FILED
June 20, 2014
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 REVOCATION OF THE LICENSE OF

Jonathan Fellus, M.D.
LICENSE NO.: 25MA06616400

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

FINAL DECISION AND ORDER
GRANTING SUMMARY DECISION
AND REVOKING LICENSURE

This matter was opened to the New Jersey State Board of Medical Examiners ("the Board") upon the filing of a Verified Complaint, a Motion for Summary Decision, a Motion to Seal and an Order to Show Cause seeking relief by summary action before the State Board of Medical Examiners by John J. Hoffman, Acting Attorney General of New Jersey by Joan Gelber, Senior Deputy Attorney General on March 26, 2014. The Complaint alleged in one (1) count that Respondent Jonathan Fellus, M.D., a neurologist, engaged in repeated inappropriate sexual conduct and sexual relations with a cognitively impaired patient to whom he was providing medical care at a rehabilitation institute. The Complaint, among other things, alleges respondent's actions constituted gross and/or repeated malpractice, professional misconduct, failure to comply with the sexual misconduct rule of the Board and a failure of the ongoing requirement of good

CERTIFIED TRUE COPY

moral character, all in violation of N.J.A.C. 13:35-6.3, N.J.S.A. 45:1-21(c),(d),(e) and (h), and N.J.S.A. 45:9-6. In her motion for Summary Decision, Certification and Brief, the deputy attorney general asserts that there are no material issues of fact to be decided at a hearing. Respondent filed an Answer on May 23, 2014 in which he admitted nearly all of the allegations of the Verified Complaint, denying a few details or portions of allegations.

Oral argument on both motions was heard by the Board on June 11, 2014.[1] Senior Deputy Attorney General Joan Gelber appeared on behalf of the State. Joseph Gorrell, Esq. appeared on behalf of Respondent.

SDAG Gelber argued in her brief and at the June 11, 2014 motion hearing that the Board should seal the briefs in support of the Motion for Summary Decision and Motion to Seal and all supporting exhibits to protect the identity of the patient. The Board moved into closed session for the oral argument on the motion to seal to ensure that confidential information would not be inadvertently disclosed. SDAG Gelber argued that sealing these documents was required to prevent unwarranted disclosure and resulting undue embarrassment. She explained that the patient record included psychiatric diagnoses made by the Respondent and other treating physicians and that the Certification of patient L. describes an account of sexual exploitation with embarrassing details. SDAG

[1] This matter was adjourned from an original hearing date of May 14, 2014.

Gelber acknowledged there is a civil case pending, but noted that it may never come to trial.

Respondent did not object to the State's motion, and further moved to seal the entire hearing. He argued that if the hearing is not sealed, it is possible the patient's name will be inadvertently disclosed to the public. Further, counsel planned to call Respondent's psychotherapist to testify and might submit a psychotherapy report which contains personal information not directly related to this matter.

Discussion on Motions to Seal

The Board deliberated in executive session, and voted on and announced its decision on the record in open session as follows. The State of New Jersey has a policy of transparency as reflected in the Open Public Meetings Act, Open Public Records Act and other statutes and rules. It is the general policy of this Board to redact personally identifying information, particularly sensitive personal information of patients, from documents prior to release. The patient in this matter requested that the documents be sealed or redacted to protect her privacy. Respondent, not the State, has put his psychological treatment at issue, and requests that it be considered in mitigation in this matter. The Board having determined that its usual policy of redaction is sufficient to protect privacy,

the motions of both the Attorney General and Respondent to seal the record and/or hearing in this matter were denied.[2]

However, in keeping with our obligation to protect against disclosure of personal information which would run contrary to reasonable privacy interests, all documents submitted by the State in this matter before or at the June 11, 2014 hearing and any psychological report submitted by Respondent will be sealed for a 60 day period after which time redacted documents may be released.[3]

Motion for Summary Decision

The Board then moved forward to the merits of the State's Motion for Summary Decision. SDAG Gelber supported her application with the following documents appended to her brief in support of Summary Decision and introduced into evidence:

P-A	Certification by patient L.
P-A-1	Chronological compilation of E-mail exchanges between L. and Respondent
P-A-2	Non-chronological compilation of E-mail exchanges, as initially retrieved by patient L.

