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FILED

October 19, 2009
**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

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

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

JOSEPH R. GAUDIO, M.D.
LICENSE NO. 25MA06692700

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL CONSENT ORDER

This matter involving Joseph R. Gaudio, M.D. ("Respondent"), was opened to the State Board of Medical Examiners ("Board") upon receipt of information concerning a federal Drug Enforcement Administration ("D.E.A.") investigation into Respondent's affiliation with an internet pharmacy.

PROCEDURAL HISTORY

Based upon letters received from Respondent's former employer, New Jersey Anesthesia Associates ("N.J.A.A."), and investigative reports received from the D.E.A., Respondent appeared at a Preliminary Evaluation Committee ("P.E.C.") of the Board on December 17, 2008. Following that appearance, the Board also received copies of the interim and final orders of the D.E.A. resulting

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from Respondent's administrative hearing before the D.E.A. At all times relevant to this Final Consent Order, Respondent was represented by the law firm of Proskauer Rose, LLP.

FINDINGS OF FACT

Based upon the findings and conclusions contained in the D.E.A. orders from Respondent's administrative hearing, the transcript of Respondent's appearance before the P.E.C., and documents produced therein, the Board finds that from 2004 to 2005, Respondent was affiliated with an internet pharmacy operation and electronically authorized prescriptions for drugs, including controlled dangerous substances ("C.D.S."), to patients over the internet for whom he performed no physical examination and for whom he kept inadequate records of treatment. Respondent failed to disclose the fact of the investigation and subsequent 2006 D.E.A. administrative proceedings to the Board and the New Jersey Drug Control Unit when required to do so on his license renewal forms. It is undisputed that the 2006 D.E.A. hearing resulted in a 2009 final agency decision suspending Respondent's D.E.A. registration for prescribing C.D.S. for one year, beginning April 8, 2009.

The Board finds that the actions of Respondent described herein constitute violations of N.J.S.A. 45:1-21(e) (professional misconduct, for failure to make proper disclosures to the Board); N.J.S.A. 45:1-21(g) (authority to prescribe C.D.S. suspended by the D.E.A.); N.J.S.A. 45:1-21(m) (prescribed C.D.S. indiscriminately or without good cause); and N.J.S.A. 45:9-22.19 (prescribed Schedule II C.D.S. not in accordance with applicable Board regulations). The Board further finds that the actions of Respondent described herein constitute violations of N.J.A.C. 13:35-6.5(b) (failure to prepare and maintain patient records) and N.J.A.C. 13:35-7.6 (failure to observe

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limitations on prescribing of C.D.S.); and thus a violation of N.J.S.A. 45:1-21(h) (failure to comply with the provisions of any act or regulation administered by the Board).

ORDER

In order to avoid further formal proceedings in this matter, Respondent agrees to each and every term of this Final Consent Order. The Board has determined that the terms of this Final Consent Order are sufficient to protect the health, safety, and welfare of the public. For such reasons and other good cause shown,

IT IS on this 19 day of October, 2009,

ORDERED:

1. The license of Respondent, Joseph R. Gaudio, M.D., to practice medicine and surgery in New Jersey is suspended for a period of two years, effective November 1, 2009. The first three months of such suspension, beginning on November 1, 2009, shall be an active suspension during which Respondent shall completely cease and desist from the practice of medicine and surgery in New Jersey. The remaining term of suspension shall be stayed and served as a period of probation.
2. No period of time during which Respondent engages in the practice of medicine in any other State or jurisdiction will count toward Respondent's period of active suspension of licensure in New Jersey.
3. Pursuant to N.J.S.A. 45:1-25, Respondent is assessed \$5,000.00 in civil penalties and \$6,500.02 in investigative costs and attorney's fees, totaling \$11,500.02. Payment of this sum may be made in installments of \$547.62 per month, with the first installment due on February 1, 2010, and fulfillment of payment of the total amount no later than two years from the entry of this Final

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Consent Order. If any installment becomes more than thirty days past due, the Board may, in its sole discretion, demand acceleration of payment of the entire amount outstanding. The Board, in its sole discretion, may file a Certificate of Debt for the amounts due under this Final Consent Order, and the Certificate shall be discharged upon payment in full of all amounts required 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.

4. Prior to reinstatement from active suspension, Respondent shall demonstrate successful completion of a Board-approved course in ethics. "Successful completion" means that Respondent attended all sessions of the course, fully participated in the course, and received a final evaluation of an unconditional passing grade. Respondent shall submit to the Executive Director of the Board written verification of said successful completion of the course.

5. Prior to reinstatement from active suspension, Respondent shall demonstrate successful completion of a Board-approved course in C.D.S. prescribing. "Successful completion" means that Respondent attended all sessions of the course, fully participated in the course, and received a final evaluation of an unconditional passing grade. Respondent shall submit to the Executive Director of the Board written verification of said successful completion of the course.

6. Prior to reinstatement from active suspension, Respondent shall appear before a Preliminary Evaluation Committee of the Board at which time he shall demonstrate full compliance with the terms of this Final Consent Order.

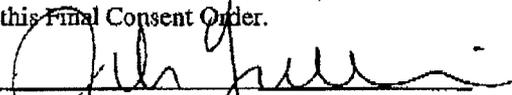
7. Respondent shall comply with all terms of the Board's "Directives Applicable to Any Medical Board Licensee Who is Disciplined or Whose Surrender of Licensure Has Been Accepted," copy attached and incorporated by reference into this Final Consent Order.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

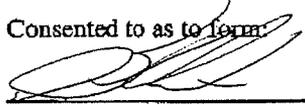
By:


Paul C. Mendelowitz, M.D., President

I have read the within Final Consent Order. I understand the Final Consent Order and I agree to be bound by its terms and conditions. I hereby consent to the entry of this Final Consent Order.


Joseph R. Gaudio, M.D.
Respondent

Dated: 10/13/09

Consented to as to form:

Proskauer Rose, LLP
Attorney for Respondent
By: Barry Warner, Esq.

Dated: 10/14/09



**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSE
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.

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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.