

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street, 5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101

**FILED**  
August 23, 2013

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

By: Joshua M. Bengal  
Deputy Attorney General  
(973) 648-7093

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION  
OR REVOCATION OF THE LICENSE OF  
  
**John Burger, D.O.**  
**LICENSE NO. 25MB03476300**  
  
TO PRACTICE MEDICINE AND SURGERY  
IN THE STATE OF NEW JERSEY

ADMINISTRATIVE ACTION

INTERIM CONSENT ORDER

This matter was opened to the New Jersey State Board of Medical Examiners ("Board") upon its receipt of eleven separate complaints by New Jersey Manufacturers Insurance Company ("NJM") concerning John Burger, D.O. The complaints alleged that, between 2004 and the present, Dr. Burger submitted a series of bills for improperly and/or fraudulently performed electromyography ("EMG") and Nerve Conduction Velocity ("NCV") tests. As part of its investigation, the Board directed Dr. Burger to appear and testify before a Preliminary Evaluation Committee of the Board on November 28, 2012.

**CERTIFIED TRUE COPY**

From the aforementioned testimony and review of the eleven patient records pertaining to the NJM complaints, the Board is concerned that Dr. Burger may lack sufficient knowledge to safely and properly administer and supervise these tests. Further the Board has serious concerns about Dr. Burger's overall ability to practice medicine and his specific competence in the area of neurology.

Dr. Burger has cooperated in the Board's investigation thus far and has agreed to this interim resolution of the Board's investigation. The Board finding the within interim disposition to be adequately protective of the public health, safety, and welfare, and for other good cause shown, and all parties agreeing to the terms of this Order,

IT IS on this 23rd day of August, 2013,

ORDERED:

1) Dr. Burger shall submit to an independent assessment, at his expense, of the following:

- a. his knowledge of, and skills and competence in, both general medicine and the performance, interpretation and billing of electrodiagnostic testing;
- b. his billing practices;
- c. his recordkeeping practices;

- 2) Such an assessment shall be made by an entity or individual proposed by Dr. Burger and pre-approved by the Board. Prior to undergoing the assessment, Dr. Burger shall approve the release of the assessment's results directly to the Board;
- 3) Acceptable assessment programs include, but are not limited to, the Colorado Personalized Education for Physicians program and the Upstate NY Clinical Competency Center-Albany Medical College;
- 4) Dr. Burger will submit to such an assessment within sixty (60) days of the date of entry of this Order;
- 5) The Board and the Attorney General will have full and complete access to any communications between Dr. Burger and the assessor, and will have full and complete access to any reports, recommendations or evaluations issued by the assessor or by any other consultant the assessor recommends, including but not limited to any medical or neuropsychological evaluations. Dr. Burger shall authorize the assessor to provide copies of any such documents to the Board and the Attorney General simultaneously with their provision to Dr. Burger. In addition, the Board, its agents, and its employees, including but not limited to the Medical Consultant to the Board, may communicate directly with the assessor with regard to Dr. Burger's participation in the assessment;
- 6) The assessment must include a personal clinical interview of Dr. Burger, review of a sample of at least ten patient records

redacted to protect patient privacy and selected by the Attorney General with notice of selection criteria provided to Dr. Burger's counsel, and oral examination by a panel of experts in the specified area of medicine, and any other components required by the assessor;

7) After the assessment has concluded, a written report must be provided to the Attorney General. That report must address the following:

a. Dr. Burger's performance in all of the assessment's component parts.

b. Dr. Burger's professional skills in each area in which he seeks to resume medical practice.

c. The auspices of the evaluation program, the sources of information considered by the panel, the topics covered in the assessment, and the panel's evaluation, conclusions and recommendations;

8) Dr. Burger must comply with any recommendations of the assessor. If Dr. Burger fails to substantially comply with the recommendations of the assessor, such conduct shall be deemed to constitute professional misconduct in violation of N.J.S.A. 45:1-21(e). In that event, the Attorney General or the Board may commence a disciplinary proceeding seeking, among other things, the suspension of Dr. Burger's license to practice medicine.

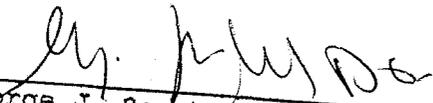
9) Dr. Burger acknowledges that any recommendations, evaluations, or reports issued by the assessor may be introduced as a matter of public record during the course of any future disciplinary proceedings;

10) The Attorney General and the Board may provide to the assessor whatever information they may possess with regard to Dr. Burger including this Order. Such submissions may also include the record of the proceedings before the Preliminary Evaluation Committee on November 28, 2012, and any medical records obtained by the Attorney General or the Board. Dr. Burger's counsel shall be informed of the materials the Attorney General and the Board submit to the assessor. Such provision of documents by the Attorney General or the Board to the assessor shall not entitle any member of the public to a copy of said documents to the extent they are confidential pending final disposition of the Board's investigation pursuant to N.J.S.A. 45:1-36;

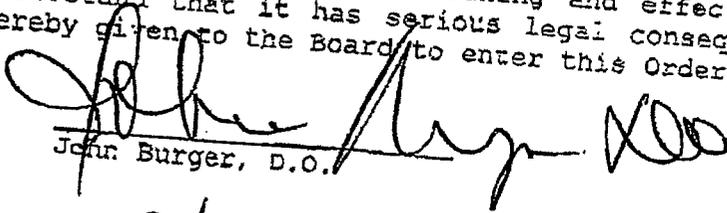
11) Entry of this Order is without prejudice to any further action by the Board or other entity based on Dr. Burger's conduct occurring prior or subsequent to entry of this Order;

12) Failure to comply with any provision of this Order may result in subsequent disciplinary proceedings for failure to comply with an Order of the Board.

NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

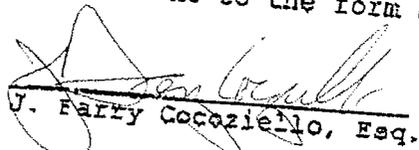
By:   
George J. Scott, D.P.M., D.O.  
President

I have read the within Consent Order and agree to be bound by its terms. I understand the meaning and effect of this Order and understand that it has serious legal consequences. Consent is hereby given to the Board to enter this Order.

  
John Burger, D.O.

Date 8/21/13

I hereby consent to the form and entry of this Order.

  
J. Barry Cocozziello, Esq.

Date 8/21/13

**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.