

FILED

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~~October 8, 2014~~  
NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

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

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

ADMINISTRATIVE ACTION

ROBERT MUSCIO, M.D.  
License No. 25MA07431300

FINAL ORDER

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

This matter was opened to the New Jersey State Board of Medical Examiners by the Acting Attorney General of New Jersey, by Joan D. Gelber, Senior Deputy Attorney General, by way of three Complaints filed, successively, on March 20, 2013<sup>1</sup>, March 20, 2014 and June 28, 2014. The Complaints allege, variously, several forms of gross and repeated malpractice by Respondent in his pain management practice, indiscriminate prescribing of Controlled Drugs, excessive fees, unreliable computer-composed and generated progress notes, failure to disclose financial interest and/or to disclose it in the form required by law when

<sup>1</sup> Complaint I was docketed at the Office of Administrative Law as BDS 08902-2013N and, by this Final Order, is resolved.

referring patients to his self-owned health care service entities, deficiencies as cited in a Medicare inspection at one of Respondent's ambulatory surgery facilities, and moral turpitude/lack of good moral character for his embezzlement of over \$1.1 million from a medical practice of which he was an owner and also the medical director, all as set forth in one or more of the three Complaints. The conduct was alleged to violate, variously, N.J.S.A. 45:1-21(b), (c) and (d), (e), (f), (h) and (m), N.J.S.A. 45:9-6, and N.J.S.A. 45:9-22.4 et seq., N.J.S.A. 45:9-19.16 and N.J.S.A. 45:9-19.16a.

Respondent, a board-certified anesthesiologist, is represented herein by Pamela Mandel, Esq. (Complaints I and III) and by Christopher D. Adams, Esq. (Complaint II). Respondent has filed Answers, admitting some of the allegations and denying others. The Attorney General filed a Motion for Summary Decision on Complaint II, which was opposed by Respondent.

Respondent has conferred with his two attorneys and has determined to waive his right to administrative hearings and to any appeal therefrom, and to reach an amicable settlement of the three Complaints. On September 10, 2014, before the Board of Medical Examiners, Respondent entered the following pleas: No contest to the allegations of Complaint I; no contest to Count 2 of Complaint II; and no contest to the allegations of Complaint III. He admits the allegations of Complaint II, Count 1.

The Board finds that a revocation of Respondent's license and other sanctions are warranted by the public health, safety and welfare, but with the opportunity for Respondent to petition in the future for relicensure. For good cause shown,

IT IS, ON THIS 8<sup>th</sup> DAY OF October, 2014

ORDERED:

1. The license of Respondent Robert Muscio, M.D. is hereby revoked. To accommodate the need to transfer current patients to other treatment providers, the revocation shall be effective as of October 10, 2014. Respondent shall cease and desist from taking on new patients, effective immediately.

2. With the consent of the Acting Director of the Division of Consumer Affairs, and pursuant to his authority under N.J.S.A. 24:21-9 et seq., Respondent's New Jersey CDS registrations, Number D08195800 and D08195801, are hereby revoked, pending further Order of the Director. Respondent shall make prompt arrangements with that agency for the lawful disposal or lawful transfer of all Controlled Drugs in his possession or under his control in New Jersey (excepting medications which were purchased and utilized solely by a medical practice in which Respondent has held a financial interest, and which medications were solely for the use of treatment of patients of the practice); excepted from this requirement are medications prescribed for Respondent's personal use for a documented medical purpose by his treating physician.

3. The CDS prescribing restriction is independent of any action taken by the State Board of Medical Examiners, federal Drug Enforcement Administration, or any other licensing authority. If, in the future, Respondent's medical license is restored by the Board, Respondent may apply for an Order from the Acting Director lifting the CDS revocation. The Director will consider the factors enumerated in N.J.S.A. 24:21-11 and determine, in the Director's sole discretion, if, and under what circumstances, the revocation of Respondent's New Jersey CDS Registration should be lifted.

4. Respondent shall assure that his name is removed from all New Jersey office letterhead and all prescription pads, all professional signage and all advertising of medical services. He shall make safe and appropriate disposition/transfer of all medical equipment in his possession, or under his custody and control, and shall confirm such actions to the Board.

5. Respondent shall promptly terminate all arrangements by which he served as medical director in any medical practice; he shall make arrangements to terminate his professional affiliation with every medical practice and medical health care service, including LLCs, in which he has any form of financial interest, within 90 days of the entry of this Order. During the same period, he shall dissolve or withdraw from, as applicable, each medical proprietorship or corporate entity of which he was an owner or member. He shall submit proof of each such termination and dissolution or withdrawal, as applicable, to the Board.

6. Respondent is assessed a civil penalty of \$120,000.00 for the conduct set forth in Complaints I and III and for the conduct set forth in Count 1 of Complaint II. He is also assessed the costs of all three matters of \$90,068.00, pursuant to N.J.S.A. 45:1-25. Penalty and costs total \$210,068.00.

7. The costs assessment shall be paid within 30 days of the entry of this filed Order and only by certified bank check or postal money order to the State Board of Medical Examiners, P.O. Box 183, Trenton, New Jersey 08625-0183. Any other form of payment will be rejected. In the event that payment is not received timely and in the stated form, a Certificate of Debt shall be filed pursuant to N.J.S.A. 45:1-24; interest shall

accrue, and shall preclude the opportunity to pay the penalty at a deferred date and in installments, as offered below.

8. The penalty of \$120,000.00 shall be due as of January 2, 2015. Respondent shall arrange with the Board office to make equal monthly payments of \$5,000.00 each. The first payment shall be due on January 2, 2015 and each subsequent payment shall be due on the first day of each month thereafter until completion. Respondent may make early payment at any time. Interest on all financial assessments shall accrue in accordance with Rule of Court 4:42-11.

