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FILED

FEBRUARY 9, 2011
NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

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

IN THE MATTER OF AN INQUIRY :
INTO THE PROFESSIONAL PRACTICE OF

ADMINISTRATIVE ACTION

BEVERLY FRIEDLANDER, M.D.
LICENSE NO. 25MA05000000

CONSENT ORDER OF REPRIMAND

PRACTICING MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY

This matter was presented to the State Board of Medical Examiners by the Attorney General of New Jersey, by Joan D. Gelber, Sr. Deputy Attorney General.

Respondent is the holder of license number 25MA05000000 and has been licensed to practice medicine and surgery during all times pertinent herein. She is board-certified in plastic and reconstructive surgery. Her current address of record is 636 Morris Turnpike, Suite 2G, Short Hills, NJ 07078-2608. Respondent is represented by Joseph M. Gorrell, Esq., Brach Eichler.

On or about June 7, 2006 Respondent authorized the filing of a corporate entity, "Electro-Diagnostic Imaging, LLC," (EDI) with the New Jersey State Department of Treasury, listing Respondent Beverly Friedlander and Michael Shortell, as 50% owners. Mr. Shortell, who does not hold a health care professional license, was also listed as Chief Executive Officer. The entity was incorporated to offer intraoperative monitoring, a medical health care service, during surgical procedures. Commencing in or about June 2006 and continuing through approximately January 2010, Respondent's EDI marketed its services to surgeons for provision of intraoperative monitoring

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during surgical procedures at various locations, including hospitals and ambulatory surgery centers.

Respondent is aware that the Attorney General intended to file an Administrative Complaint alleging various forms of gross and/or repeated negligence, professional misconduct and failure to comply with rules of the Board of Medical Examiners in connection with the marketing, practice, reporting, and billing for the IOM services rendered by the Electro Diagnostic Imaging entity between 2006 - 2009.

The Complaint would have alleged, in part, that incorporation of a Limited Liability Company for the offering of a medical health care service by Respondent with partial ownership by an unlicensed person constituted violation of N.J.A.C. 13:35-6.16(f)(2) and thereby of N.J.S.A. 45:1-21(e) and (h).¹

Intraoperative Monitoring is a health care service performed by electrophysiological testing, administered in the operating room to detect the onset of changes in the functional status of various components of the central and/or peripheral nervous system during a surgical procedure, in order to reduce the risk of neurological injury to structures that may be at risk due to the nature of the surgical procedure. The patient is typically placed under conscious sedation or anesthesia which must be limited to types and depths so as not to impair the monitoring.

The Complaint would have alleged the importance of real-time monitoring of surgical procedures by a licensed and trained physician/neurophysiologist when patients are under anesthesia or conscious sedation, to assure that any disruption of pertinent nerves is promptly identified and the nature and likely cause of the disruption is identified and properly interpreted in time to alert the surgeon to take corrective action. The Complaint would have alleged in part that EDI's failure to have a licensed, trained and qualified physician performing real-time monitoring, and supervision of technicians by a licensed and trained physician on behalf of EDI, exposed the patients under anesthesia/conscious sedation to an undue risk during the surgeries and that such conduct constituted gross and/or repeated negligence in violation of N.J.S.A. 45:1-21(b), (c) and/or (d), (e) and (h) and of N.J.A.C. 13:35-2.6(n)(1) and (3). The parties agree, however, there was no evidence presented that any patient suffered any adverse consequences from EDI's services.

¹Respondent asserts that the unlicensed person withdrew from the LLC on January 1, 2007. The withdrawal does not appear on records of the State Department of Treasury.

