FILED
May 14, 2009
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 SALVATORE DEFRANK, D.P.M. License No. MD001445 TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY	Administrative Action FINAL ORDER 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, Salvatore DeFrank, M.D., is the holder of License No. MD001445 and was licensed to practice medicine and surgery in the State of New Jersey on July 2, 1984. Respondent's license lapsed on October 31, 1989, which has resulted in the automatic suspension of Respondent's license to practice medicine and surgery in the State of New Jersey without a hearing pursuant to N.J.S.A. 45:1-7.1(b).

CERTIFIED TRUE COPY

2. On or about February 28, 2005 the Texas State Board of Podiatric Medical Examiners ("Texas Board") entered into an "Agreed Order" with the Respondent, Salvatore DeFrank, D.P.M., which provided for the revocation of his Texas license to practice podiatric medicine. More specifically, the Agreed Order stated that Respondent violated Texas laws in that: he prescribed medications that were for non-podiatric medical care; he failed to perform due diligence to prevent drug diversion; and he practiced podiatry below the standard of care.

3. Thereafter, on or about July 18, 2008, Respondent pled guilty in connection with a superseding indictment filed on April 4, 2007 and an information filed on July 10, 2007 to 21 U.S.C. §846 (21 U.S.C. §841(a)(1) and (b)(1)(D)), conspiracy to distribute a controlled substance, in the United States District Court, Northern District of Texas, Dallas Division, and was sentenced for each criminal conviction to forty-one months in prison to run concurrently.

CONCLUSION OF LAW

1. The above disciplinary action taken by the Texas State Board of Podiatric Medical Examiners 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and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(g) in that Respondent's Texas license to practice medicine has been revoked.

2. The above criminal convictions provide 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(f).

DISCUSSION ON FINALIZATION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline ("POD") was entered by this Board on January 16, 2009 and served upon Respondent. The POD was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor. Respondent submitted a response dated February 6, 2009 to the POD. The prosecuting Deputy Attorney General responded by letter dated March 17, 2009.

In his response, the Respondent states that his license has been in an inactive status for almost 20 years and, accordingly, he expressed curiosity concerning the urgency shown in this matter. He advises that he is in a Minimum Security Federal Prison Camp and that he cannot access information regarding active and inactive podiatric practitioners. He states that it would be unfair to take

advantage of him given his current circumstances and therefore requests modification or dismissal of the POD until he can properly respond.

Respondent's submission was reviewed by the Board, and the Board determined that further proceedings were not necessary and that no material discrepancies have been raised. The Board finds that the Respondent did not dispute the Findings of Fact or Conclusions of Law in his response. Rather, Respondent makes statements unrelated to the voluntary surrender of his Texas license and guilty plea. The Board is unpersuaded by Respondent's submission and finds that it does not warrant a hearing, modification or dismissal of the POD.

ACCORDINGLY, IT IS ON THIS 14th day of May, 2009, ORDERED THAT:

1. Respondent's license to practice medicine and surgery in the State of New Jersey shall be suspended until such time as his license to practice podiatric medicine in Texas has been fully reinstated with no restrictions, conditions or probation.

2. Prior to resuming active practice in New Jersey, Respondent shall be required to appear before the Board (or a Committee thereof) and has the burden to demonstrate that he is fit to practice medicine in this State and, further, demonstrate that he holds an active, unrestricted license to practice medicine in Texas. Any practice in this State prior to said appearance shall

constitute grounds for the charge of unlicensed practice. In addition, the Board reserves the right to place restrictions and/or limitations upon Respondent's practice should his license be reinstated in this State.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By: _____
Paul C. Mendelowitz, M.D.
Board President

DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE HAS BEEN ACCEPTED

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

NOTICE OF REPORTING PRACTICES OF BOARD REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

(1) Which revokes or suspends (or otherwise restricts) a license,
(2) Which censures, reprimands or places on probation,
(3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license(and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A.45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.