

# FILED

July 31, 2013

**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 THE REVOCATION :  
OF THE LICENSE OF :  
:  
Gary Karakashian, M.D. :  
LICENSE NO. 25MA05182300 :  
:  
TO PRACTICE MEDICINE AND :  
SURGERY IN THE :  
STATE OF NEW JERSEY :  
:

**Administrative Action**

**FINAL DECISION AND ORDER**

This matter was opened to the New Jersey State Board of Medical Examiners ("the Board") following the issuance of a seventy-eight (78) page Initial Decision of Administrative Law Judge Jeff Masin recommending dismissal of all but one allegation in the various Amended Complaints filed in this matter<sup>1</sup>. The Complaints sought the suspension or revocation of the license of Gary Karakashian, M.D. (Respondent), based on allegations in multiple counts that in the course of his practice of dermatology between 1996 and 2000 Respondent committed acts of gross malpractice, gross negligence and repeated acts of malpractice regarding four patients involving breast augmentation and revision of a scar. Three additional counts alleged

<sup>1</sup> The initial Administrative Complaint was filed on April 3, 2007. Thereafter, four Amended Complaints were filed.

**CERTIFIED TRUE COPY**

that his conduct violated applicable professional standards, including requirements for honesty and integrity involving certified answers on hospital re-appointment applications.

Respondent submitted an Answer wherein he denied the charges within the Administrative Complaints. Subsequently, the plenary hearing was conducted before the Office of Administrative Law, A.L.J. Jeff Masin presiding, on various dates in January, March, April and June 2012. A.L.J. Masin issued his Initial Decision on May 3, 2013 in which he found that the Attorney General failed to meet the burden of proof on all of the quality of care counts and all but one of the counts concerning the doctor's dishonesty.

The sole count on which the State prevailed related to a document that Respondent filed with Monmouth Medical Center seeking re-appointment to the staff for the years 2008 - 2009. The Judge was hesitant to find Respondent liable regarding false answers on forms filed for the years 2004 - 2005 and 2006 - 2007 due to testimony suggesting that Respondent's father, acting in the capacity of an office manager, filled out and signed Respondent's name to those forms certifying the answers were true. However, the A.L.J. did find that the charge that Respondent made false and deceptive statements on the form for the years 2008 - 2009, for which he found Respondent himself signed the certification, was established by a preponderance of the credible evidence. He found such conduct violates N.J.S.A.

45:1-21(b), (e) and N.J.S.A. 45:1-39 by answering "no" to the question concerning whether there were "ever" any investigations instituted against his medical license at a time when it was clear Respondent was the subject of an investigation by the Board. The A.L.J.'s decision is incorporated by reference and attached as if fully set forth herein.

Based on these findings, A.L.J. Masin recommended that the Board enter an Order suspending Respondent's license for two years, with an active suspension of four months and a civil penalty in the amount of \$7,500. The A.L.J. further recommended, given that Respondent was found liable for only a very limited portion of the many counts contained in the various Complaints, he should pay only 15% of the costs incurred by the Board in this matter.

Following entry of A.L.J. Masin's decision, the parties were advised of a schedule whereby written exceptions to the Initial Decision were to be filed and served. Exceptions were submitted by Respondent and his attorney Stephen M. Pascarella, Esq., under cover of letter dated May 17, 2013 with a supplemental submission personally from Respondent dated May 28, 2013. In his written submission and oral arguments, Mr. Pascarella addressed only the count concerning dishonesty on the 2008-2009 hospital privileges re-appointment application. He emphasized the delay between the commencement of the Board investigation and conclusion of the trial approximately 13 years

later. He argued that there was no evidence in the record to support the conclusion that Respondent was aware that a Complaint had been filed and thus, he could not be held responsible for not reporting it on his 2008 - 2009 hospital re-appointment forms. He suggested that even if Respondent had engaged in the alleged dishonest behavior, a reprimand and a small fine would be a more appropriate penalty.

