

**FILED**

September 10, 2008

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

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

_____	:	
IN THE MATTER OF THE LICENSE OF	:	
	:	
Atul Kumar Agarwala, M.D.	:	Administrative Action
License No. MA61586	:	
	:	
TO PRACTICE MEDICINE AND SURGERY	:	Final ORDER
IN THE STATE OF NEW JERSEY	:	OF DISCIPLINE
_____	:	

This matter was opened to the New Jersey State Board of Medical Examiners ("Board") upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

**FINDINGS OF FACT**

1. Respondent, Atul Kumar Agarwala, M.D., is the holder of license number MA61586 and has been licensed to practice medicine and surgery in the State of New Jersey since 1994.

2. On or about March 16, 2004, the New York State Department of Health, State Board for Professional Medical Conduct ("New York Board"), filed a Statement of charges alleging that Atul Kumar Agarwala, M.D. ("Respondent") committed professional misconduct as

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defined by N.Y. Educ. Law §6530(14) and N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently. Specifically, the New York Board alleged that during the periods between 2000-2002 Respondent gave inaccurate responses in connection with applications for staff privileges at Our Lady of Mercy Medical Center, Bronx, N.Y. and Parkway Hospital, Queens, N.Y. Additionally, the New York Board alleged that during the period between 2000-2002, with intent to mislead, Respondent gave inaccurate responses in connection with applications for staff privileges at Irvington General Hospital, Irvington, New Jersey; on his application for registration renewal with the New York State Education Department; and on his New York State Physician Profile.

3. On or about March 26, 2004 the New York Board entered a Consent Agreement and Order. Pursuant to the Consent Agreement and Order, Respondent agreed not to contest the First Specification of the Statement of Charges. The First Specification charged Respondent with committing professional misconduct as defined by N.Y. Educ. Law §6530(14). As a result, Respondent received a Censure and Reprimand. Additionally, Respondent is subject to a two year term of conditions which include his agreement to conform his conduct to moral and professional standards; maintain active registration of his license with the New York Board; provide information concerning a full description of Respondent's employment and practice, all professional and residential addresses

and telephone numbers, and information regarding all investigations, charges, convictions or disciplinary actions. Also, Respondent was required to enroll in and complete a continuing education program in Medical Ethics and pay a \$10,000 fine within 30 days of the effective date of the Order.

#### **CONCLUSIONS OF LAW**

The above disciplinary action taken by the sister state of New York provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(e) in that Respondent has engaged in professional misconduct.

#### **DISCUSSION ON FINALIZATION**

Based on the foregoing findings and conclusions, a Provisional Order of Discipline ("POD") was entered by this Board on March 24, 2008 and served upon Respondent. The Respondent responded to the POD by letters dated May 23, 2008 and July 3, 2008 at which time he requested that the Board dismiss its POD. The Attorney General responded by letter dated July 3, 2008 to Respondent's original submission.

More specifically, in his responses, Respondent outlined the penalties imposed by the New York Board and stated that he did not understand that the censure and reprimand was public. He further stated that the New York disciplinary action resulted in unanticipated adverse consequences against him, such as his

automatic removal from eligibility to participate in the panels of the Blue Cross/Blue Shield insurance plans, as well as a loss of reputation among colleagues and patients. Respondent further argues that this Board erroneously concluded that Respondent had fraudulently and/or with intent to deceive practiced medicine as more fully set forth in the New York Statement of Charges.

Respondent requests that the Board take into consideration various mitigating factors, including, but not limited to, his personal circumstances during the 2000-02 time frame; his compliance with the New York Consent Agreement and Order; and the adverse consequences of taking action against his New Jersey medical license, including negative publicity of a public reprimand and possible extended ineligibility for participation on insurance companies' panels of physician providers. He argues that any New Jersey action would not be a reciprocal disciplinary action which would end when the sister state action ends, but rather an additional disciplinary action for the same events, and, therefore, improper double punishment. As a result, Respondent maintains that any action taken by this Board would be unwarranted and unjustified.

The Board has reviewed all mitigating information, including various supporting letters, response letters of counsel, and certification of Respondent, and is sympathetic to Respondent's personal circumstances during the 2000-02 period. The Board finds

that the Respondent agreed to not contest only the First Specification set forth in the New York Statement of Charges which incorporated paragraph A under Factual Allegations, but not paragraph A1 which alleged intent to deceive. Accordingly, the Board has modified its Findings of Fact and Conclusions of Law as set forth in the POD to remove the proposed violation pursuant to N.J.S.A. 45:1-21(b) (dealing with misrepresentation). The Board likewise notes that the Attorney General concedes that the New York Board ultimately did not find that Respondent had engaged in acts with an intent to deceive.

The Board, however, rejects Respondent's double jeopardy/double punishment argument since there is no applicability of the doctrine in a civil license disciplinary proceeding. Rather, the Board finds that it has distinct and independent statutory authority pursuant to N.J.S.A. 45:1-21(e) to discipline Respondent's New Jersey medical license and impose penalties based upon the findings agreed to by the Respondent in the New York Consent Agreement and Order.

Further, as to Respondent's reciprocal disciplinary action argument, it is contemplated that any disciplinary action taken in this State based upon findings of fact/admissions and conclusions of law of a sister state or agency will, by necessity, occur after the final determination in that state and will not necessarily end at the same time.

The Board further finds the imposition of a public reprimand to be appropriate and fair taking into consideration the Respondent's acts to which he admitted as well as the mitigation information. The Board acknowledges the Respondent's concern that a public reprimand may result in a loss of reputation and adverse actions by other states, agencies or third parties. However, the Board is required to safeguard the interests of the public and maintain the public's trust and confidence, as well as protect the integrity of the profession, by taking appropriate disciplinary action against a licensee despite such possible loss of reputation and adverse consequences of other states, agencies or third parties.

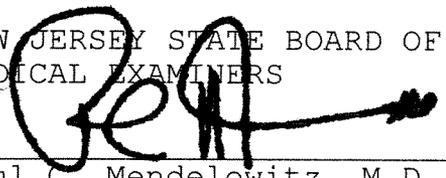
Finally, Respondent requests an in-person hearing to discuss the arguments set forth in his responses to the POD. It is clear that the Administrative Procedure Act, N.J.S.A. 52:14B-11, and In the Matter of the License of Andrew T. Fanelli, D.O., to Practice Medicine and Surgery in the State of New Jersey, 174 N.J. 165 (2002), grants a right to a hearing when an agency revokes or refuses to renew a license. However, in the present case, the penalty is a public reprimand, not a revocation or failure to renew. Additionally, the Respondent has not identified any issue of fact requiring resolution at a plenary hearing. The Boards finds that the parties have had a full and fair opportunity to provide written arguments with supporting documentation and that it

has sufficient information to make a final determination. As a result, the Board denies Respondent's request for an in-person hearing.

**ACCORDINGLY, IT IS** on this 10th day of Sept, 2008, **ORDERED THAT** Respondent shall be, and hereby is, publicly reprimanded for engaging in professional misconduct in violation of N.J.S.A. 45:1-21(e).

NEW JERSEY STATE BOARD OF  
MEDICAL EXAMINERS

By:

  
Paul C. Mendelowitz, M.D.  
Board President

**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.