Other issues would have involved the unusual business arrangement by which EDI billed on its letterhead for services rendered by technicians it did not employ but “leased” indirectly from a family relation. Additional issues involved alleged inappropriate marketing activities of EDI’s Chief Executive Officer/Administrator Michael Shortell regarding the offering of IOM services through the EDI entity to surgeons at various hospitals and surgery centers. This included, in part, the submission of malpractice insurance documentation of the training of many of the technicians used by EDI as holding the credential “CNIM” when that was not accurate. Also at issue was responsibility for a surgi-center form signed by a surgical patient at another facility to allow “Observers” in the Operating Room when the “observer” was a technician who thereafter billed for IOM services in the name of EDI. Other issues included issuance of monitoring reports on EDI letterhead, bearing the typed name of an individual referenced as “M.D., Clinical Director” although that individual was not a licensed physician, was not informed that he was a “leased” employee of EDI, and had not authorized his name to be used on medical testing reports for EDI. Finally, issues included EDI’s billing for certain monitoring procedures which were allegedly without medical benefit in connection with the surgical procedure for which the monitoring was performed. Billing matters included alleged unbundling of charges and claims of length of service time substantially in excess of the time actually documented in the surgical facility record.

Respondent, having consulted with her attorney, acknowledges the unlawful inclusion of an unlicensed person in the original incorporation of EDI and failure to have adequately supervised the entity’s marketing and professional services, administrative matters including the credentialing of personnel, and billing; N.J.S.A. 45:1-21(d) and (h). Respondent does not use intraoperative monitoring in her surgical practice and asserts, by way of explanation, that she placed undue reliance upon the entity’s Administrative personnel. Respondent represents that Electro Diagnostic Imaging has ceased functioning and that the LLC will be dissolved in 2011 promptly upon completion of its legal obligations to file taxes and to complete required payments to its creditors. She has agreed to accept the disciplinary disposition herein.

The Board of Medical Examiners, having considered the matter and noting the absence of any prior disciplinary history of Respondent, and other mitigating information having been shown,

has determined that the proposed resolution is sufficient to protect the health, safety and welfare of the public. For sufficient cause shown,

IT IS, ON THIS 19TH DAY OF JANUARY 2011

ORDERED:

1. Respondent Beverly Friedlander, M.D. is hereby reprimanded for the unlawful inclusion of an unlicensed person in the original incorporation of EDI and failure to have adequately supervised the entity's marketing and professional services, administrative matters including the credentialing of personnel, and billing.

2. Respondent shall pay costs of \$6,560.00 and penalty of \$20,000.00, pursuant to N.J.S.A. 45:1-25,² totaling \$26,560.00, by certified check or bank check payable to the State of New Jersey.

(a) Respondent has requested to make, and the Board has agreed to permit, payment of the \$6,560.00 costs to be delivered to the Board of Medical Examiners within ten days of the entry of this Order. A Certificate of Debt for the remainder of the financial assessment shall be filed pursuant to N.J.S.A. 45:1-24, and Respondent shall be permitted to make payments in eighteen equal monthly installments of \$1,111.00, each due on the first day of the month commencing March 1, 2011. Interest on all financial assessments shall accrue in accordance with Rule of Court 4:42-11. In the event that a payment is not received within five days of its due date, the entire balance of the unpaid civil penalty and costs shall become due and owing and the Board may seek all other remedies authorized by law.

3. The attached Notice provisions are incorporated herein.

THIS ORDER IS EFFECTIVE UPON ENTRY

STATE BOARD OF MEDICAL EXAMINERS

By: 

Paul T. Jordan, M.D.

President

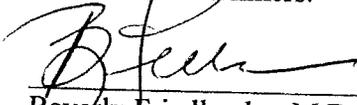
²Restitution to the patient/payors is not sought, as the insurance carrier for two identified patients denied the claims, due to lack of real-time physician monitoring.

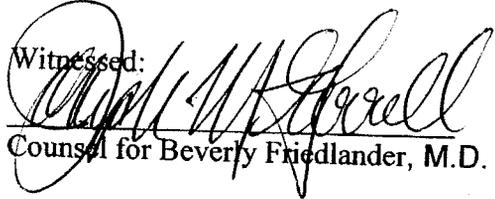
THIS ORDER IS EFFECTIVE UPON ENTRY

STATE BOARD OF MEDICAL EXAMINERS

By: 
Paul T. Jordan, M.D.
President

I have read and understood the within Order and agree to be bound by its terms. I consent to the form and entry of the Order by the Board of Medical Examiners.


Beverly Friedlander, M.D.

Witnessed:

Counsel for Beverly Friedlander, M.D.

**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.