

FILED

June 8, 2009

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

nunc pro tunc April 8, 2009

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

In the Matter of:

BRIAN SHAFFER, M.D.

CONSENT ORDER

This matter was opened before the New Jersey State Board of Medical Examiners upon the Attorney General's filing of an administrative complaint seeking the imposition of disciplinary sanction against respondent Brian Shaffer, M.D., on December 5, 2008. Said complaint, filed by Deputy Attorney General William Lim, was predicated generally on respondent's conviction, following his entry of a guilty plea, of having violated 26 U.S.C. §7201 (Income Tax Evasion), for which crime he was sentenced on July 25, 2008 at a hearing in the United States District Court for the District of New Jersey. The Attorney General alleged in said complaint that respondent's conviction, and the facts established thereby, provided basis for the entry of disciplinary sanction against respondent pursuant to N.J.S.A. 45:1-21(b), (e), (f) and/or (h) (based in turn on respondent's alleged violation of N.J.A.C. 13:35-6.17), and pursuant to N.J.S.A. 45:9-6.

Respondent, who is represented in this matter by DeCotiis, Fitzpatrick, Cole & Wisler (Anthony LaBue, Alex J. Keosky and Susan Fruchtman appearing on respondent's behalf), filed an answer to the complaint on January 15, 2009, wherein he admitted in

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part and denied in part the allegations made within the Complaint. The Attorney General thereafter filed a motion for entry of summary decision on the complaint, returnable before the Board on April 8, 2009. Prior to hearing on said motion, a negotiated settlement of this matter was reached, the terms of which were placed on the record and expressly agreed to, under oath, by respondent.

The record before the Board establishes that, on July 25, 2008, respondent was convicted, following his entry of a guilty plea on April 14, 2008, of having violated 26 U.S.C. §7201 (Income Tax Evasion) in the United States District Court, District of New Jersey. When entering his guilty plea, respondent admitted that, during the years 2001, 2002 and 2003, he received cash payments from two individuals who ran diagnostic testing laboratories (specifically, Chambers Clinical Laboratory in Trenton, New Jersey and Nu-Tek Diagnostic Laboratories in Pennsylvania), in exchange for sending blood drawn from his patients to the laboratories for testing. Respondent further admitted that he knowingly and willingly failed to report his receipt of the cash payments on his income tax returns.

The Board having found that respondent's conviction, and the facts admitted at the time of his entry of his guilty plea, provide a basis for the entry of disciplinary sanction pursuant to provisions of the Uniform Enforcement Act, to expressly include N.J.S.A. 45:1-21(f) (conviction of a crime or offense involving moral turpitude or relating adversely to the practice of medicine),

and being satisfied that the within disposition is adequately protective of the public health, safety and welfare, and that good cause exists to support the entry of this Order,

IT IS on this 8th day of June , 2009

ORDERED

nunc pro tunc April 8, 2009:

1. The license of respondent Brian Shaffer, M.D., to practice medicine and surgery in the State of New Jersey is hereby suspended for a period of three years, effective May 8, 2009. The first six months of the suspension, commencing on May 8, 2009 and continuing through and including November 7, 2009, shall be served as a period of active suspension. The remainder of the period of suspension shall be stayed and served as a period of probation, conditioned upon respondent's compliance with the remaining terms of this Order.
2. Respondent is hereby assessed costs and penalties, to include attorneys' fees, in the aggregate amount of \$30,000. The amount of said sum that shall be deemed to be costs shall be set upon the Attorney General's submission of a supplemental certification of costs. Payment of the assessment herein may be made in installments of \$1,250.00 per month, with fulfillment of the total payment amount no later than two years from the entry of this final consent order. The Board may file a Certificate of Debt for the amounts due under this final Consent Order, to be discharged upon payment in full of all amounts due under this Final Consent Order.

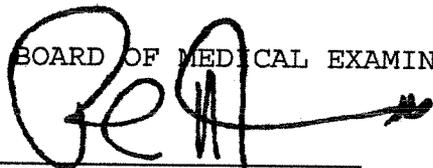
Payments shall be made by certified check or money order payable to the "State Board of Medical Examiners" and delivered to the Executive Director of the Board.

3. Prior to resuming any practice during the period of probation, respondent shall attend and successfully complete a Board-approved course in medical ethics. Successful completion of the Professional Renewal in Medicine through Ethics course, available through the Robert Wood Johnson Medical School, shall be deemed to satisfy this requirement. "Successful completion" means that respondent attended all sessions of the course, fully participated in the course, and received final evaluation of an "unconditional" passing grade. Respondent shall ensure that documentation attesting to his successful completion of the ethics course is provided to the Board by the course provider.

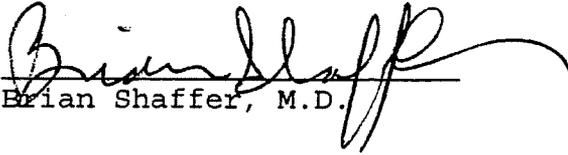
4. Respondent shall comply with all terms of the Board's "Directives Applicable to any Medical Board Licensee who is Disciplined or whose surrender of Licensure has been Accepted," copy attached.

STATE BOARD OF MEDICAL EXAMINERS

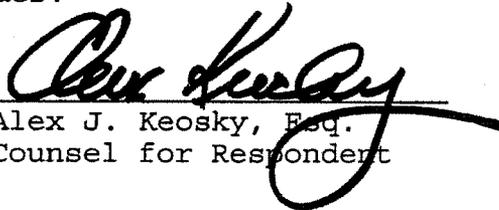
By:


Paul C. Mendelowitz, M.D.
Board President

I hereby agree to be bound by the terms and conditions set forth above, and consent to the entry of this Order by the State Board of Medical Examiners


Brian Shaffer, M.D.

Consent given to the form and entry of this Order.


Alex J. Keosky, Esq.
Counsel for Respondent

Consent given to the form and entry of this Order.


William Lim
Deputy Attorney General

**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.

NJ License # _____

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.

**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.