Respondent submitted at least twenty (20) exceptions on his own behalf regarding the sole count which was not dismissed by the A.L.J. In summary, he suggested that A.L.J. Masin mischaracterized and misstated the questions on the renewal form and improperly assumed that the 2007 Administrative Complaint was properly served in May 2007 and that Respondent had knowledge of the Complaint when he completed the renewal form. He argues that A.L.J. Masin mistakenly assumed that Respondent should have known he was "under investigation" after his appearance before a preliminary evaluation committee ("PEC") of the Board and that Judge Masin should have noted that Respondent had previously and repeatedly informed Monmouth Medical Center of his interactions with the Board. Respondent argued that allowing the Fourth Amended Complaint to be admitted after the conclusion of testimony is prejudicial and violates the Administrative Code. Finally, Respondent argued that A.L.J. Masin used dissimilar cases to establish an appropriate penalty and that the imposition of costs for the failed portion of the Complaint is unconscionable.

Deputy Attorney General Bindi Merchant did not file Exceptions, but submitted a response dated May 23, 2013 to Respondent's Exceptions. She urged the Board to reject the Exceptions filed by Respondent and his attorney and adopt the Initial Decision in its entirety. She argued that review of the Initial Decision and the record below, revealed that the A.L.J. made fair and reasonable credibility findings that are amply supported by the evidence. She further noted that the A.L.J., in consideration of an appropriate penalty, weighed the need for complete honesty against the doctor having already suffered much personal and financial stress from defending a case in which he has largely been exonerated.

The matter was scheduled for consideration at the Board meeting of June 12, 2013, but was adjourned due to lack of a quorum and rescheduled to be heard at the next regularly scheduled meeting of the Board on July 10, 2013. At the time of hearing, Respondent was represented by Stephen Pascarella, Esq. and also appeared on his own behalf. Deputy Attorney General Bindi Merchant appeared on behalf of the State. Both counsel and Respondent were afforded an opportunity to present oral argument on the Exceptions. A hearing at which Respondent was afforded an opportunity to present written and testimonial evidence in mitigation of penalty was also held before the Board on July 10, 2013, immediately following the Board's determination to adopt the Findings of Fact and Conclusions of Law

of the ALJ, as discussed below.

**DETERMINATION TO ADOPT**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After due consideration of the Initial Decision of the Administrative Law Judge, transcripts, exhibits, Exceptions, and arguments of counsel and Respondent on this matter, we conclude that cause exists to adopt, in their entirety, the findings of fact and conclusions of law as set forth in the Initial Decision of the Administrative Law Judge in this matter in total. We also hereby make one modification that does not impact on Respondent's liability and we reject Respondent's Exceptions.

Respondent argues that A.L.J. Masin improperly assumed that Respondent should have known he was "under investigation" after, at a very minimum, his appearance before a PEC of the Board. A PEC is an investigatory inquiry conducted pursuant to N.J.S.A. 45:1-18 by a committee of the Board with a DAG present. In the instant matter, Respondent appeared before a PEC, was represented and was asked questions under oath about the patients whose care formed the basis for the Complaint. This investigative appearance was one of many contacts Respondent had with the Board and the Attorney General's Office. Respondent also had his office inspected and records seized, he received Consent Orders and had an attorney representing him throughout. Again, we concur with the A.L.J.'s opinion that, given

the facts of this case,

any reasonable doctor, having seen his office 'raided' by state authorities, having received a 'complaint' or at least notice of some intention to revoke his license and shutter his practice, having been summoned to the PEC meeting and having heard DAG Bey-Lawson explain as she did the purpose of the proceeding that day, would have understood that his practice was, at a minimum, under 'investigation' by the Board of Medical Examiners.

(Initial Decision at page 69).

Respondent suggests that A.L.J. Masin mischaracterized and misstated the questions on the re-appointment application form for the 2008-2009 period. When asked whether investigation had ever been instituted or was currently pending, Respondent answered "no."<sup>2</sup> Although the heading preceding this question indicates that the answer is for the period of time since the last biennial renewal, the evidence and testimony in this matter clearly establishes that Respondent was aware of an ongoing Board investigation and knew or should have known that an Administrative Complaint had been filed in early 2007, before he submitted the 2008 - 2009 re-appointment application. The evidence also reflects that the investigation was not reported on previous re-appointment applications. Respondent's argument that he did not believe he needed to disclose the proceedings is simply not credible.

---

<sup>2</sup> The pertinent question was: "Have investigations or proceedings that could have resulted in denial, revocation, suspension, limitation, termination, reduction, probation or lack of renewal ever been instituted or are any such investigations or proceedings currently pending for . . . medical license in any state." (P-8 in evidence).

Once again, we concur with Judge Masin in that the question on the renewal is direct and straightforward.

