

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Division of Law 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
By: Joan D. Gelber
Sr. Deputy Attorney General
Tel. (973) 648-2972

FILED

February 13, 2013

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEP'T OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
OAL DKT NO. BDS00983-2011N

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

ADMINISTRATIVE ACTION

ARTHUR C. ROTHMAN, M.D., Ph.D.
License No. 25MA05287200

FINAL ORDER
OF REPRIMAND

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

This matter was opened to the State Board of Medical Examiners by way of Administrative Complaint filed July 22, 2010 and by an Amended and Supplemented Complaint filed July 30, 2012, alleging violations of law and rules of the Board, as more fully set forth in those documents.

Respondent, while represented by prior counsel, filed an Answer denying the allegations. The matter was transmitted to the Office of Administrative Law for hearing.

Hearing dates were held in abeyance for an extended period, on order of the Hon. Jeffrey A. Gerson, ALJ, to await the outcome of Dr. Rothman's appeal of an adverse decision by the Appellate Division in Selective Ins. Co. v. Rothman, 414

N.J.Super. 331 (App. Div. 2010), holding that use of an employed physician assistant to perform needle electromyography (EMG) was not permitted by N.J.S.A. 45:9-5.2. The decision was ultimately affirmed by the Supreme Court, 28 N.J. 580 (2012).

Hearings at the Office of Administrative Law commenced on December 11, 2012, at which time Dr. Rothman was represented by Keith J. Roberts, Esq., of Brach Eichler, LLC.

The parties agree that information produced during the hearings has adequately addressed the primary concerns alleged in the Amended and Supplemented Complaint, which are now resolved consistent with terms of this Order.

The parties are now interested in amicable settlement. Respondent, having consulted with his counsel, has offered certain representations.

With regard to the remaining issues, which the Board finds involved a failure to comply with N.J.A.C. 13:35-2.6 (k) as it concerned retention of NCV waveforms, (p) as it concerned VNG testing, (s) as it concerned the use of a physician for VNG testing licensed outside the jurisdiction of the Board, and 13:35-6.5 for recordkeeping, which Dr. Rothman does not contest, Dr. Rothman has offered mitigating circumstances for consideration, as follows:

I. Supervision of Needle Electromyography:

Dr. Rothman represents that after N.J.S.A. 45:9-5.2 became effective in 2006, he made substantial efforts to obtain guidance concerning the use of a physician assistant to perform needle electromyography. He relied upon advice received from the Physician Assistant Advisory Committee stating its opinion that licensed Physician Assistants could perform needle EMG, an opinion supported by a Law Division judge. On appeal, however,

the Appellate Division reversed that ruling in Selective Ins. Co. v. Rothman, 414 N.J.Super. 331 (App. Div. 2010). The New Jersey Supreme Court affirmed the Appellate Division ruling, but declined to rule whether the decision had retroactive application. Dr. Rothman represents that as of the date of the Appellate Division ruling, he never permitted a Physician Assistant to perform needle EMG in the face of the adverse court ruling.

II. Billing for videostagmography tests:

Dr. Rothman represents that he was unaware of the lack of current New Jersey State licensure of the Florida physician, and the lack of documentation of third party consent to such service which was not subject to the protective jurisdiction of the New Jersey Board of Medical Examiners. Dr. Rothman was also unaware that his prior counsel had mis-identified the Florida physician as a different physician. Dr. Rothman represents that in the event he receives a report of VNG which identifies artifact, he shall take the circumstances into consideration when determining the fee and whether the study needs to be repeated.

The parties are satisfied that these issues, which Dr. Rothman does not contest, can be resolved as set forth below.