[2] Although not explicitly addressed on the day of hearing, transcripts of oral argument made in closed session on the motions to seal will be made public with appropriate redactions consistent with the Board's decision to deny the motions to seal.

[3] The parties were directed to submit proposed redactions for Board review within 30 days, and the Board will review same. Henceforth, all documents in this case shall be redacted to eliminate all identifiers of the patient and her family, including other information (such as addresses or names) which may reasonably lead to disclosure of the patient's identity. The documents may contain initials, but the patient's name shall not be disclosed by the parties or the Board. The court reporter was also directed to refer to the patient by initials and to correct any transcript references if anyone present inadvertently referred to her name. Any member of the public present was also directed not to further disseminate any personal identifying information that might be inadvertently disclosed at the hearing. The Board preserved its ability to rely on and cite to any information, redacted or otherwise, in the record for use in this proceeding and in any Order.

P-A-3	List of some telephone calls made between Respondent and L.
P-A-4	Note, "BUY SOME NICE THINGS," on prescription form given to patient L. by Respondent
P-A-5	Respondent's December 2008 Prescription for "epilepsy monitoring" for patient L.
P-B-1	Respondent's typed Initial Evaluation report for patient L's office visit August 8, 2008
P-B-2	Respondent's handwritten chart notes for a second office visit September 15, 2008
P-B-3	Respondent's September 18, 2008 Plan of Care
P-B-4	Respondent's handwritten chart notes for a third office visit date of October 21, 2008
P-C	Code of Conduct for employees of the rehabilitation institution, excerpt from the institution's document, identified in the civil deposition.
P-D	Record of Service Dates for patient L. as maintained by the rehabilitation institution.
P-E	Respondent's Letter of Resignation from the rehabilitation institution, effective February 11, 2011
P-F	Respondent's Answers to Plaintiff's Interrogatories and to Supplemental Interrogatories in the Civil litigation filed against Respondent and the rehabilitation institution.
P-G	Respondent's Deposition by the attorney for plaintiff L. dated December 19, 2012
P-H	Respondent's Deposition by the attorney for plaintiff L. dated May 7, 2013

Respondent did not contest liability and made no objection to the documents the State sought to enter into evidence.

Discussion on Motion for Summary Decision

Upon consideration of the entire record, written and oral arguments of counsel and a review of submissions, the Board deliberated in executive session, and voted on and announced its decision on the record in open session.

Summary decision is a tool designed to achieve judicial economy while protecting due process rights. This Board may enter summary decision pursuant to N.J.A.C. 1:1-12.5 when the documents filed demonstrate that there is no genuine issue of material fact challenged and the moving party is entitled to prevail as a matter of law. The adverse party, in order to prevail, must set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.

In his Answer, Dr. Fellus admitted to the vast majority of allegations contained in the Verified complaint. Notably, he admitted:

- On patient L.'s initial visit with Respondent on August 8, 2008, Respondent determined that L. suffered apparent mild traumatic brain injury in addition to many other sequelae, including vestibulopathy, bodily pain, elements of posttraumatic stress disorder, episodes or spells or ictuses resembling features of seizure activity or autonomic dysfunction, and post-concussive syndrome. He recommended neuropsychological testing.

- At the initial visit, in response to an inquiry whether he was at the institution on weekends, Respondent asked L. "are you asking me out?" That evening, L. sent Respondent an e-mail

indicating "I wouldn't mind if you asked me out." On the next business day, Respondent sent an e-mail to L.: "Thanks! And glad to see that confidence is building already. I would need to find time as I'm way overscheduled, have taken on too much responsibility. Your smile and eyes definitely melt the heart."

