and practice restrictions, and those restrictions deemed appropriate by the Board.

Following agreement of the parties to the stipulation of facts, conclusions of law- including that Steven C. Nielson, D.P.M. has engaged in conduct that constitutes multiple violations of N.J.S.A. 45:1-21 (b), (c), (d), and (e), N.J.S.A. 45:9-6 and N.J.S.A. 45:5-11- and concessions as to the disciplinary sanctions, the Board, upon a motion made and seconded voted unanimously to accept as the findings of fact and conclusions of law in this matter those above and which were agreed to by the parties on the record.

DISCUSSION

After the Board voted to accept the findings of fact and conclusions of law as presented on the record by the parties, a decision on the motion for summary decision was rendered unnecessary. Additionally, the parties had agreed that certain sanctions as indicated above, should be imposed, but respondent submitted information and desired to proceed to a hearing regarding the appropriate penalty, in large measure in order to assert his inability to pay costs and penalties. In his written submissions and oral presentation, respondent took the position that none of the patients were harmed as a result of the risks they were subjected to by the procedures respondent performed on them; asserted that he suffers from Obsessive Compulsive Disorder, for which he has been under treatment and medication; and indicated this condition "may" have led to his situation as he was attempting to expand his practice, "a salesman provided him the opportunity through the use of lasers and once involved, he could not stop." Respondent also asserted, without tax returns or certified financial statements which are expected to support a claim of inability to pay³, that his assets are insufficient to pay penalties and costs given his mortgages and other liabilities and as he is unemployed and responsible to support four children.

³Respondent did submit an unaudited net worth statement indicating a negative net worth based primarily on multiple mortgages on his home and student loans.

Representative were made that respondent's 2004 tax return showed personal income of \$70,000 despite over \$800,000 of income from his business entities (Advanced Ankle & Laser Me Beautiful); with similar amounts in 2005 (\$65,000 personal income with over \$820,000 income from the business entities).

Following the presentation regarding mitigating circumstances, the Board concluded that the violations established -including at least 68 instances of the unlicensed practice of medicine beyond the scope of this licensee which posed risks of harm in each instance - are so egregious, that any showing of financial circumstances (even with the representations here made as to the tax returns) is insufficient to alter the Board's determination that it is appropriate to impose significant discipline, monetary penalties for each instance of patient interaction, and to impose full costs.

We deem the sanctions agreed to by the parties appropriate to the seriousness of the findings herein, and therefore impose them as indicated below. As to monetary penalty, although the maximum penalty of up to \$20,000.00 per violation of the statute would be justifiable in this instance, considering the revocation of licensure imposed, and the mitigation presented, we feel it appropriate to impose \$10,000 for each of 68 of the patient encounters- totaling \$680,000 of monetary penalties.

As to costs, Based on the documentation of investigative,

expert, and transcript costs and attorney's fees presented, as we note the reasonableness of the amount of costs was not challenged, and as we find the costs to be reasonable and appropriate to a case of this magnitude, we impose \$74,065.18 in costs consisting of \$44,667.50 attorney's fees and \$29,397.68 in investigative and other costs.

IT IS THEREFORE on this 21 day of May, 2008,

Ordered that as of the oral announcement of this matter on the record on June 13, 2007:

1. The license of respondent Steven C. Nielson, D.P.M. to practice podiatric medicine in the State of New Jersey is revoked.

2. Respondent shall be ineligible to apply for reinstatement of a license to practice podiatric medicine in the State of New Jersey until such time as:

a. He undergoes a psychiatric evaluation by a psychiatrist pre-approved by the Board;

b. Such psychiatrist shall have submitted a complete written report of such evaluation to the Board;

c. Such psychiatrist shall provide an unqualified, written opinion that Respondent suffers from no psychiatric condition that would render him a threat to the health, safety and welfare of patients or the public;

d. Such psychiatrist shall certify to the Board that the Respondent has fully complied with whatever recommendations the

Respondent has fully complied with whatever recommendations the psychiatrist has made with regard to treatment;

e. The Respondent agrees to comply with any practice restrictions that the psychiatrist may recommend or that the Board may deem appropriate, and agrees to comply with any treatment plan the psychiatrist may recommend; and

f. Respondent shall have fully complied with all terms of this Order.

3. The Respondent Nielson shall pay a civil penalty of \$680,000.00, representing \$10,000.00 for each of 68 of the patient encounters included in the stipulation and findings.

4. The Respondent Nielson shall pay \$74,065.18 in costs in this matter, including costs of investigation, expert witness fees transcripts and other costs of \$29,397.68 and \$44,667.50 in attorney's fees.

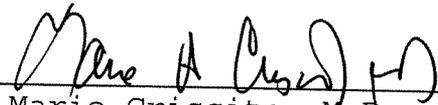
5. The Board may, in its sole discretion, file a Certificate of Debt for the amounts due under this Final Order if penalties and costs are not paid within 30 days of the entry of this Order.

6. All payments required under the terms of this Final Order shall be made by certified check or money order payable to "State Board of Medical Examiners" and shall be delivered to the Executive Director of the Board no later than 30 days after entry of this Order.

7. The Respondent shall fully comply with the Directives for

Disciplined Licenses which are and made a part hereof whether or not attached hereto.

STATE BOARD OF MEDICAL EXAMINERS

By: 
Mario Criscito, M.D.
Board President

NIELSON, Steven C., D.P.M.
NJ License # MD002408

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.

**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.