

FILED

November 9, 2011

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS
EFFECTIVE**

November 11, 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	:	
OR REVOCATION OF THE LICENSE OF	:	
	:	
AMGAD HESSEIN, M.D.	:	ORDER ADOPTING AND RATIFYING
LICENSE NO. MA067650	:	BOARD COMMITTEE ORDER OF
	:	OCTOBER 31, 2011
TO PRACTICE MEDICINE AND SURGERY	:	
IN THE STATE OF NEW JERSEY	:	

This matter is before the State Board of Medical Examiners today on review of the action of its committee taken on October 26, 2011, as memorialized in its order of October 31, 2011. The Board entered an Order to Show Cause and filed a Verified Complaint in this matter at its meeting on October 12, 2011. Because the allegations of the Verified Complaint lodged against Amgad Hessein, M.D. (Dr. Hessein or respondent) presented exigent circumstances requiring a hearing before the next regularly scheduled monthly Board meeting to prevent further danger to the public and his patients, the Board delegated the hearing on the application for temporary suspension to a committee of the Board. That committee heard the matter on October 26, 2011,¹ and, at the conclusion of the hearing, entered an order finding that the

¹ The committee members were: Steven Lomazow, M.D.; Zeyad Baker, M.D.; Elliott Krauss, M.D.; George Ciechanowski, M.D.; and Stewart Berkowitz, M.D. Dr. Berkowitz is an officer of the Board.

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physician's practice of substantiating massive, fraudulent billing by fabricating medical records presented a clear and imminent danger to the public health, safety, and welfare. It, therefore, temporarily suspended the license of respondent Amgad Hessein, M.D., to practice medicine and surgery in the State of New Jersey pending the completion of plenary proceedings in this matter, which includes a full opportunity to be heard at the Office of Administrative Law. See Order of Temporary Suspension of License, filed October 31, 2011, effective upon oral announcement of the committee's decision on October 26, 2011, appended to this order and adopted here in its entirety.²

The order of the committee, together with the record from the hearing (transcript and evidence), as well as the pleadings and briefs of counsel, were presented in advance to the full Board of Medical Examiners for review, so as to afford the full Board an opportunity to determine whether to ratify, reject or modify the action taken by the Committee. On that date, the Board reviewed

² The Board has been advised that respondent filed an emergent application in the Appellate Division of the Superior Court on October 28, 2011. The Honorable Philip Carchman, P.J.A.D., granted a stay and directed that the committee's order be filed and served by October 31, 2011, and that the parties submit briefs to the Court in the days following. The Appellate Division deferred ruling on the application until the Board considered the committee's order at its meeting on November 9, 2011..

written arguments of counsel.³

Respondent's counsel has argued in his November 7, 2011, letter that the delegation to a committee to hear the emergent application was improper. Respondent cites to statements in the record regarding the dates the full Board considered the Attorney General's request for consideration of the Order to Show Cause and the number of Board members present at the meeting. The issues raised do not change the facts: on October 12, 2011, during a meeting of the Board while a quorum was present, the Attorney General presented her request to enter the Order to Show Cause based on her Verified Complaint. Respondent attaches to his November 7, 2011, letter the Board's "Open Agenda," not the minutes of that meeting. The Board reviewed, amended, and ratified the October 12 minutes on November 9, 2011 (today). Those minutes will reflect that the Board at its October meeting, upon motion made and seconded, voted to authorize the filing of the Order to Show Cause and delegated its full authority to that committee to render a decision on its behalf to issue a temporary suspension order if warranted because of the emergent circumstances alleged in

³ Respondent by letter dated November 2, 2011, requested an opportunity to appear before the Board. The Attorney General, by letter of the same date, opposed that request. The Board president, Paul T. Jordan, M.D., declined to entertain oral argument but permitted written submissions. Respondent submitted a letter dated November 7, 2011.

the Order to Show Cause.⁴ The agenda's reference to lack of a quorum was for the specific matter listed (Parvez Dara, M.D.); the lack of quorum identified on the agenda was due to recusals known in advance of the meeting. Notably, the agenda did not list the Hessein matter because it was presented as an emergent matter. As noted in the minutes, the Board, with a quorum present, delegated to a committee, the authority to hear the Attorney General's emergent application and take action, if warranted. The committee's action was to be reviewed by the Board at its meeting on November 9, 2011.⁵

The Order to Show Cause itself reflects that it was entered on October 12, 2011 (page 2, which was signed by Kathryn Lambert, D.O., Vice President of the Board). The documents were marked filed on October 13, 2011, at the Board office.⁶ The filed date does not change the date of the Board's action: October 12.