Respondent argues that A.L.J. Masin improperly assumed that the 2007 Administrative Complaint was properly served in May 2007 and that Respondent had knowledge of the Complaint when he completed the renewal form. Further, Respondent's father, Vincent Karakashian testified at trial that he received a document in May 2007 which he passed along to Respondent's attorney. Vincent claims he did not show this document to Respondent but told him he had received something from the Board of Medical Examiners which he thought was a duplicate of correspondence from 2002 sent in error. (Testimony of Vincent Karakashian June 22, 2012, page 124-126). Regardless of whether Vincent showed the document to his son, it is clear that the Complaint was, in fact, served on Respondent at his address on record with the Board. A.L.J. Masin discusses the credibility of Vincent Karakashian and Respondent regarding this issue at length. He notes that on this later form Respondent signed the re-appointment application himself, in deviation from the two prior applications, and concluded that given the totality of the circumstances, it is reasonable to understand this change in practice,

as reflective of a heightened concern about the turn of events vis a vis the State, a concern brought about by some knowledge of how the matter had now advanced to a more serious stage. . . such that it is more likely than not that he knowingly provided false and misleading

information.

(Initial Decision page 74)

The Board concurs that Respondent is an educated physician who retained a lawyer, appeared at an investigative inquiry and received correspondence regarding the investigation (and ultimately the Administrative Complaint) at his address of record with the Board. His attempts to explain away the untruthful certified answer he personally provided on his 2008 - 2009 renewal form are strained and not credible. We find that A.L.J. Masin's credibility findings are not arbitrary, capricious or unreasonable and are supported by sufficient, competent, and credible evidence in the record. We also find that the A.L.J. observed the demeanor and heard the testimony and is in the best position to make credibility findings. We also independently find that Respondent's explanation is simply not believable.

Respondent argues that allowing a Fourth Amended Complaint to be admitted after the conclusion of testimony is prejudicial and violates the Administrative Code. The Fourth Amended Complaint alleged for the first time that Respondent knowingly provided false information on his re-applications to practice at Monmouth Medical Center in 2004 - 2005 and in 2006 - 2007. We affirm the A.L.J.'s conclusion that, given extensive testimony regarding these prior re-appointment applications,

the amendment to the charges was warranted, and no surprise or unfairness can reasonably be claimed in regard to either their admission or to the charges relating to them, which mirror those made for the 2007 form."

(Initial Decision page 67).

That being said, this Exception point would appear to be moot as these amended charges were ultimately dismissed by the A.L.J. based upon his understanding that Respondent did not fill out or sign the certification on the 2004 - 2005 and 2006 - 2007 applications himself. Instead, Respondent's father/officer manager signed Respondent's name on these applications, falsely certifying there were no Board investigations or proceedings.

The Attorney General did not submit exceptions regarding the A.L.J.'s dismissal of the counts involving the applications that the father/office manager signed on Respondent's behalf. We are adopting that conclusion of law and not holding Respondent liable as we have chosen not to re-examine this issue sua sponte. However, it has always been the standard and continues to be the standard that licensees may not delegate the responsibility for the truthfulness of certified statements on any applications/forms regarding their professional responsibilities and the practice of medicine. The Board hereby puts Respondent and licensees on notice that a licensee may not delegate responsibility for the truthfulness of personal certifications. A licensee is responsible for the content of his or her own

certifications regardless of who signs the licensee's name.

In conclusion, after careful review of the Initial Decision, transcripts and exhibits in this matter, the Board has determined that the ALJ's credibility findings, findings of fact and conclusions of law are not arbitrary, capricious or unreasonable and are supported by sufficient competent, and credible evidence in the record. Accordingly, the Board adopts in totality the Findings of Fact and Conclusions of Law as set forth in the Initial Decision of the Administrative Law Judge in this matter.

#### **PENALTY DISCUSSION**

Upon deciding to adopt the Findings of Fact and Conclusions of law of ALJ Masin, the Board proceeded to hold a hearing on the questions of sanctions to be assessed. The Board then considered both the oral and written arguments of counsel on the recommended penalty. Respondent testified in mitigation of penalty as to how stressful the past 12 years have been and the toll the prosecution had on his life, reputation and medical practice.

Deputy Attorney General Merchant, Mr. Pascarella and Respondent made arguments regarding the appropriate quantum of penalty to be assessed. The Attorney General urged that the Board find A.L.J. Masin's recommendation of a two year suspension, with four months active and a \$7,500 civil penalty to be appropriate. Mr. Pascarella and Respondent argued that the Board should impose no more than a

reprimand and a nominal penalty.

