

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Division of Law - 5th floor
124 Halsey Street
P.O.B. 45029
Newark, New Jersey 07101
By: Joan D. Gelber
Sr. Deputy Attorney General
Tel. 973-648-2972
Joan.Gelber@dol.lps.state.nj.us

FILED

DECEMBER 28, 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
DOCKET NO. BDS 02346-2011N

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF LICENSE OF

PAUL K. RATZKER, M.D.
LICENSE NO. 25MA06464600

TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY

ADMINISTRATIVE ACTION

FINAL CONSENT ORDER
AND SETTLEMENT AGREEMENT

This matter was presented to the State Board of Medical Examiners by the Attorney General of New Jersey by way of a Six-Count Administrative Complaint filed January 3, 2011. The conduct, as set forth in detail in the Complaint, was alleged to constitute, variously, violations of the cited administrative rules and of N.J.S.A. 45:1-21(b), (c) and/or (d), (e), (h) and (n), and 45:9-22.4 et seq.

Respondent Dr. Ratzker, in his Answer, filed on February 18, 2011, denied each and every allegation contained in the Complaint. Respondent has primary offices currently at "The Back Institute, P.C." (the "Back Institute"), 700 Rahway Avenue, Union, NJ 07083, and is represented by Walter F. Timpone, Esq. The contested case was transmitted by the Board to the Office of Administrative Law, for hearings before the Hon. Jesse H. Strauss, A.L.J. Thereafter, with Respondent's consent, the case was consolidated for hearings with Administrative Complaints filed

against Douglas D. Bradley, M.D. (BDS 02307-2011N) and Marvin Friedlander, MD (BDS 03637-2011N).

All three physicians are co-owners of "The Back Institute" and were co-owners of "Neurophysiological Monitoring, LLC" ("NPM"), a limited liability company set up to perform intraoperative monitoring services.

Respondent has asserted that, with respect to the allegations of the Administrative Complaint, he made good faith efforts to comply with applicable statute and regulations, that his actions were in furtherance of what he believed to be in the best interests of patient care, and that he did not engage in conduct intended to be in violation of New Jersey law.

The Attorney General contends that, notwithstanding Respondent's lack of intention to violate the law, there is sufficient support for the allegations of the Complaint.

Respondent has determined to neither admit nor deny liability with regard to the allegations of the Complaint, and has agreed to comply with the provisions of this Order.

Respondent has acknowledged that at least one hospital, at which he holds surgical privileges, currently provides the services of its contracted IOM company. However, Respondent has represented that when performing surgeries at other facilities, he has encountered difficulty in locating IOM companies in this State which will provide reliable and competent service, and which will agree to provide service for Medicare, charity care, emergency or Medicaid cases. He has further represented that at present, when performing surgeries at facilities not offering a contracted IOM service, the Back Institute employs its own CNIM technologist to monitor spine surgery, and that Respondent's practice currently does not bill for that service. He has assured the Board that he/his medical practice has initiated and will continue to make good faith efforts to secure the services of an IOM company or qualified physician to provide monitoring of the technologist at facilities which do not currently provide their own contracted IOM service.

In the interests of amicable settlement, Complainant Attorney General and Respondent Dr. Ratzker have agreed to the following resolution of the matter. Of note is the fact that NPM ceased operations in January 2009, and Respondent has represented that no effort shall be made to collect pending and unpaid bills, if any, for intraoperative monitoring services rendered by that entity or any other entity.

All parties acknowledge and agree that this Final Consent Order and Settlement Agreement constitutes a full compromise and settlement of disputed claims.¹

The Board has considered the matter, and finds that the entry of this Order will adequately protect the public interest. For good cause shown,

IT IS, ON THIS 28TH DAY OF DECEMBER 2011

ORDERED:

1. Respondent's license shall be suspended for three years, all of which shall be stayed as a period of probation, contingent upon his compliance with the following conditions.
2. Respondent is assessed an aggregate civil penalty of \$35,000.00 for the offenses set forth in Counts One through Six, pursuant to N.J.S.A. 45:1-25. In addition, Respondent shall reimburse the Board for partial costs of investigation \$14,685.00 and partial attorney fees of \$9,800.00, pursuant to N.J.S.A. 45:1-25(d).
3. All forms of costs and penalty, totaling \$59,485.00, shall be paid as follows:
 - a. Investigative costs and attorney fees totaling \$24,485.00.00 within ten (10) days of the entry of this Order;
 - b. Twelve (12) monthly payments of \$2,916.67 each for the penalty, each due on the first day of the month commencing on January 1, 2012.
 - c. All payments shall be made by Certified Bank Check or U.S. Postal Money Order payable to the State of New Jersey, at the Board office at P.O. Box 183, Trenton, NJ 08625-0183.
 - d. For any payments ordered herein, which have not been paid in full within 10 days of the entry of this Order, a Certificate of Debt shall be filed pursuant to N.J.S.A. 45:1-24 and interest shall accrue in accordance with Rule of Court 4:42-11. As the Court Rules for 2012 anticipate that the interest rate for 2011 is expected to continue at 0.5%, Respondent has offered to and will pay in advance the \$175.00 interest payment for 2012. In the event that a monthly payment is not received

¹It is understood that the disposition herein does not constitute proof against any other Respondent as to the factual allegations in the consolidated case.

within five days of its due date, the entire balance of the civil penalty and any remaining unpaid costs shall become due and owing.

4. Respondent has agreed to promptly review CMS regulations regarding intraoperative monitoring (IOM) and to review medically justified indications for IOM as reported in juried journals, and shall inform the Board of the sources on which he shall rely.

