

FILED

SEPTEMBER 29, 2011

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

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 : Administrative Action
OR REVOCATION OF THE LICENSE OF: :
: :
SAM LOCATELLI, M.D. : **FINAL DECISION AND ORDER**
LICENSE NO. 25MA04783200 : :
: :
TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY :
: :

This matter was brought before the Board of Medical Examiners by the filing of an Administrative Complaint on July 2, 2010, of Paula T. Dow, Attorney General of New Jersey, by former Deputy Attorney General Sobande F. Afolabi. The complaint alleged in one count, in part, that in connection with a medical staff privilege application, Dr. Locatelli faxed a copy of his controlled dangerous substance (CDS) certificate to Beth Israel Medical Center indicating that it was valid from November 1, 2008 through October 31, 2009, although respondent's CDS registration had expired on October 31, 2007 and had not been renewed. The complaint went on to allege that the CDS certificate provided by respondent had been altered. The complaint further alleged that on March 12, 2009 and continuing through June 6, 2009 respondent's medical staff privileges at Beth Israel Medical Center were suspended because he failed to maintain a current CDS certificate. Respondent did not appeal the hospital determination nor reapply for membership or

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hospital privileges at Beth Israel Medical Center. Finally, the complaint alleged that respondent appeared before the Medical Practitioner Review Panel of the Board on November 20, 2009 at which time he testified denying that he altered his CDS registration, and testified that the dates of his most recent CDS certificate were November 1, 2008 to October 31, 2009 although he needed to trace over the number "8" in 2008 and the number "9" in 2009 because those numbers were blurry. He was asked to provide the original certificate. The respondent later faxed a letter to the Board claiming he no longer had the original CDS certificate indicating a valid registration from November 1, 2008 to October 31, 2009. Respondent's actions were alleged to constitute dishonesty, fraud, deception, misrepresentation, false promise or false pretense in violation of N.J.S.A. 45:1-21(b); professional misconduct in violation of N.J.S.A. 45:1-21(e); having his authority to practice medicine suspended by Beth Israel Medical Center in violation of N.J.S.A. 45:1-21(g); failure of the duty to cooperate in an inquiry of the Board in violation of N.J.A.C. 13:45C-1.2, and thus a failure to comply with an Act administered by the Board in violation of N.J.S.A. 45:1-21(h).

Respondent, represented by Michael Keating, Esq., filed an answer in which he admitted certain of the allegations of the complaint, denying others, asserting that he was without knowledge sufficient to form a belief, or that certain other allegations were

legal conclusions. Thus the matter was transferred to the Office of Administrative Law as a contested case. On or about June 10, 2011, the Board was notified that the parties had stipulated to the essential allegations in the complaint, thus the matter was uncontested, and was being returned to the Board for a hearing regarding that stipulation, and then a hearing regarding mitigating circumstances for a determination of penalty.

On July 13, 2011, a hearing on the complaint was scheduled before the Board of Medical Examiners. Respondent was represented by Michael Keating, Esq. Carla Silva, Deputy Attorney General appeared on behalf of the complainant. At the time of hearing the parties indicated that in addition to the paragraphs of the complaint which had previously been admitted by the respondent (3,4,5,6,8,9,10,11,14,15,16,17,18 and 20), respondent was stipulating to facts that would support the allegations as contained in paragraphs 13,21,22, and 23 as set forth in Count I of the complaint. The parties also stipulated to the entry of certain documents into evidence (as reflected in the attached exhibit list), labeled P-1 through P-11, which include but are not limited to letters and reports from Beth Israel Medical Center (P-1 through P-3), a transcript of respondent's testimony before the Medical Practitioner Review Panel on November 20, 2009, (P-4), and a certified statement of Dr. Locatelli to the Board of May 10, 2011 (P-11).

Finally Dr. Locatelli testified at the Board hearing on July 13, 2011, acknowledging that he faxed a document to the Newark Beth Israel Medical Center Medical Staff office in March of 2009 representing that it was a valid CDS certificate, although he did not have a valid certificate at that time. In response to a question regarding the photocopy appearing to have been altered with the dates appearing to be written over, the doctor admitted that he wrote over the dates on the certificates and acknowledged that this was unprofessional conduct. Further, respondent acknowledged not having been candid with the Medical Practitioner Review Panel in regard to the CDS certificate he provided to the hospital and as to the fact that it had been altered. Respondent maintained however, that he came upon a very large copy of his CDS certificate in which the dates weren't clear, and that as far as he knew at the time his CDS privilege certificate was current, so he changed the dates to what may have been appropriate for that time frame. He claimed that this was an honest mistake. Further he claimed only those two numbers - the number 8 in the year 2008 and the number 9 in the year 2009-were blurred on the entire certificate and that he changed them because they were blurry.

At the conclusion of the presentation the Board found that given the stipulated facts and the testimony elicited from respondent, there was sufficient evidence to establish liability

and a basis for discipline. Having made all findings of fact and conclusions of law as alleged in the complaint, the Board moved on to the mitigation phase of the hearing.

