FILED
July 9, 2010
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 ERNESTO LUIS MARTIN, M.D. License No. MA60603 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 upon receipt of information which the Board has reviewed and on which the following preliminary findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Respondent, Ernesto Luis Martin, M.D., License No. MA60603, is a physician licensed in the State of New Jersey and has been licensed at all times relevant hereto. As a consequence of Respondent's failure to submit his biennial renewal on June 30, 1995, Respondent's license to practice medicine in the State of New Jersey was automatically suspended pursuant to N.J.S.A. 45:1:7-1(b).

2. on or about December 12, 2007 Ernesto Luis Martin, M.D. (hereafter "Respondent") entered into a Final Decision and Order

CERTIFIED TRUE COPY

with the Wisconsin Medical Examining Board (hereafter "Wisconsin Board"). (Exhibit A is attached to and made a part hereof.)

More specifically, the Wisconsin Board found that Respondent, a psychiatrist, had engaged in sexual activity with two of his female patients. The first patient, "Ms. A," saw Respondent for psychiatric treatment regarding her antidepressant medication from April 2006 through June 2006. At Respondent's request, he visited Ms. A's residence on several occasions to take her blood pressure. On June 21, 2006, while at her residence, Respondent told Ms. A that he did not want to be her doctor any more, kissed her, removed some of her clothing, and asked her to perform oral sex on him, which she did. Respondent and Ms. A also had sexual intercourse at Ms. A's residence on June 25, 2006 and July 1, 2006. The second patient, "Ms. B," saw Respondent for psychiatric treatment for opioid dependence from January 2007 through May 2007, while Respondent was employed at a substance abuse treatment clinic. On April 30, 2007, after an appointment with Ms. B, Respondent kissed Ms. B and requested to meet her after work. They met at a gas station and drove to a public park, where they engaged in "heavy petting" and oral sex in Respondent's car. Ms. B and Respondent then met at a hotel on May 8, 2007, where Ms. B performed oral sex on Respondent three times. During Ms. B's last psychiatric visit with Respondent at the clinic, they kissed and Respondent caressed Ms. B's legs. Respondent resigned from his position May 22, 2007

after Ms. B disclosed the sexual relationship to her substance abuse counselor.

The Wisconsin Board found Respondent's conduct to be below the minimal standards of his profession, and that Respondent exposed his patients to risks of harm to which a minimally competent physician would not expose a patient. The Wisconsin Board further found that Respondent's actions constituted unprofessional conduct in violation of Wisconsin statutes and regulations. The Final Decision and Order requires the surrender of Respondent's medical license, payment of administrative costs of $1,775.00, and compliance with certain conditions for reinstatement, including providing proof that Respondent does not have a psychological condition which would interfere with his ability to practice.

3. The Illinois Department of Financial and Professional Regulation, Division of Professional Regulation, entered an order on February 16, 2008, based solely on the Wisconsin disciplinary action. (Exhibit B is attached and made a part hereof) The Illinois order temporarily suspended Respondent's license pending the proceedings before the Administrative Law Judge and Medical Disciplinary Board of Illinois.

CONCLUSIONS OF LAW

1. The above disciplinary action taken by the sister state of Wisconsin and Illinois 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 license has been surrendered to be deemed a revocation in another state for conduct which is a basis for discipline in New Jersey.

2. Respondent's failure to renew his license to practice medicine in New Jersey provides an additional ground for automatic suspension pursuant to N.J.S.A. 45:1-7.1(b).

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline suspending the Respondent's license to practice medicine and surgery at all times in the State of New Jersey was entered on June 12, 2009 and a copy was forwarded to the Respondent's last known address on file with the Board by means of regular and certified mail. The Provisional Order 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 state 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.

Although the record reflects that the Provisional Order was served upon respondent at the last known address of record, no response has been received to date. According the Board considered the matter, determined that further proceedings were not necessary and the Provisional Order should be made final.

ACCORDINGLY, IT IS on this 9th day of July, 2010, ORDERED THAT:

1. Respondent's license to practice medicine and surgery in the State of New Jersey is suspended until such time as Respondent's license to practice medicine in the States of Wisconsin and Illinois are fully reinstated without any restrictions and he has satisfied all aspects of the Order in Wisconsin. Additionally respondent shall then be subject to the re-application process pursuant to N.J.S.A. 45:1-7.1(d).

2. Prior to the Board entertaining an application for reinstatement, Respondent shall be required to appear before the Board or a committee thereof, to demonstrate fitness to resume practice, to show that he has satisfied all requirements of the Wisconsin and Illinois Boards. 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 on Respondent's practice should his license be reinstated.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

BY

Paul 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.