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FILED

May 22, 2012

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEP'T OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF AN INQUIRY :
INTO THE PRACTICE OF

ADMINISTRATIVE ACTION

ORIN K. ATLAS, M.D.
License No. 25MA7390600

CONSENT ORDER

PRACTICING MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY :

This matter was opened to the State Board of Medical Examiners by investigation into the professional and financial arrangements between Orin K. Atlas, M.D. and two corporate entities known as "The Back Institute, LLC" and "Neurophysiological Monitoring, LLC." Dr. Atlas is represented by Nicholas C. Harbist, Esq.

Dr. Atlas is a board-certified orthopedic surgeon maintaining a professional practice as "Atlas Spine, LLC" in Hainesport. He holds hospital privileges. Certain of his spinal surgeries warrant the use of intraoperative monitoring as a safety measure to protect the integrity of the patient's spinal cord or for other special purposes.

In 2003, a medical device salesman introduced Dr. Atlas to a person identified as the Administrator of "Neurophysiological Monitoring, LLC," (hereinafter referred to as "NPM"), an entity

offering to supply "certified" technicians to perform intraoperative monitoring at surgery facilities when called in by the surgeon. The NPM entity billed patients/third party payors for the IOM service.

Dr. Atlas agreed to try use of the NPM technicians. Although NPM initially had no contract with the hospital at which Dr. Atlas practiced, and at least one other provider of IOM services was available, Dr. Atlas deemed NPM's service to be satisfactory and chose to utilize that entity for those surgeries for which IOM was appropriate. He also recommended that his hospital designate NPM as an approved provider. His choice to use of NPM services continued through 2008, when NPM ceased to do business under that name. Dr. Atlas has represented and the Board accepts that he received no payment from NPM for his selection of the entity throughout this period. In making these arrangements for IOM for particular surgeries, Dr. Atlas was thereafter in regular contact with the NPM Administrator.

In mid-2004, Dr. Atlas was informed by the NPM administrator that he was also the Administrator for a medical practice, "The Back Institute, LLC," owned by physicians performing neurosurgery and orthopedic surgery. The Administrator proposed that Dr. Atlas perform retrospective "audits" of the surgeons' previously completed Operative Reports, for which Atlas would be paid. The auditing role entailed delivery by the Administrator of some redacted Operative Reports, along with a handwritten page listing billing codes allegedly utilized by that medical group. Dr. Atlas was to review the reports and the listed codes and to initial his agreement or disagreement with the codes used (and already

billed) by the practice. The Administrator offered Dr. Atlas \$4,000.00/month to be available to perform the retroactive coding service. The Administrator provided no written contract and no specification of the extent or timing of work to be done. Dr. Atlas agreed to undertake the audits of Back Institute charts and coding. He asserts that he was initially unaware of the identities of the Back Institute physician owners, and states that the Administrator specifically represented that there was no connection between The Back Institute and NPM.

The Back Institute, through its Administrator, commenced delivery of the reports, each comprising about two-three pages. As Dr. Atlas was already familiar with most of the codes, common to his own professional work, each review was brief.¹ He did not question that the "audits" were sometimes for surgery dates long since past, and without any apparent reason for the selection of reports. In approximately 2006, he requested, and The Back Institute Administrator agreed, to increase payments to \$5,000.00/month. He accepted the Administrator's explanation of "clerical error" when he received - and returned - an NPM check in February 2006. When Dr. Atlas received tax forms from The Back Institute, he did not question why some came in the form of W-2 statements and others in the form of 1099 statements.

Dr. Atlas, who had no contract with The Back Institute, did not keep a copy of the reports he audited, nor did he keep records of his work completed for "The Back Institute." Although Dr. Atlas did not submit bills for his work, twice-monthly payments were sent to him by The Back Institute by check. In 2007, he reports that he began to notice that the

¹ Dr. Atlas noted that he declined to review some reports, when the particular surgery was out of his specialty.

number of charts was variable, and in some months he received very few. Dr. Atlas was also aware that in approximately 2007, there were months when he received no reports to audit, but the payments continued to come. He represents that on noticing this, he questioned the Administrator but was assured that it was "okay" because Atlas "was doing enough work." Throughout this period, Dr. Atlas was continuing to designate NPM technicians for his surgeries, by contacting the same individual who Atlas knew to be the Administrator of NPM as well as of The Back Institute. Dr. Atlas asserts that he made no greater use of the NPM technicians than was warranted by particular surgeries. However, he has acknowledged to the Board that well before this time, he had suspicions that there was, indeed, a connection between NPM and The Back Institute.

In early March 2009, an investigator for the Board of Medical Examiners contacted Dr. Atlas by telephone, informing him that she wished to make an appointment to discuss his financial arrangements with The Back Institute and NPM. Dr. Atlas represents that he attempted to contact the Administrator and, when unable to do so, personally spoke with Dr. Marvin Friedlander, one of The Back Institute surgeons (and, as Atlas learned soon thereafter, one of the owners of NPM), to ask why the Board was investigating. Dr. Atlas states he was told the matter related to unlicensed practice of medicine by an employee, and that "The Back Institute had nothing to do with NPM."