The Board has considered the arguments made by counsel and concludes that cause exists to mitigate A.L.J. Masin's recommended penalty. The conduct underlying the Initial Complaint filed in this matter occurred between 1996 and 2000. An investigation commenced as early as 2002 and the first Complaint was filed in 2007. Following a hearing before an A.L.J., the vast majority of allegations in the various Complaints were dismissed. That being said, the sole count on which the State prevailed involved the fundamentally dishonest act of failing to report a currently pending investigation/proceeding on an application for re-appointment for hospital staff privileges. Physicians are presented with situations daily where their fundamental honesty must be trusted. The public relies on the Board to assure that their health care providers are honest and trustworthy in all their actions. Physicians are entrusted with the most private information and must be trusted to truthfully report billing and accurately create and maintain medical records. Certainly, hospitals need to be able to rely on the truthfulness of the certified statements on privilege applications. The record before us fully supports entry of an Order imposing serious discipline.

We conclude that the imposition of a period of two years of suspension, the entirety to be stayed and served as a period of probation and a meaningful monetary penalty is necessary to further

our paramount obligation to protect the public health safety and welfare. A \$7,500 civil penalty, as recommended by A.L.J. Masin is less than the penalty of up to \$10,000 for a first violation as authorized by N.J.S.A. 45:1-25. In this instance, the stayed suspension of Respondent's license and the \$7,500 monetary penalty, which A.L.J. Masin recommended, will serve both a punitive element - that is, to punish Respondent for his behavior - and a deterrent effect, as it is intended to send a message to the community of licensees at large that dishonesty in dealing with privileging exposes a licensee to significant penalty.

It is axiomatic that each case must be judged individually, on its own unique facts and circumstances. There is no cookie-cutter penalty imposed for all physicians who are found to have engaged in dishonesty, as not all cases involve the same degree of misconduct, and not all cases deserve equal sanction. For the reasons cited above, we find Respondent's conduct to have been serious and thus find his case to be one that fully supports the sanctions ordered herein.

#### **COSTS**

The Board considered the application for costs and the response by Respondent at our meeting of July 10, 2013.

The State's submission on costs included certifications and documents to support an application for investigative costs of \$7,191.52; expert costs of \$11,525.00; transcript costs of \$4,898.70

and attorney's fees of \$152,491.50; all totaling \$176,106.72. 15% of the total is \$24,444.66.

Mr. Pascarella and Respondent did not object to the calculations utilized as to investigative costs, but maintain that Respondent should not be held liable for costs incurred for those portions of the various Complaints that were ultimately dismissed.

We have reviewed the costs sought in this matter and find the application for investigative, transcript, expert and attorney costs sufficiently detailed and the amount reasonable. As recommended by the A.L.J. we have also substantially reduced the amount requested to 15% of the costs sought by the State. Our analysis follows.

In its submission seeking investigative costs, the State has submitted certifications of supervising investigator Mary Davison, RN as well as Daily Activity Reports which identify the precise activities performed, the amount of time spend in each activity, and the hourly rate charged for each investigative assignment. The Daily Activity Reports and certifications document costs totaling \$7,191.52.

We find the portion of the application for investigative costs supported by signed and detailed contemporaneous time records to be sufficient. We note that investigative time records are kept in ordinary course of business by the Enforcement Bureau, and contain a detailed recitation of the investigative activities performed.

Furthermore, 15% of the overall amount of investigative time expended (approximately 12 hours and 15 minutes) is minimal for activity of investigators involving investigation of potential violations, service of documents and subpoenas and related functions. We have also considered and find that the rates charged, (\$86.30 to \$94.72 per hour) to be reasonable, and take notice that investigative costs, approved many times in the past, are based on salaries, overhead and costs of state employees. Considering the important state interest to be vindicated, protection of the public by assuring physicians are truthful in privilege applications, the investigative costs imposed are certainly reasonable. Similarly, the court reporting/transcript fees are documented by invoices and appear necessary and reasonable to this proceeding.