⁴ Board minutes should be available several days following their ratification.

⁵ The specific delegation in an abundance of caution, but was unnecessary as the Board's policy, first adopted in 1979 (as amended in 1984) and in effect and repeatedly utilized since, provides that a Board officer alone may make interim decisions on behalf of the Board with respect to licensees whose conduct appears to pose a clear and imminent danger to the public. Thus Board treasurer Berkowitz, who served as a member of the committee, was authorized by consistently followed Board policy to take action after hearing, even sitting alone, and without the specific delegation effectuated by the Board on October 12, 2011. (Board policy attached).

⁶ The meeting is held in a different building and papers are brought to the Board office the day following the meeting.

Finally, the chairman of the committee mis-spoke during his opening comments. Far from respondent's claim that the delegation was a "fundamental disregard of the rule of law," the Board, in light of the emergent nature of the application, made a proper delegation to its committee. Inadvertent misstatements, whether orally or in writing, while preferably avoided, do not change that simple fact.

The Board also adopts the committee's reasoning that the exhibits attached to the Verified Complaint, all of which were accepted into evidence at the hearing, provided an adequate basis to meet the verification requirements of N.J.S.A. 45:1-22. The committee's findings were based in part on portions of the transcripts of taped statements of Dr. Hessein's patients and employees. Those individuals represented that they would provide truthful answers to questions posed by Detective Nechamkin (see committee Order, page 3). When read in conjunction with the exhibits containing medical and billing records, they demonstrate that Dr. Hessein's patients' charts cannot be trusted to determine the dates or nature of the treatment rendered, whether the treatment was performed within the standard of care, or whether it was rendered at all. The records cannot even be relied on to document the most basic information regarding the patient's condition. That, coupled with the certified statements of investigators who analyzed the billing and medical records and provided damning compilations showing the pervasive fraud

respondent engaged in, led the committee, and now this Board, to conclude that a clear and imminent danger has been palpably demonstrated.

Respondent correctly notes that the Attorney General cannot personally verify the complaint, and N.J.S.A. 45:1-22, in its requirement that the application be duly verified" does not require her to do so. Of necessity, these filings may be via a series of documents that verify the facts underlying the allegations of the complaint. In this application, the Attorney General has presented statements that contain sufficient indicia of reliability to allow the Board to take action at this juncture, where the Board, after a hearing of more than nine hours including deliberations, has found clear and imminent danger exists. Respondent had an opportunity to present evidence before the committee and did so - including four expert reports highlighting respondent's supposed medical acumen, but nothing to rebut the overwhelming evidence that he has fabricated medical records and engaged in massive billing fraud.

As this is a contested case, the Board will transmit it to the Office of Administrative Law for a plenary hearing where respondent will have every opportunity to test the evidence and rebut the allegations against him. The parties may also choose to seek to accelerate the proceedings as permitted by N.J.A.C. 1:1-9.4. The Board's decision today is not a final order.

Finally, respondent argues that the committee, and with this ratification, now this Board, temporarily suspended his license based on the August 2011 indictment, in which he and his brother (who worked as his office manager) were charged with multiple counts of health care fraud. This action is not predicated on the indictment. The finding of clear and imminent danger is based on evidence that demonstrates egregious conduct in fabricating medical records and in billing for services not rendered. As noted by the committee, "The veracity and trustworthiness of medical records are the very foundation of the practice of medicine." (Order at page 14). Our evaluation of respondent's clinical practice has been critically hampered by his failure to have created and maintained patient records that meet the standards for record keeping in this State. That evidence of pervasive fraud forms the basis of an indictment in Union County does not prevent this agency from reviewing it, assessing it, and finding it supports the Board's conclusion that Dr. Hessein has demonstrated judgment and character so flawed that his continued practice constitutes a clear and imminent danger.