- On August 19, 2008, L. was examined and tested by the institution's psychologist who found she suffered neurocognitive dysfunction affecting several areas of abilities and diagnosed with post-concussive syndrome and cognitive disorder among other things.

- Over the next several weeks Respondent and L. exchanged numerous e-mails regarding adverse effects of medication she was taking.

- On September 15, 2008, at the second office visit, after asking her mother to leave the examining room, and with the door closed, Respondent kissed L.'s neck and stated that he was not getting along with his wife. He did not note the sexual contact in his notes of the visit.

- Two days subsequent to the September 15th office visit, L. reported more collapses resulting in Emergency Department treatment, diagnostic tests and another episode while driving a car.

- On September 18, 2008, Respondent noted in the institutional record his diagnosis of ICD 438.0 (Cognitive Deficits) and he prescribed "CRP (the Institution's Cognitive Rehabilitation Program) full program 3 days x 12 weeks."

- L. began the CRP program on October 1, 2008. On or about October 7, 2008, Respondent approached L. in the institution's cafeteria and asked her if she would come to his home on November 7th, while his wife was away.

- On or about October 15, 2008, L. drove Respondent to the airport. On arrival at the airport, Respondent kissed L.

- L.'s third office visit to Respondent - and the last one he documented in the medical record - took place on October 21, 2008. Respondent hand wrote that she was taking prescribed psychoactive medications and attending the CRP program. On that visit Respondent engaged in sexual contact with the patient, kissing, hugging and petting.

- On or about October 27, 2008, Respondent saw L. at the rehabilitation institute and handed her a folded paper. Inside was cash, wrapped in Respondent's prescription form on which was written, "BUY SOME NICE THINGS."

- On the evening of November 7, 2008, L. went to Respondent's house. Respondent provided food and wine and they had sexual relations.

- After that, Respondent and L. continued phone calls and sexual contact by hugging and kissing while in closed rooms at the rehabilitation institution.

- On or about November 21, 2008, Respondent arranged to meet L. at a Newark hotel, where they again engaged in sexual relations.

- L. informed Respondent of a severe episode she suffered and, on or about November 25, 2008, Respondent arranged to meet with L. at the institution. In an empty examining room with the door closed, they engaged in sexual contact by hugging and kissing. This encounter is not documented in the patient record.

- On or about December 2, 2008 L. collapsed while at the institution.

- On or about December 3, 2008 the institution informed L. that she was being terminated from treatment because she was a "fall risk."

- In early December, L. notified Respondent that she was pregnant. Respondent met with her at the rehabilitation institution and told her he was not prepared to leave his wife or jeopardize his career.

- Some time in December 2008, Respondent, continuing his role as treating neurologist, issued a prescription for L. ordering "epilepsy monitoring inpatient r/o TBI seizure vs. PNES."

- The patient became increasingly despondent and, in February 2009, L. called Respondent to tell him she planned to hurt herself. He sought to dissuade her.

- Upon discharge from an inpatient treatment clinic, L. was instructed to make (according to Respondent by the staff at the

hospital where she had been admitted), and did make, a follow-up visit with "your neurologist," Respondent.

- On March 24, 2009, L. and Respondent met in a patient examining room with the door closed, at which time L. performed a sexual act with Respondent.

The few allegations that Respondent denies do not rise to the level of "material" given the volume of egregious allegations he has admitted. Further, his counsel represented at the hearing that Respondent does not contest any of the legal conclusions in the Verified Complaint and affirmed again that Respondent concedes liability.

We find that the State has demonstrated sufficient undisputed facts for the Board to determine liability. Respondent conceded liability and all of the legal conclusions as alleged in the complaint, and, in any event, did not show by responding affidavit specific facts demonstrating genuine issues which can only be determined in an evidentiary proceeding. Based upon Respondent's Answer, admissions and deposition testimony alone, summary decision is appropriate.