5. Respondent has agreed to comply with the restrictions on referrals by a licensee holding any financial interest in a health care service (such as IOM), as set forth in N.J.S.A. 45:9-22.4 et seq. and N.J.A.C. 13:35-6.17(b). If IOM services are offered by the "Back Institute" or by any other entity in which Respondent holds any financial interest (as defined by the cited statute and rule) under an exception thereto, Respondent shall assure that patients are informed at the time of initial scheduling of the surgery.

6. Respondent's patient records shall document the medical justification for IOM he orders for his patients.

7. Henceforth, Respondent shall utilize his best efforts, subject to paragraph 9(a), to secure performance of IOM by

(a) a New Jersey-licensed physician or neurophysiologist trained in performing IOM, with such performance to be documented in the IOM report and the surgery report; or

(b) by a technologist trained in IOM, preferably credentialed as a CNIM, who shall be monitored, as set forth in paragraph 8 below, by a New Jersey-licensed physician or neurophysiologist trained in performing IOM; the technologist and the monitoring shall be identified in the IOM report and the surgery report.

8. Respondent shall consult, subject to paragraph 9(a), with the physician/neurophysiologist and an anesthesiologist regarding the clinical problem involved in the surgery, and shall determine whether, under the particular circumstances of the patient-case, the monitoring physician must be (a) in the operating room; (b) in the same building; (c) monitoring real-time recordings from a remote site when a monitoring technologist is continuously present in the operating room; or (d) at a location from which the operating room is accessible in minutes to view the recording procedure, and appropriate arrangements shall be made.

9. If Respondent, directly or through his medical practice, elects to utilize the services of an independent entity providing IOM, he or his medical practice shall take reasonable measures, subject to paragraph 9(a), to require that the entity's monitor will participate in the consultation described above, and that the entity represents in writing that it will provide monitoring, as defined in paragraph 8, by a New Jersey-licensed physician or neurophysiologist, or monitoring by such person of a qualified technologist.

9(a). Respondent shall make reasonable efforts to schedule surgeries warranting IOM in facilities providing real-time monitoring by a trained licensed physician, by one or more of the methods set forth in 8(c) above. In the event that the facility in which he performs a surgery is unable to provide such monitoring at the present time, Respondent shall make good faith efforts to contract with a monitoring individual/entity no later than June 30, 2012, and shall confirm such arrangement to the Board of Medical Examiners. If unable to make such monitoring arrangement, surgeries warranting IOM shall be performed only in facilities meeting the requirements of section 8(c).

10. Respondent shall not be deemed in violation of this Order in any of the following circumstances, which shall be documented in the patient record:

(a) Respondent is performing the surgery on an emergency basis, using a technologist as defined in paragraph 7, and there was insufficient time to arrange for a monitoring physician, or

(b) Respondent had arranged for IOM performance by the trained physician, or for trained physician monitoring of the trained technologist, but, for reasons beyond Respondent's control, the person or entity responsible for providing the monitoring failed to be available as scheduled, or

(c) Respondent had arranged for monitoring and the monitoring physician was available to perform the monitoring as defined in paragraph 8, but for technical reasons, a monitoring connection could not be effectuated.

11. Respondent may seek Board reconsideration of paragraphs 8 or 9 on submission of supporting documentation.

12. Respondent shall assure that if his patients are billed for the IOM service by the "Back Institute" or any other entity through which he practices medicine, such billing shall be made in the

same name as the surgery service is billed, *i.e.*, Respondent's name or the name of his medical practice, as required by N.J.A.C. 13:35-6.17(b)(3)(a).

13. The parties recognize that Respondent may not always be able to prevent unauthorized actions by his agents, but Respondent shall take reasonable measures to supervise the conduct and representations made by an agent of his medical practice, such as to patients, health care facilities and insurance carriers, whether such agent is deemed a salaried employee or an independent contractor, and Respondent shall observe the responsibilities of an owner/investor in health care service as required by N.J.A.C. 13:35-6.16(b).

14. Prior to the end of the probation period, Respondent shall meet with a committee of the Board, on notice, to discuss his compliance with all terms of this Order.

15. The entry of this Order shall not limit the authority of the Attorney General or of any other person or agency to initiate any further action permitted by law, whether administrative, civil or criminal, in any court or other forum of competent jurisdiction in connection with any matters coming within that jurisdiction.

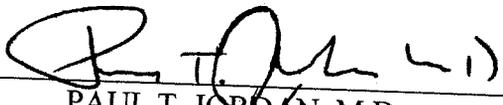
16. The Notice provisions attached hereto are incorporated herein.

17. Respondent shall comply with the Probation/Monitoring Conditions attached hereto as Attachment A and shall complete (for Board confidential file use alone) the Addendum enclosed with this Order.

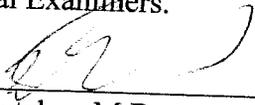
18. It is intended by the parties that this Order shall resolve all administrative and license issues with Respondent, which were alleged or were known and could have been alleged as violations by the Attorney General in the Administrative Complaint, with regard to his responsibility to the State Board of Medical Examiners.

THIS ORDER IS EFFECTIVE UPON ENTRY.

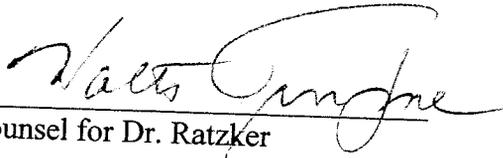
STATE BOARD OF MEDICAL EXAMINERS

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.



Paul K. Ratzker, M.D.



Counsel for Dr. Ratzker

8

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED¹**

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.)

¹APPROVED BY THE BOARD ON MAY 10, 2000

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 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 such 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 an 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.

11

**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.