As noted, the full Board was provided with copies of the record several days before the meeting. It has reviewed the committee's order and considered arguments of counsel, both those made during the hearing and those submitted post hearing. The Board unanimously votes to ratify and adopt, in its entirety, the

temporary order of the committee. The Board finds the reasoning of the committee, outlined at length in the committee's order, convincingly supports the committee's conclusion, and now this Board's conclusion, that a palpable demonstration has been made that respondent's continued practice would present clear and imminent danger to public health, safety and welfare. The pervasive nature of billing fraud has led to respondent's widespread creation of medical records designed to justify billing and which now prevent reviewers from determining what care was - or was not - rendered to patients. Moreover, that failure to create and maintain accurate, contemporaneous records, has deprived patients of a most critical record, one that would allow subsequent health care providers to continue care for vulnerable, pain management patients.

We are cognizant that our charge is to address a finding of clear and imminent danger in the least restrictive manner. There is no adequate way to monitor the practice of this physician and safeguard patient care, for it is not just his billing practices that are at issue. He has routinely created notes in charts where there was no patient visit. On many days when patients were present, he has noted procedures that he has not performed. He has billed for hundreds of days when the office was closed, including when he was out of the country. Every aspect of his practice has been called into question. Therefore, because his judgment is so

flawed, the Board has concluded that no measure short of the temporary suspension of respondent's license would be sufficiently protective in this case.

The license of respondent Amgad Hessein, M.D., shall therefore be temporarily suspended, pending the completion of plenary proceedings in this matter, for the reasons set forth at length in the order of the committee. Because respondent has been able to practice since being granted an emergent stay by the Appellate Division, his counsel has asked, in the event the Board were to adopt the committee's decision, that respondent be given a period to permit him to wind down his practice. Having found that his continued practice represents a clear and imminent danger to the public health, safety, and welfare, the Board will grant a very brief period, for the benefit of patients who may be hospitalized or scheduled for procedures, until November 11, 2011, at 5 PM, before the suspension shall take effect, and declines to stay this order pending appeal.

THEREFORE, IT IS ON THIS 9th DAY OF November, 2011,

ORDERED:

1. The Board adopts, in its entirety, the order of its committee filed on October 31, 2011.

2. The license of respondent Amgad Hessein, M.D., shall be temporarily suspended as of 5:00 PM on November 11, 2011, pending the completion of plenary proceedings in this matter or further

Order of the Board.

3. Respondent's motion to stay the effect of this order is denied.

**NEW JERSEY STATE BOARD OF
OF MEDICAL EXAMINERS**

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

EXECUTIVE PRIVILEGES

THE BOARD AUTHORIZED THE PERSON SERVING AS PRESIDENT OF THE BOARD TO MAKE CERTAIN INTERIM DECISIONS ON BEHALF OF THE BOARD WITH RESPECT TO ORDERS RELATIVE TO BOARD LICENSEES WHOSE CONDUCT APPEARS, IN THE CIRCUMSTANCES, TO POSE A CLEAR AND IMMINENT DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE, PURSUANT TO N.J.S.A. 45:1-22(e) AND N.J.A.C. 13:44A-3.1. SUCH ACTIONS SHALL BE TAKEN AFTER HEARING ARGUMENT BY A DEPUTY ATTORNEY GENERAL AND, WHERE POSSIBLE AND NOT INCONSISTENT WITH THE PUBLIC SAFETY, BY THE SUBJECT LICENSEE OR ATTORNEY.

THE BOARD FURTHER GAVE AUTHORIZATION FOR INTERIM DECISION WHEN THE BOARD HAS APPROVED THE GENERAL TERMS OF ANY ORDER OR A PLEA BARGAIN, THE EXECUTION OF WHICH REQUIRES IMMEDIATE ACTION.

ALL ACTIONS EXERCISED BY THE BOARD PRESIDENT UNDER THIS AUTHORIZATION ARE SUBJECT TO ULTIMATE RATIFICATION BY THE BOARD.

(FROM THE MEETING MINUTES OF NOVEMBER 14, 1979)

ABSENCE OF PRESIDENT

THE BOARD RULED THAT IN THE ABSENCE OR UNAVAILABILITY OF THE PRESIDENT OF THE BOARD, THE VICE PRESIDENT OF THE BOARD IS AUTOMATICALLY DESIGNATED PRESIDENT, PRO-TEM. THE LINE OF SUCCESSION WOULD THEN CONTINUE TO THE SECRETARY AND THEN TREASURER.

(FROM THE MEETING MINUTES OF JULY 11, 1984)

**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.