In granting summary decision, we find that Respondent engaged in a sexual relationship with patient L. while she was a patient in a therapeutic relationship with him acting as her treating neurologist. We further find that the sexual activity occurred after his diagnosis of mild traumatic brain injury in addition to many other sequelae, including vestibulopathy, bodily pain, elements of posttraumatic

stress disorder, episodes or spells or ictuses resembling features of seizure activity or autonomic dysfunction, and post-concussive syndrome. The sexual activity continued both in and outside the rehabilitation institution during her participation in a cognitive rehabilitation program he prescribed, and while he treated her for cognitive disorder. Such conduct constitutes gross malpractice, repeated malpractice, professional misconduct, failure to comply with regulations of the Board and failure to maintain the ongoing requirement of good moral character in violation of N.J.A.C. 13:35-6.3; N.J.S.A. 45:1-21(c), (d), (e) and (h); N.J.S.A. 45:9-6, in addition to a failure to document an office visit of L. on March 24, 2009 in violation of N.J.A.C. 13:35-6.5.

PENALTY HEARING

Immediately following the Board's announcement of its determination that cause for discipline had been found, the Board proceeded to a hearing for determination of sanctions in this matter. Respondent and five other witnesses testified on Respondent's behalf. He further supported his mitigation argument with documents marked into evidence.[4]

---

[4] DAG Gelber objected that the C.V.'s and other documents noted were not previously provided to her and, in the case of letters, were irrelevant to the case. They were accepted into evidence and were given appropriate weight. The documents admitted were as follows:

R-1 Curriculum Vitae of Gregory Dominick Anselmi, M.D.
R-2 Curriculum Vitae of George Joseph Carnavale, Ph.D.
R-3 Curriculum Vitae of Respondent
R-4 Letter from S.G., a patient's wife, dated June 9, 2014
R-5 Letters from patient A.J.G and from D.G., the mother of another patient, undated and unsigned

Gregory Dominick Anselmi, M.D. testified on behalf of Respondent. He is Board Certified in vascular neurology and stroke, engages in private practice and is the Director of Stroke at Hoboken University Medical Center. He testified that he began referring difficult to treat patients to Respondent in 2001 or 2002, with "good results." After Respondent left the rehabilitation institution, patients that were referred there did not report back to him the same level of satisfaction. Some time in 2011, Dr. Anselmi began referring patients to Respondent again. Dr. Anselmi believes that Respondent tailors the treatment of each patient resulting in better overall results, and thinks Respondent is the only doctor in the Tri-State area who can help some of the patients with more complex brain injuries. On cross-examination, Dr. Anselmi acknowledged that he first learned of Respondent's alleged misconduct the week before the hearing. When asked whether he would fire an employee who engaged in similar conduct, he indicated he would have to "gather more information" and know more than "a simple allegation." He did not know that Respondent admitted all of the sexual misconduct with the patient - only that he "admitted to misconduct."

Respondent's next witness was Dr. George Joseph Carnavale, Ph.D., who is a licensed psychologist. He was Director of

---

R-6 Letter from V.C., a patient's wife, dated June 10, 2014
R-7 Letter from Philip A. DeFina, Ph.D. dated June 10, 2014
R-8 Respondent's Personal Statement
R-9 Curriculum Vitae of Jeffrey C. Singer, Ph.D.
R-10 Report of Jeffrey Singer, Ph.D.

Neuropsychology at the rehabilitation institution from 1989-2004, where he supervised the Neuropsychology Unit and coordinated out-patient care following traumatic brain injury. He testified that he worked closely with Respondent, sharing some patients in common and discussing all patients formally and informally. Dr. Carnavale testified that Respondent was the first neurologist hired at the rehabilitation institution, was a popular physician and was able to achieve very good outcomes for his patients. Dr. Carnavale has referred six patients to Respondent over the last six or seven years. He opined that there are not sufficient physicians willing to treat traumatic brain injury patients with neuropharmacological methods. On cross-examination, Dr. Carnavale acknowledged that he was aware of the rehabilitation institution's Code of Conduct prohibiting personal relationships with patients. Although he did not know the details of the allegations lodged against Respondent, he conceded that "something is wrong" if a physician is kissing, hugging, fondling and having intercourse with a patient both at a medical institution and off premises.