Dr. Atlas then reached the Back Institute/NPM Administrator, who arranged to meet with Dr. Atlas prior to the designated appointment with the Board investigator. Dr. Atlas represents that, at that meeting, he was told by the

Administrator for the first time that the physicians who owned The Back Institute were also the owners of NPM. Dr. Atlas also asserts that he was instructed by the Administrator to make certain statements to the investigator, including that Atlas did not know the ownership of The Back Institute and also regarding the financial arrangement for the auditing, which statements Dr. Atlas knew to be untrue. At the same meeting, the Administrator presented Dr. Atlas with some audit forms to be immediately signed - without the Operative Reports to which they pertained, and Dr. Atlas signed them.

When he met with the Board's investigator, Dr. Atlas described inaccurately the amount of auditing work he had done and the amount of payments received, did not reveal that at times he received payment for little or no auditing work or that he had recently signed audit forms without matching Operative Reports, and denied knowing of any connection between The Back Institute and NPM, hampering the Board's investigation.

Dr. Atlas reports that subsequently, during the same month of March 2009, he was contacted by the Administrator, who claimed that more audit reports were needed to justify the amount of money which had already been paid by The Back Institute, and that additional reports would be sent to Atlas to promptly sign and return to The Back Institute. Three batches of over 400 audit pages were then delivered to Atlas, with return labels addressed to The Back Institute.

The batches contained only a couple of actual Operative Reports, and the remaining hundreds of pages referenced redacted surgeries purportedly performed several years before, with no matching reports. At or about the same time, he also received two Back Institute checks totaling \$5,000.00. However, Dr.

Atlas turned over all the material to his attorney; sent a letter of resignation of his consulting role to The Back Institute, and did not cash the checks, which were subsequently provided to the Board's attorney.

Dr. Atlas later received use immunity pursuant to N.J.S.A. 45:1-20 and disclosed the above information to the Board. Knowing that he remained subject to disciplinary sanction by the Medical Board, Dr. Atlas testified on behalf of the State at the administrative prosecution of Marvin Friedlander, M.D. Dr. Atlas has expressed great remorse at his initial naiveté and for his misjudgments.

The Board, having considered the documents and testimony, accepts Dr. Atlas' representation that he did not initially know that The Back Institute physicians, who were paying him to "audit" old Operative Reports, were also the owners of NPM, which he was designating as the IOM provider at the hospital, and that such knowledge was not confirmed to him until the Administrator of both entities so acknowledged in March 2009. However, the Board finds that Dr. Atlas, knowing that the Administrator was working for both entities, should have followed up on his admitted earlier suspicions of the connection to avoid concerns of accepting remuneration from The Back Institute for making referrals to NPM for its services to his patients. The Board also finds that Dr. Atlas' knowing acceptance of substantial twice-monthly payments by The Back Institute's administrator for "auditing" of Operative Reports, even at times when few or no reports had been sent to him to audit, was imprudent; that his signing of several audit forms given to him by the Administrator - without Operative Reports - was spurious; and that the making of knowingly false statements

to the Enforcement Bureau Investigator, constituted violation of N.J.S.A. 45:1-21(b), (e) and (h). The Board takes into account Dr. Atlas' subsequent good faith cooperation in the Board's investigation.

For good cause shown,

IT IS, THEREFORE, ON THIS ~~2nd~~ DAY OF MAY 2012

ORDERED:

1. The license of Orin K. Atlas, M.D. is hereby suspended for six (6) months, the entirety of which shall be stayed, contingent upon the conditions set forth below;
2. Prior to the end of the stayed suspension period, Respondent shall submit to the Board proof of having taken and satisfactorily completed a course in professional ethics approved in advance by the Board.¹
3. Dr. Atlas is assessed investigative costs and attorney fees of \$3,000.00 and civil penalty of \$15,000.00 pursuant to N.J.S.A. 45:1-25. The financial assessment shall be paid within 10 days of the entry of this Order, at the Board office at P.O. Box 183, Trenton, NJ 08625-0183.
4. If installment payments are requested, Dr. Atlas shall make such arrangements with the Board.
5. Interest on financial assessments shall accrue in accordance with Rule of Court 4:42-11. All payments shall be made by certified check or money order payable to the State of New Jersey. In the event that a monthly payment is not received within five days of its due date, the

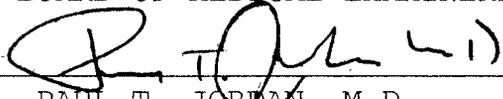
¹A list of approved courses/programs, such as those offered by The Center for Personalized Education for Physicians (CPEP), is available from the Board office.

entire balance of the civil penalty and costs shall become due and owing. For any payments, as ordered in paragraphs 3 and 4, 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.

6. The Directives Applicable To Any Medical Board Licensee Who Is Disciplined Or Whose Surrender Of Licensure Has Been Accepted, attached hereto, are incorporated in this document.
7. 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 in any court or other forum of competent jurisdiction in connection with any matters coming within that jurisdiction.
8. It is intended by the parties that this Order shall resolve all administrative and license issues with Dr. Atlas which are addressed in this Order, with regard to his responsibility for compliance with laws and rules of the State Board of Medical Examiners.

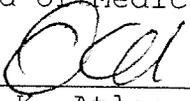
THIS ORDER IS EFFECTIVE UPON ENTRY.

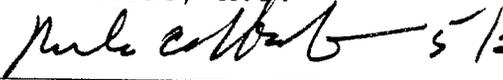
STATE BOARD OF MEDICAL EXAMINERS

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.

 5/14/12
Orin K. Atlas, M.D.

 5/21/12
Counsel for Dr. Atlas

**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.

**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.