DISCUSSION ON PENALTY

Respondent's counsel opened his presentation in mitigation of penalty by indicating that respondent was undergoing a significant number of personal problems that became overwhelming and which led to a series of events that impacted his life and judgment at the time of the events in this case. He argued that respondent's decisionmaking was clouded by these events, was unprofessional and out of character. Counsel admitted that respondent let his license lapse and faxed an altered certificate to the medical staff at the hospital and asked the Board to waive discipline given the circumstances explaining why he did it. He asserted that any time out of practice would present a significant hardship to respondent and requested that financial information submitted be considered by the Board.

Following the opening statements, respondent was sworn and testified regarding a difficult medical condition and hospitalization of his then six (6) year old son which lead to his need to leave a busy private practice to help his family. Attempts to practice as a solo practitioner also proved difficult and therefore in 2007 respondent began working at Newark Beth Israel Medical Center. He further described a number of financial problems

and taking on of financial responsibilities relating to family obligations. He also asserted that he felt some of his son's medical problems were his fault, and a sense of guilt began to cloud his judgment. He was forced to sell his home in 2008, was divorced, and his financial obligations increased, as did his sense of responsibility for his son's having developed a mental health condition for which he needed extensive treatment. Having to take a hospital-based position and leaving the private practice of obstetrics and gynecology further increased the financial pressures as respondent testified that he did not have the funds to maintain his obligations to his children, his home and taxes. In October of 2008 he lost one position at a hospital due to staff reductions which also contributed to his desperate financial situation. Respondent again acknowledged that he altered the CDS certificate, that it was inappropriate, and that he sent a copy to Newark Beth Israel Hospital recognizing that it was improper and unprofessional. He asserted that this was the first time that there was such a lapse in judgment and he asked the Board to take that into consideration. He opined that in the event he were to lose his license he may have to file bankruptcy. He claimed that he struggles from paycheck to paycheck in order to pay his bills, and acknowledged that he has a state and federal tax liability which he is also attempting to negotiate and pay down. He asserted that any lengthy active period of suspension would "bring him down" both professionally and

personally, and there would be consequences to innocent individuals to whom he owed financial support. He asked that he be permitted to continue to work so that he can support his children to the best of his ability.

Upon cross-examination, respondent acknowledged that his privileges were suspended by Newark Beth Israel Hospital based upon the alteration of the certificate in or about March of 2009. He further acknowledged that when he appeared before the Panel, even after being shown the altered certificate, he continued to maintain that it was valid and that he was currently registered. He admitted that while it was wrong, he was desperate and feared losing his livelihood and the impact on all financial obligations that he had at the time.

DAG Silva had reminded the Board that respondent was asked to provide a current valid CDS registration certificate and acknowledged that he sent an altered version. When given an opportunity to tell the truth to the Panel at a later time, he vehemently maintained he thought it was valid and continued to misrepresent his actions. While he has made admissions during the final hearing before the Board in July of 2011, his failure to not acknowledge these actions previously were indications of his continued deception and misrepresentation of the truth. At each instance in the process, he was afforded an opportunity to tell the truth, yet at each juncture he failed to proffer a truthful version

of what had really occurred. DAG Silva argued that the continued unprofessional behavior is egregious and merited a significant period of time out of practice. In closing, DAG Silva asserted even considering the difficult and stressful circumstances that he faced, the doctor should be sanctioned. He had admitted to a number of misrepresentations and failures to be truthful. She maintained that respondent acted in a manner that was self-serving and to protect his own interests, and that this was not a sole act rather it was a series of acts demonstrating a lack of candor and truthfulness.

Respondent's counsel in his closing comments noted that there were truly mitigating circumstances presented in this case and he asked the Board to consider those personal circumstances that became so overwhelming that it clouded respondent's judgment. He also asserted that the physician has so many financial issues at this point that any active period of suspension would cripple him both professionally and personally, and possibly end his medical career. As the doctor has acknowledged this mistake, counsel requested the Board to put all the circumstances into context and not deal a blow to a career and personal life that has already faced a number of obstacles.

In fashioning an appropriate resolution or disciplinary result in this matter, the Board has taken into account the difficult personal circumstances faced by respondent. However, it is clear that a physician has the obligation to act in a truthful manner at

all times, and cannot use his personal life as an excuse for engaging in conduct which is inappropriate and unprofessional. Patients, health care facilities, other institutions and the public must depend on the veracity of physicians. Although we are of the opinion that respondent committed dishonest acts, compounding his faxing of an altered certificate to the hospital with his having continued to claim currency of privileges before the Panel, he did take responsibility prior to the resolution of this matter and truthfully testified before the Board after stipulating to the facts before us. Respondent is not seeking to deflect blame on others, but appears to be sincerely expressing contrition for the previous acts of misrepresentation. We must consider however that physicians are presented with situations daily where their fundamental honesty must be trusted, and this record fully supports the entry of an order suspending respondent's license. We conclude that the imposition of a period of two (2) years of suspension, two (2) months to be actively served and a monetary penalty of \$5,000.00 plus costs¹ are necessary to further our obligation to protect the