S.D., a patient who was involved in a major car accident in 2006 which left her paralyzed from the waist down from traumatic brain injury, also testified on Respondent's behalf. He was her treating neurologist between approximately 2006 and 2010. She testified that Respondent gave her the correct medications and she was able to resume her life. She testified that Respondent told her he was

"stressed" and she stated that she could help relieve his stress and tried to go out with him. She made a sexual advance, which he rebuffed, and he repeatedly advised her that would not be right and explained why she was behaving this way - something about the "head injury" and impulses. He ultimately told her that if she continued to behave inappropriately she would need to find another doctor. On cross-examination, S.D. again confirmed that Respondent told her it was "very wrong" for a physician to have a relationship with a patient.

C.C. testified she was involved in a car accident in 1998 which left her comatose for a few months. Respondent became her treating neurologist at the rehabilitation institution in August 1998, where she received treatment for approximately 11 months. She testified that Respondent was very encouraging during her rehabilitation and provided intermittent support as she returned to college. After graduating from college, she became employed at the rehabilitation institution and had a professional relationship with Respondent. She also worked with him at the International Brain Research Foundation and, for a few months, as a medical assistant in his private practice. She has never seen him interact with patients in anything other than a professional manner and was "shocked" when she learned about his behavior in this matter. In her opinion, if Respondent is prevented from practicing, in terms of patient care there would be a "void with no one to fill it." On cross

examination, C.C. indicated that she is working with Respondent and other doctors on research and a future clinical trial of the drug Neudexta for treatment in patients with stroke and traumatic brain injury.

Respondent then testified on his own behalf, claiming that there are, perhaps, seven neurologists in the country who specialize in rehabilitation following traumatic brain injury. Most will not accept patients outside their system. Respondent claims he offers a combination of therapies not found elsewhere in the United States. This specialized protocol of 26 medications, nutritional supplements and electrical stimulation has FDA approval and will soon be the subject of a clinical trial overseen by the International Brain Research Foundation funded by a grant from the Department of Defense.

When questioned about patient L., Respondent testified that she was a "complex" case and it was not clear whether the mechanism of her injury was sufficient to cause brain injury, and "she had a lot of trouble focusing and thinking clearly." He thought L. was invested in believing all her problems were a result of brain damage. However, not all cognitive impairment is related to direct brain damage. Respondent asserted that, setting aside balance of power issues, he was never forceful, abusive or coercive with L. He claimed he never had a sexual relationship with any other patient before or since. He later testified that personal, work and financial pressures were partially to blame for his conduct. He now

has greater insight into these stressors and will never repeat his conduct.

Respondent identified written testimonials from patients commending him on his medical knowledge, bedside manner, responsiveness and positive outcomes. R-4, R-5, R-6 in evidence. He also identified a letter from Philip A. DeFina, Ph.D., the co-principal investigator on what he termed a "unique Department of Defense study seeking to improve the care and outcomes of military personnel and civilians with the severest level of brain injury and disordered consciousness." Dr. DeFina claimed that there is no other person with such deep familiarity and knowledge of the treatment protocol as Respondent and that without his expertise the research will be jeopardized. (R-7 in evidence). Respondent explained that the one-and-a-half year clinical trial will most likely be conducted at a long term care facility in New York, but may be carried out in part with a Rutgers affiliated facility in New Jersey.

Respondent expressed his sorrow at all the wrongdoing and harm he caused to his family, himself, the practice of medicine and most of all to L. He has been in psychotherapy for an "arduous but rewarding 2 ½ years." He stated: "I am here to beg for the opportunity to continue as a practicing physician so I can compensate L. and continue to help others and not have a career derailed for one huge egregious mistake with one patient."