The Attorney General's certification in this matter extensively documented the amount of time the attorneys expended in these proceedings, detailing fees of DAsG Merchant, Puteska, Volonte, Jespersen, Rubin and Bengal from 2007 to February 2013 with time sheets attached. The Attorney General initially sought a total of \$152,491.50 in counsel fees for 1018.9 hours that had been incurred in the course of the proceedings regarding Respondent. The Attorney General did not seek attorney fees for activity prior to the filing of the first Administrative Complaint (approximately 2002 to 2007) and did not seek any costs for time spent by paralegals on this matter. Given that the

majority of the allegations in the Complaint were dismissed, and keeping in mind the age of this case and the numerous DAsG who were, in turn, required to spend time familiarizing themselves with this matter, we find the recommendation of the A.L.J. to impose only 15% of the total amount to be fair and reasonable in the circumstances. Therefore, we have reduced the total attorney fees awarded to 15% of the whole, resulting in \$22,873.73 of attorney fees.

Although the rate of compensation was not challenged, the application included information derived from a memorandum by Nancy Kaplan, then Acting Director of the Department of Law and Public Safety detailing the uniform rate of compensation for the purpose of recovery of attorney fees established in 1999 and amended in 2005, setting the hourly rate of a DAG with various years of legal experience at between \$135.00 to \$175.00 per hour. We are satisfied that the record adequately details the tasks performed and the amount of time spent by the Deputy Attorney General (to include investigation, research, drafting, appearances, settlement discussions, depositions, motions, briefs, trial preparation and preparation for hearing before the Board, trial presentation and post hearing brief.) We are satisfied the tasks performed, while time consuming, needed to be performed and that in each instance the time spent was reasonable.

The rates charged by the Division of Law of \$135 to \$175 for a Deputy Attorneys General with various years of experience has been

approved in prior litigated matters and appears to be well below the community standard. Moreover, we find the certification attached to the billings to be sufficient. We also note that no fees have been sought for any time after February 2013, following which oral argument on exceptions and additional transcript costs were incurred.

We find the application to be sufficiently detailed with the reductions we have applied, to permit our conclusion that the amount of time spent on each activity, and the overall fees being awarded, are objectively reasonable as well. (See, Poritz v. Stang, 288 N.J. Super 217 (App. Div. 1996). We find the Attorney General has adequately documented the legal work we have found necessary to advance the prosecution of this case. We are thus satisfied that the fees we are awarding are reasonable especially when viewed in the context of the seriousness of the action maintained against Respondent. We further find that Respondent has provided absolutely no documentation of any inability to pay such costs.

Costs are traditionally imposed pursuant to N.J.S.A. 45:1-25 so as not to pass the costs of proceeding onto licensees who support Board activities through licensing fees. Were we not to assess costs against Respondent, those costs would instead need to be borne by the entire licensee population which ultimately pays all Board expenses within licensure fees, and we do not perceive that to be an equitable result in this case. In summary, sufficient documentation has been submitted

to support imposition of the following costs which represent 15% of the total costs requested by the Attorney General in this matter:

Expert Costs:	\$768.00 <sup>3</sup>
Transcript Costs:	\$326.50
Investigation Costs:	\$476.43
Attorney's Fees:	\$22,873.73
Total:	\$24,444.66

**THEREFORE** as orally ordered by the Board on the record on July 10, 2013,

**IT IS ON THIS 31st DAY OF JULY, 2013:**

**ORDERED:**

1. The Board hereby adopts in its entirety the Initial Decision of ALJ Masin, including all findings of fact and conclusions of law.

2. The license of Respondent Gary Karakashian, M.D. to practice medicine and surgery in the State of New Jersey is hereby suspended for a period of two (2) years. The entire period of suspension shall be stayed and served as a period of probation.

3. Respondent is hereby assessed a civil penalty of \$7,500.00

4. Respondent is hereby assessed costs of this action, in the aggregate amount of \$24,444.66.

5. Respondent shall pay the aggregate penalties and costs

---

<sup>3</sup> We note that the State did not prevail on the counts involving quality of care. However, we believe, as did the A.L.J. that Respondent should bear this nominal 15% of the total expert charges.

assessed herein of \$31,944.66 in full no later than thirty (30) days from the date this Order becomes effective (August 9, 2013).

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

7. This Order, announced on the public record on July 10, 2013, will be effective thirty days following its oral announcement on the record, that is, on August 9, 2013.

NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

By: George J. Scott D.P.M., D.O. FRCOFP  
George J. Scott, D.P.M., D.O.  
Board President

Stewart A. Berkowitz  
STEWART A. BERKOWITZ, MD  
BOARD VICE PRESIDENT

**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.