

FILED

~~April 29, 2011~~
**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:

PEDRO R. MARGATE, M.D.

CONSENT ORDER

This matter was opened before the New Jersey State Board of Medical Examiners (the "Board") upon its receipt of a report from the Medical Practitioner Review Panel (the "Panel") detailing findings and recommendations made by the Panel following the Panel's investigation of care provided by respondent Pedro Margate, M.D., to patient B.M. Specifically, the Panel received notice from respondent's medical malpractice insurance carrier that a payment of \$850,000 was made on respondent's behalf to settle a civil malpractice action, wherein B.M. alleged that respondent performed an improper and incomplete ultrasound, where only parts of the fetus were displayed, which in turn resulted in "missed" abnormalities of the fetus.

The Panel has considered available information regarding this matter, to include patient records and ultrasound films, and expert reports prepared during the pendency of the malpractice lawsuit. Additionally, the Panel considered testimony offered by respondent when

CERTIFIED TRUE COPY

he appeared before the Panel on October 22, 2010, *pro se*. Carl J. Saphier, M.D., served as a consultant to the Panel during the course of the Panel's investigation.

Upon review of available information, the Panel found that patient B.M. underwent a level I obstetrical ultrasound examination on April 15, 2002, at approximately 22 weeks gestation. Respondent prepared and signed an ultrasound report dated April 16, 2002, wherein he noted measurements, including the femoral length, which were consistent with the menstrual dating and a normal amount of amniotic fluid. Respondent stated in the report that "the fetal spine, stomach, kidneys, urinary bladder, three vessel cord and umbilical cord insertion; four chamber heart and lateral ventricles were all visualized. The atria of the lateral ventricles, the cisterna magna, and the cerebellum appear to be within normal limits." Respondent concluded his report with the impression "single, viable fetus identified at approximately 22 weeks, 6 days gestational age."

On August 19, 2002, B.M. gave birth to a male infant, A.M. The infant was diagnosed with multiple abnormalities, including: 1) an absent right lower extremity with the foot attached to the right hip; 2) absence of the right kidney; 3) incompletely formed right ear with absent right ear canal; 4) single umbilical artery - two vessel cord; 5) fused ribs and vertebral body anomalies including hemivertebrae and abnormal

spinal curvature with levoscoliosis; 6) hypospadias; and 7) hypoplastic right scrotum and absent right testicle.

The Panel found that respondent interpreted, and then prepared a report, on a transabdominal obstetric study performed upon patient B.M. on April 15, 2002. While some of the images obtained were technically acceptable, a significant number of the images were not technically adequate. Respondent's report was not appropriate for the study, because the report listed abnormally and possibly abnormally imaged structures as being normal, suboptimally recorded structures as being normal, and unrecorded components as being normal. Without limitation, the Panel found that respondent grossly deviated from accepted standards of care when interpreting B.M.'s ultrasound by:

- inappropriately reporting as "visualized" an inadequately visualized and possibly abnormal appearing spine;
- inappropriately reporting as "visualized" inadequately visualized kidneys;
- wrongly reporting visualization of a three vessel cord when recorded images revealed an abnormal, two vessel umbilical cord;
- failing to assess and report upon the adnexae; and
- failing to ensure that an adequate 4-chamber heart view was secured.

The Board has reviewed the report made by the Panel and has ratified and adopted all findings made by the Panel. The Board therefore

concludes that grounds for disciplinary action against respondent exist pursuant to N.J.S.A. 45:1-21 (c) (providing that disciplinary action may be taken against a licensee who engages in gross negligence, gross malpractice or incompetence) and/or N.J.S.A. 45:1-21(d) (providing that disciplinary action may be taken against a licensee who engages in repeated acts of negligence, malpractice or incompetence).

The parties desiring to resolve this matter without need for the filing of an administrative complaint and additional administrative proceedings, and the Board being satisfied that need for such proceedings is obviated by the entry of this Order, and finding that good cause exists to support the entry of this Order:

IT IS on this 29 day of April, 2011

ORDERED and AGREED:

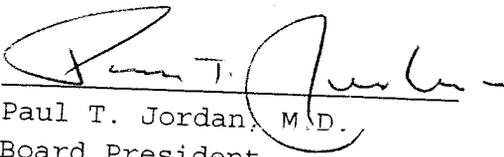
1. Respondent Pedro Margate, M.D., is hereby formally reprimanded for having engaged in gross negligence in his interpretation of an obstetrical ultrasound performed upon patient B.M., for the reasons set forth in greater detail above.
2. Respondent is hereby assessed an administrative penalty in the amount of \$5,000, which penalty shall be payable in full upon entry of this Order.
3. Respondent shall cease and desist from performing and/or interpreting any ultrasounds. In the event respondent hereafter performs

and/or interprets an ultrasound, without first obtaining express written authorization to do so from the Board (see paragraph 4 below), said conduct shall constitute grounds upon which the Board may enter an Order permanently revoking his medical license.

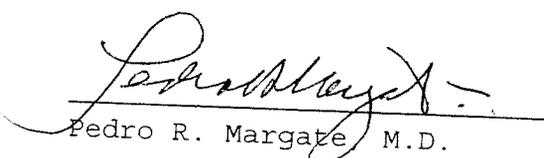
4. Respondent may apply hereafter to the Board for authorization to resume performing and/or interpreting ultrasounds, however shall not resume any such practice unless he receives express written authorization from the Board. In the event respondent makes application to the Board to resume performing and/or interpreting ultrasounds, he shall then be required to submit to a skills assessment, to be performed by a post-licensure assessment entity acceptable to the Board. The assessment shall focus on the issue whether respondent is competent to perform and/or interpret ultrasounds, with or without supervision, and the assessment entity shall offer an opinion whether respondent is in need of retraining and/or additional education before he could be found competent to perform and/or interpret any further ultrasounds. Respondent shall expressly authorize the assessment entity to prepare a written report detailing findings and recommendations made following the assessment, and shall expressly authorize the assessment entity to submit said report directly to the Board for consideration. The Board shall thereafter review the report, and shall consider any findings and recommendations made within said report when deciding

whether to grant or deny, in full or in part, respondent's application for authorization to resume performing and/or interpreting ultrasounds.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

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

I represent that I have carefully read and considered this Order, and consent to the entry of the Order by the Board. I am aware that, in the event I perform and/or interpret any ultrasounds subsequent to the entry of this Order (unless I first receive written authorization to do so from the Board), such conduct shall constitute grounds upon which the Board may enter an Order permanently revoking my license to practice medicine and surgery in New Jersey.


Pedro R. Margate M.D.

Dated: April 21, 2011

**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.