At the conclusion of his testimony, Respondent's written personal statement was entered into evidence (R-8).

On cross-examination Respondent conceded that he was aware of the rehabilitation institution's Code of Conduct prohibiting personal relationships with patients; that he knew he could ask for a chaperone, but did not; and that he engaged in an inappropriate sexual relationship with patient L. between September 2008 and March 2009. He felt shame when he first kissed L. and continued to feel shame as the relationship progressed. Respondent conceded that he noted in L.'s patient record that she had cognitive deficits and recommended her for the full rehabilitative program of three days a week for twelve weeks. Her working diagnosis of mild traumatic brain injury in addition to many other sequelae, including vestibulopathy, bodily pain, elements of posttraumatic stress disorder, episodes or spells or ictuses resembling features of seizure activity or autonomic dysfunction, and post-concussive syndrome, was never changed. Respondent nonetheless claimed at the hearing that L. may not have had traumatic brain injury. He confirmed that after L. became pregnant he advised her that he would not be available to her if she continued the pregnancy and that it would jeopardize his career. He gave her money to assist in whatever decision she made. Respondent further acknowledged that when L. returned to him for a follow-up office visit following her in-patient

treatment for suicidal thoughts, he met with her in an exam room, with the door closed and they engaged in oral sex.

Respondent conceded that he lied to the rehabilitation institution in 2009 when he informed the administration he had never inappropriately touched any patient.[5] He lied again in 2010 when asked about L.'s allegations. In 2011 he was put on administrative leave and resigned after he acknowledged the sexual relationship in response to interrogatories in the patient's civil suit. He began to see his psychologist, Dr. Singer, in December 2011 when he was ready to confront "the origins of his egregious misbehavior."

Jeffrey C. Singer, Ph.D. is a licensed psychologist, Respondent's treating psychologist, and has been involved in the treatment and evaluation of sex offenders since 1995. He testified that Respondent is conscientious about keeping his appointments. Respondent has expressed remorse, "feels genuinely awful, humiliated and shamed." He is developing skills to tolerate the enormity of his error. Respondent has never put blame on L. during therapy. Dr. Singer expressed optimism when asked about risk of recidivism, indicating "a lack of bad risk factors." Dr. Singer's progress report regarding his treatment of Respondent was entered into evidence as exhibit R-10. On cross-examination, Dr. Singer agreed that there are negative psychological consequences for a patient when they have sex with a doctor.

[5] Respondent claimed that this discussion with administration was in the context of a complaint related to an employee, not patient L.

Prior to closing statements, DAG Gelber submitted her Fee Application.[6] In closing, Respondent's attorney acknowledged that there is no question that Respondent engaged in inappropriate conduct. He stressed that Respondent has unique skills and that severely brain injured patients and the public at large will be harmed if Respondent is prevented from practicing medicine. He cited to several prior Board Orders involving sexual misconduct where a period of suspension was not imposed, or a suspension of limited duration was imposed.

DAG Gelber argued that Respondent now seeks to escape severe discipline despite the harm to L. and the profession. She reminded the Board that patients need to be able to trust that doctors will not take advantage of them. Respondent did not engage in a single lapse of judgment, rather, his behavior was calculated and continuous over several months. DAG Gelber argued that Respondent is not indispensable to the International Brain Research Foundation clinical trials - there are two other doctors listed on the letterhead for the foundation and the trials will take place in New York State - where Respondent does not hold a medical license. DAG Gelber mentioned a number of sexual misconduct cases in which the discipline imposed was revocation and reminded the Board that, in this case, the victim had

[6] She explained the size of attorney fees were in part due to the need to review transcripts of the depositions in the civil matter, and that L. alone was subjected to three (3) full days of deposition. Such review was needed to conduct an appropriate analysis of whether Respondent met statutory grounds for discipline. Mr. Gorrell objected that the fees were grossly excessive because Respondent has conceded liability from the beginning.

cognitive impairment and was very vulnerable. She encouraged the Board to impose the most severe sanction.