¹We have reviewed the certifications submitted by the Attorney General in support of cost assessments without any objection as to the reasonableness of the amounts sought by respondent. We find the amounts sought to be reasonable in the context of this important matter, the number of hours of attorney time and the rates of compensation for that time. With regard to the detail produced, we have reduced the number of attorney hours requested by slightly more than 5 for those activities for which no description was submitted. Attorney's fees are the subject of a memo detailing the rates charged by the Division of Law for a DAG with 5 or less years of experience - \$135 per hour, which we

public health, safety and welfare, both to punish for the acts engaged in and to serve a deterrent effect to put physicians on notice of the high standards of honesty expected of them. We also impose the following costs:

Shorthand Reporting/Transcript costs	\$ 220.00
Attorneys fees	\$ <u>4,880.00</u>
Total costs:	\$ 5,100.00

THEREFORE as orally ordered by the Board on the record on July 13, 2011;

IT IS ON THIS 13TH DAY OF SEPTEMBER 2011

ORDERED THAT:

1. The license of respondent Sam Locatelli, M.D. to practice medicine and surgery in the State of New Jersey is hereby suspended for a period of two (2) years. The first two (2) months of the suspension are to be served as a period of active suspension with an effective date and credit on the active suspension as provided

have considered and approved many times in the past, and note is well below the community standard. The application as reduced, is sufficiently detailed to permit our conclusion that the amount of time spent, and the overall fees sought, are objectively reasonable. (See Poritz v. Stang, 288 N.J. Super 217 (App. Div. 1996). Similarly, sufficient documentation of transcript fees has been submitted to support our conclusion that the imposition of these costs is reasonable viewed in the context of the seriousness and scope of the action maintained against respondent.

in paragraph 5 below.² The remainder shall be stayed and served as a period of probation.

2. Within six months of the date of filing of this order respondent shall provide proof to the Board that he has fully attended and successfully completed an ethics course pre-approved by the Board.

3. Respondent is hereby assessed a civil penalty in the amount of \$5,000.00.

4. Respondent is assessed costs of this action, in an aggregate amount of \$5,100.00.

5. The period of active suspension provided above was to commence thirty (30) days following service of this Order and continue for two (2) months thereafter. However upon request of respondent and documentation provided which demonstrates to the satisfaction of the Board that he ceased the practice of medicine and/or surgery as of July 29, 2011, and has not practiced in New Jersey or any other State or jurisdiction since that time, he shall receive credit for the time out of practice. The suspension shall be considered to have begun on July 29, 2011 and shall continue through and including September 29, 2011.

²A request was submitted on respondent's behalf for credit toward the active suspension of his license for time he claimed to have ceased practicing medicine as of July 29, 2011. The request was considered by a Committee of the Board, and the Board then approved respondent's request at its meeting of September 14, 2011.

6. Respondent shall pay the aggregate penalties and costs assessed herein of \$10,100.00 in full no later than thirty (30) days from the date of filing of this Order unless he requests prior to that date to pay in equal monthly installments over two the (2) year period of suspension. Should respondent request to pay in monthly installments, the first payment shall be due on or before October 29, 2011, and the remaining payments shall thereafter be due on or before the 29th day of each ensuing month (i.e., November 29, 2011, December 29, 2011, etc.). Provided respondent makes timely payment of each installment, the Board shall waive the imposition of any interest that otherwise will be added to the assessment ordered herein.

7. During the period of reinstated license on probation, any deviation from the terms of this order without the prior written consent of the Board shall constitute a failure to comply with probation and with an order of the Board. Receipt of any reliable information indicating respondent violated any term of this order will result in the automatic activation of the stayed period of suspension provided in this order. Upon notification of such automatic suspension, respondent may, upon five (5) days notice, request a hearing to contest the entry of such an order. At any such hearing, the sole issue shall be whether any information received regarding violation of the order was materially false.

8. Respondent shall comply with the Directives applicable to disciplined licensees of the Board, whether or not attached hereto.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: _____

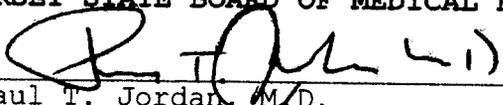

Paul T. Jordan, M.D.
Board President

EXHIBIT LIST

- P-1 A March 24, 2009 letter from John A. Brennan, M.D., Executive Director of Newark Beth Israel Medical Center, to the New Jersey State Board of Medical Examiners
- P-2 A May 8, 2008 Supplemental Report from Newark Beth Israel Medical Center
- P-3 A June 11, 2009 letter from Executive Director of Newark Beth Israel Medical Center John A. Brennan, to the Board
- P-4 Transcript of Respondent's November 20, 2009, appearance before the Medical Practitioner Review Panel
- P-5 Exhibits marked during Respondent's November 20, 2009 appearance before the Panel
- P-6 A November 24, 2009 letter from DAG Steve Flanzman to Respondent
- P-7 A December 4, 2009 facsimile transmittal from Respondent to Marylou Mottola at the Board.
- P-8 Certification of Kathleen Collins from the Controlled Dangerous Substance Registration Board
- P-9 Certification of Costs
- P-10 An Affidavit as to the cost of the transcript
- P-11 A May 10th, 2011 Certified Statement from Dr. Locatelli to the Board