

FILED

AUG 27 2010

**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:

WARREN K. SOMMER, M.D.

CONSENT ORDER

This matter was opened before the New Jersey State Board of Medical Examiners (the "Board") upon the Board's receipt of a report from the Medical Practitioner Review Panel (the "Panel"), detailing findings and recommendations made by the Panel upon conclusion of an investigation of respondent Warren K. Sommer, M.D. The Panel commenced its investigation of respondent's conduct and practice upon receipt of notice, from Robert Wood Johnson University Hospital ("RWJ"), that Dr. Sommer's privileges to practice at RWJ were revoked effective March 5, 2008. RWJ reported that Dr. Sommer had initially been issued a letter of reprimand by the Hospital on January 2, 2008, concerning instances of alleged unprofessional conduct relating to members of the hospital staff, which letter cautioned respondent that any further instances could result in the revocation of his hospital privileges. RWJ reported that another incident occurred on January 9, 2008, and that Dr. Sommer's medical staff appointment and privileges were thereafter revoked. Dr. Sommer maintains that he elected not to exercise his

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right to a hearing, but instead chose to relocate his practice to a Surgicenter.

During the course of its investigation, the Panel had opportunity to review and consider, without limitation, information provided by RWJ detailing incidents which formed the predicate for the revocation of respondent's privileges, confidential reports from the Professional Assistance Program of New Jersey (the "PAP") regarding Dr. Sommer's enrollment and participation in the PAP program, and to consider testimony that was offered by respondent when he appeared before the Panel, represented by Joseph M. Gorrell, Esq., on November 14, 2008.

The Panel found that a series of complaints were lodged against respondent by nurses and physicians at RWJ, regarding instances of alleged unprofessional conduct. The complaints generally concerned respondent's interactions, both physical and verbal, with his co-workers. The incidents included an instance where respondent physically pushed the chair on which a nurse was sitting out of his way; an instance where Dr. Sommer allegedly verbally threatened a co-worker with physical harm; an instance where Dr. Sommer allegedly sought to initiate unwelcome physical conduct with a nurse; and multiple instances where Dr. Sommer exhibited angry behavior, sometimes accompanied with the use of profane and inappropriate language.

The Panel additionally found that Dr. Sommer enrolled, in

January 2008, in the PAP and was then evaluated by the PAP for possible impairment. The PAP reported that Dr. Sommer was found not to meet the criteria for any Axis I illness. Dr. Sommer was followed by the PAP for a period of approximately one year and was then discharged from the PAP program after one year in January 2009.

The Board has adopted the above findings made by the Panel, and has determined that said findings support a conclusion that respondent engaged, on multiple occasions, in professional misconduct, which in turn constitutes grounds for the imposition of disciplinary sanction against respondent pursuant to N.J.S.A. 45:1-21(e). It is noted that the Board has received information from Asher Yama, M.D., the medical director at the Surgicenter at which Dr. Sommer has practiced since leaving RWJ, that Dr. Sommer's practice has been without incident. The Board being satisfied that the need for further administrative proceedings is obviated by Dr. Sommer's voluntary agreement to the terms and conditions of this Order, and being further satisfied that good cause exists for the entry of this Order,

IT IS on this day of , 2010

ORDERED AND AGREED:

1. Respondent Warren Sommer, M.D., is hereby formally reprimanded for having engaged in instances of professional misconduct, as detailed above.

2. Respondent shall limit his practice of anesthesiology

to a site (or sites) where his conduct will be subject to observation by a Board approved monitor. Respondent shall be required to nominate an individual(s), acceptable to the Board, at any site where he may engage in the practice of anesthesiology to serve as a monitor. The monitor will need to be an individual who will be on premises on a regular basis when Dr. Sommer is on premises, and who shall agree to assume responsibility to generally observe and monitor respondent's conduct. The approved monitor(s) shall provide the Board with a written report, twice annually (the first report to be submitted six months from the date of entry of this Order), concerning respondent's conduct, and addressing whether respondent has comported himself in a professional manner at all times. The monitor shall additionally provide the Board with an immediate written report in the event Dr. Sommer is observed or reported to have engaged in any further instance(s) of alleged unprofessional conduct. The monitoring and reporting requirements imposed herein shall continue for a period of not less than two years following the date of entry of this Order. After two years, respondent may petition the Board for discontinuation of the monitoring and reporting requirements herein, provided that respondent is then able to demonstrate his full compliance with the conditions of this paragraph and provided that no reports of any further incidents of unprofessional conduct have been received. The Board has presently approved Asher Yama, M.D., to serve as respondent's

monitor at University Surgicenter, 561 Cranbury Road, East Brunswick,
New Jersey.

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By:



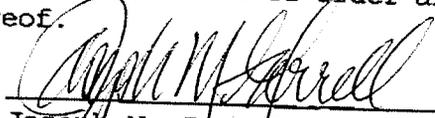
Paul T. Jordan, M.D.
Board President

I represent that I have reviewed this
Order, and consent to its entry by the
State Board of Medical Examiners.



Warren K. Sommer, M.D.

Consent given to the form of Order and
entry thereof.



Joseph M. Gorrell, Esq.
Counsel to Respondent

Agreement to function as Dr.
Sommer's "monitor" and to make
reports to the Board as outlined in
paragraph 2 above.



Asher Yama, M.D.

**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.