DISCUSSION ON PENALTY

The presentation made in mitigation by respondent in no way dissuades us from the fundamental proposition that the misconduct involved in this matter warrants a severe sanction. As we have observed many times before, it has been accepted since the time of Hippocrates that sexual relations with a patient are improper. There is no such thing as a consensual sexual relationship between a physician and a patient. Such a relationship is inherently coercive as the physician is in control and empowered, by virtue, for example of the specialized knowledge of the physician and the needs of the patient, including the need for treatment and medication.

Sexual misconduct by any physician shatters the trust reposed in him as a licensee of this Board. However, that misconduct is magnified in this case by the fact that respondent is a neurologist who was treating a vulnerable patient. The patient record is replete with references to the patient's difficulties. Respondent reported upon his initial evaluation his diagnostic impression that she had a mild traumatic brain injury, had elements of posttraumatic stress disorder, and episodes of ictuses which resemble many features of seizures, among other difficulties (P-B-1). Despite Respondent's attempts at the hearing to downplay her diagnoses, they were never changed, and indeed on the patient's second office visit her

"Diagnosis/Impairment" is listed as "TBI Cognitive deficits"(P-B-2) and respondent prescribed an intensive cognitive rehabilitation program for the patient at the institution. Despite the vulnerabilities of this patient, and his awareness of the impropriety of sexual activity with a patient (as indicated by his own witness S.D., a head injury patient who he had earlier contact with), Respondent engaged in inappropriate sexual activity beginning at L.'s very first visit. He engaged in inappropriate verbal and written communications about dating the patient, kissed her neck during an examination in a closed examination room on the second visit, and then engaged in repeated sexual contact inside the facility and sexual relations outside the facility. The conduct continued even following patient L.'s pregnancy and on one last occasion after he was aware she had just been released from an inpatient stay in a psychiatric facility for threatening to harm herself.

After weighing the misconduct admitted and proven, the context of treatment of a vulnerable brain injured patient with cognitive deficits, and the fact that respondent's initial dishonest denials of having had any sexual contact with patients prevented the discovery of his behavior and allowed him to continue to practice for several years, we find the most severe sanction to be appropriate in this case. However, factoring in the testimony offered by character and other witnesses on respondent's behalf, and that he eventually acknowledged the conduct making a contested hearing unnecessary, we

have determined that it is to impose revocation of license, we will offer respondent an opportunity to restore his career, by permitting an application for reinstatement after three (3) years, following psychotherapeutic treatment and evaluation, and re-education on medical ethics and maintaining appropriate boundaries.

As to the imposition of costs in this matter, we have reviewed the costs sought by the State and find the application sufficiently detailed and the amount reasonable, given the length of time expended and complexity of the prosecution of this matter. Costs are traditionally imposed pursuant to N.J.S.A. 45:1-25 so as not to pass the cost of the proceedings onto licensees who support Board activities through licensing fees. Our analysis follows.

The Attorney General's certification in this matter extensively documented the time the attorney expended in these proceedings, detailing costs which reflected a total of attorney fees in the amount of $32,865.00. The rate charged by the Division of Law of $175 for a Deputy Attorney General with 10 or more years of experience has been approved in prior litigated matters and appears to be well below the community standard. We find the overall application to be sufficiently detailed to permit our conclusion that the amount of time spent, and the overall fees sought are objectively reasonable as well. (See, Poritz v. Stang, 288 N.J. Super. 217 (App. Div. 1996)). However, in our discretion we decline to award costs for 5 hours to "update documents" on March 11, 2014 and 1.2 hours on

October 15, 2013 "to request documents" due to the lack of detail in the description, and we reduce the fee sought for study of the civil deposition transcripts to $2,500.00. Thus the attorneys fees sought of $32,865.00 shall be reduced by $3,585.00. We find that the Attorney General has adequately documented the legal work necessary to advance the prosecution of this case. We are thus satisfied that the Attorney General's claims are reasonable, especially when viewed in the context of the seriousness and scope of the action maintained against the Respondent, the complexity of the case and voluminous evidence.