The Board, having considered the matter, and finding that the public health, safety and welfare can be adequately protected by the terms of this settlement:

IT IS, ON THIS 13 DAY OF February 2013

ORDERED:

1. Dr. Rothman is hereby reprimanded for the above-described failure to comply with Board rules; N.J.S.A. 45:1-21(h);

2. In order to fully satisfy the Board's supervision requirements for NCV and needle EMG testing, Dr. Rothman shall continue to take all necessary measures to assure that when performing electrodiagnostic tests for his patients, only a New Jersey-licensed physician shall physically examine the patient, determine the necessary scope and sufficiency of the electrodiagnostic study for the patient, and the physician performing the study shall contemporaneously report positive and negative findings along with any limitations to the Impressions/Diagnoses resulting from any technical difficulties;

3. Dr. Rothman shall take all necessary measures to assure that all forms of tests which he orders for his patients that are performed in his office and require a physician's interpretation, including but not limited to videostagmography, shall be performed and/or personally supervised and billed in accordance with all applicable New Jersey Statutes, and regulations of the Board. If Dr. Rothman elects to delegate that medical service to a physician who is not a member of Dr. Rothman's medical office identified on Dr. Rothman's letterhead stationery, Dr. Rothman shall assure compliance with N.J.A.C. 13:35-2.6 (s). The interpreting physician shall be fully identified by name and office address on the test report;

4. Dr. Rothman is assessed costs of \$5,734.00, pursuant to N.J.S.A. 45:1-25(d), which shall be paid within 10 days of the entry of this Order, to the State Board of Medical Examiners, at the Board office at P.O. Box 183, Trenton, NJ 08625-0183.

5. If installment payments are requested, and approved by the Board for good cause shown, arrangements shall be made with the Board office. Interest on financial assessments shall accrue

in accordance with Rule of Court 4:42-11. Respondent may elect at any time to increase the amount paid per installment.

6. All payments to the State 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 entire balance of the civil penalty and costs shall become due and owing.

7. For any payment ordered in paragraph 4 above, which has 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.

8. Incorporated in this Order are the attached "Directives Applicable To Any Medical Board Licensee Who Is Disciplined Or Whose Surrender of Licensure Has Been Accepted."

9. It is agreed by the parties that this Order shall resolve all administrative and license issues with Dr. Rothman which were alleged in the Administrative Complaint and the Amended and Supplemental Complaint addressed in this Order, with regard to Respondent's responsibility for compliance with laws and rules of the State Board of Medical Examiners and accepted standards of practice.

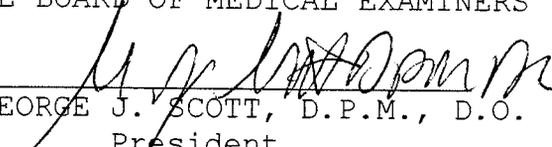
10. The parties hereby stipulate that entry of this Order shall not limit the authority of the Attorney General, the Drug Control Unit or the Director of the Division of Consumer Affairs, nor shall the Order limit the authority or any law enforcement entities, or of any other person or other agency to 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.

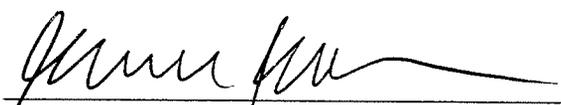
THIS ORDER IS EFFECTIVE UPON ENTRY.

STATE BOARD OF MEDICAL EXAMINERS

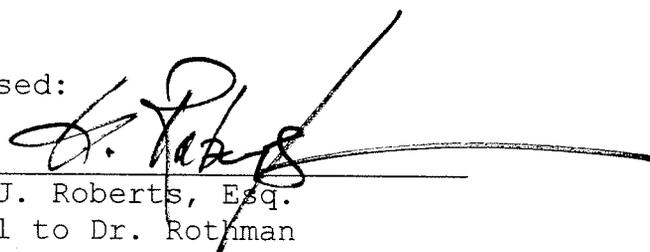
By:


GEORGE J. SCOTT, D.P.M., D.O.
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.


Arthur C. Rothman, MD, Ph.D.

Witnessed:


Keith J. Roberts, Esq.
Counsel to Dr. Rothman

**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 Confidential Information page enclosed with 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,

¹APPROVED BY THE BOARD ON MAY 10, 2000

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 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 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 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.

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.