We 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 practice within the standard of care, the investigative costs sought of $5171.00 are certainly reasonable.

We are thus satisfied that the following fees we are awarding are reasonable especially when viewed in the context of the seriousness of the action maintained against Respondent:

Investigative Costs	5,170.00
Attorney's Fees	29,280.00
TOTAL	**$34,450.00**

We further find that Respondent has provided absolutely no documentation of any inability to pay such costs as required by notification provided to him well before the hearing date in this matter.

For all the reasons set forth, and in consideration of the egregious nature of the violations in this matter;

IT IS THEREFORE ON THIS 20th DAY OF JUNE, 2014

AS ORALLY ORDERED ON THE RECORD ON JUNE 11, 2014:

1. Respondent's license to practice medicine and surgery in the State of New Jersey is hereby revoked, effective in 30 days on July 11, 2014 to accommodate the need to transition current patients to other treatment providers. Respondent shall cease and desist taking on new patients, effective immediately.

2. No credit shall be given toward the period of revocation for any length of time that the Respondent practices medicine or surgery in another jurisdiction or State.

3. Respondent shall pay civil penalties in the amount of $10,000.00, for the violations found in this matter. Payment shall be made within thirty days of the entry of this Order by certified check or money order, payable to the State of New Jersey and forwarded to the attention of William Roeder, Executive Director, Board of Medical Examiners, 140 East Front Street, 2nd Floor, Trenton,

New Jersey, 08608, unless installment payments are sought from and approved by the Board prior to the date due.

4. Respondent shall pay costs in the amount of $34,450.00 Payment shall be made within thirty days of the entry of this Order by certified check or money order, payable to the State of New Jersey and forwarded to the attention of William Roeder, Executive Director, Board of Medical Examiners, 140 East Front Street, 2nd Floor, Trenton New Jersey, 08608, unless installment payments are sought from and approved by the Board prior to the date due.

5. Failure to make timely payment of penalties and costs under this Order shall result in the filing of a certificate of debt, and such other proceedings as are permitted by law.

6. Respondent may not apply for reinstatement of his license until 3 years has elapsed from the effective date of revocation of his license. Prior to Board consideration of any application for reinstatement, Respondent shall:

a. Provide documentation showing continued psychotherapy with a therapist approved in advance by the Board with experience counseling professionals who have committed sexual boundary violations. Respondent shall cause the therapist to submit a comprehensive report to the Board recommending reinstatement. For the purposes of this Order, Jeffrey C. Singer, Ph.D. is a Board approved therapist.

b. Take and successfully complete, at his own expense, a boundaries course and the ProBe or Prime ethics course, or another ethics course approved in advance by the Board. Successful completion means that all sessions were attended, all assignments were properly and appropriately

completed, and a passing grade was achieved which was unconditional and without reservations.

c. Pay in full all civil penalties and costs imposed pursuant to this Order.

d. Appear before the Board or a committee thereof to discuss his readiness to reenter the practice of medicine. At that time, Respondent shall be prepared to propose his plans for future practice in New Jersey and demonstrate evidence of rehabilitation to the Board's satisfaction. At any appearance for reinstatement the burden shall be on Respondent to demonstrate fitness and competency. The Board reserves the right to impose such conditions and restrictions as it deems appropriate should any application by Respondent for reinstatement be granted.

7. The attached Directives regarding future activities of a Board licensee who has been disciplined is incorporated into this Order whether or not attached here to.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By: George J. Scott DO. FACOFP
George J. Scott, D.P.M., D.O.
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.