9. In the event that a monthly penalty payment is not received within five days of its due date, the entire balance of the civil penalty shall become due and owing.

10. Respondent shall have the right to apply for relicensure. If granted by the Board, it shall be no sooner than three years from the effective date of revocation of license. 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.

11. Notwithstanding the minimum period of revocation set forth in paragraph 10 above, Respondent may submit to the Board, no sooner than two years and six months from the October 10, 2014 start of the revocation, a plan for resumption of practice to commence no sooner than the conclusion of the three years' revocation.

12. Prior to Board consideration of any application for relicensure, and prior to consideration of any plan for resumption of practice which Respondent may propose, he shall:

a) Provide proof that he has taken and successfully completed, at his own expense:

- i. A course in professional ethics, and
- ii. A course in medical recordkeeping, and
- iii. A course in medical coding and billing,

each of which shall have been approved in advance by the Board.<sup>2</sup> 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;

b) Provide proof of CME compliance for the most recent Medical Board biennial registration cycle;

c) Provide proof of payment of all civil penalties and costs imposed pursuant to this Order;

d) Appear before the Board or a committee thereof, on notice, to discuss his fitness to reenter the practice of medicine. At that time, Respondent shall be prepared to demonstrate rehabilitation to the Board's satisfaction, and to propose his plans for future practice in New Jersey following the three years of revocation. At any appearance for relicensure, the burden shall be on Respondent to demonstrate clear and convincing evidence of fitness and competency.

13. If the Board grants relicensure, Respondent's practice shall be limited to performance of anesthesiology procedures in a hospital licensed by the New Jersey State Department of Health, accompanied by proof that Respondent has attained the level of training prerequisite for each such privileged procedure. Respondent may then apply to the Drug Enforcement Administration and to the Director of the New Jersey Division of Consumer Affairs for registration of privileges to administer

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<sup>2</sup> A list of remedial courses approved by the Board is available from the Board office.

Controlled Drugs in the licensed hospital setting. Respondent shall perform no interventional pain procedures, whether as primary surgeon, co-surgeon or assistant surgeon until further Order of the Board.

14. Respondent's proposed plan to re-enter medical practice may seek, in addition to practice in a licensed hospital, permission to practice in a State-licensed Ambulatory Surgical Center or State-licensed Ambulatory Care Facility under the supervision conditions set forth below.

15. For any such expansion of privileges beyond the licensed hospital setting, the Board may require that Respondent be supervised by an anesthesiologist who is board-certified in that specialty, who has been approved in advance by the Board of Medical Examiners. The supervisor may be required by the Board to be physically present in the Operating Room with Respondent during performance of any anesthesia by Respondent. Respondent shall be solely responsible for the cost of the supervision, and shall not pass on any part of that cost to the patient.

16. Respondent shall assure that a board-certified anesthesiologist seeking approval by the Board to be Respondent's supervisor shall submit his/her curriculum vitae, written confirmation that the proposed supervisor has read each of the Administrative Complaints and this Final Order, and has agreed to serve in the role delineated by the Board. The supervisor shall agree to submit quarterly reports to the Board for such probationary period as the Board deems appropriate. Each quarterly report shall specify the Board-approved licensed facility, the number of anesthesia procedures performed there during each date of that quarter, and the nature of the surgical procedures performed on that date. Each of Respondent's

anesthesia services shall have been personally supervised live and in-room by the approved supervisor. The report shall identify any adverse events, whether or not specifically identified as anesthesia-related. The supervisor(s) shall agree to report to the Board within 24 hours of learning that Respondent has performed any medical procedure other than anesthesia, or other than under the Board-required personal supervision, or which included an adverse event.

17. Respondent shall authorize the Supervisor to make immediate report to the Board regarding work which, in the opinion of the supervisor (whether documented or not documented by Respondent) fails to meet accepted standards of practice in the specialty of anesthesia, and also of any individual matter which the supervisor believes to present an imminent peril to the patient or to the public's health, safety or welfare.

18. Respondent shall provide appropriate releases to any and all persons who are participating in the supervision program as outlined herein, as may be required in order that all reports, records and other pertinent information shall be provided to the Board in a timely manner. Respondent agrees that none of the persons proposed and/or approved as supervisor shall have or incur any liability to Respondent as a result of their good faith performance of their service.

19. If the Board permits Respondent to practice in the non-hospital setting(s) referenced above, he shall have no financial interest therein other than as a salaried W-2 employee, and he shall hold no position of additional authority such as, but not limited to the role of Medical Director. Until further Order of the Board, Respondent shall not perform any interventional procedures, and shall not engage in the practice of pain

management, and shall not prescribe or dispense any Controlled Drug for pain management. The Board reserves the right to impose such other conditions and restrictions as it deems appropriate.

20. Following completion of at least one year after relicensure, Respondent may petition the Board for relaxation of any of the restrictions in place at that time, such as expansion of scope of practice and/or financial interest in a licensed ambulatory care facility. Any such requests shall be considered and determined at the sole discretion of the Board.

21. The parties hereby stipulate that the entry of this Order shall not limit the authority of the Attorney General, or the Drug Control Unit, or the Director of the Division of Consumer Affairs, or of any other person or agency to initiate any further action permitted by law, whether administrative, civil or criminal, in any court or other forum of competent jurisdiction in connection with any matters coming within that jurisdiction.

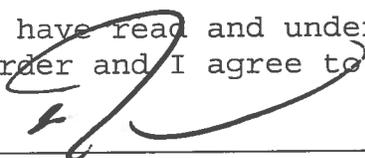
22. It is intended by the parties that this Order shall resolve all administrative and license issues with Respondent, which were specifically referenced in this document by the Attorney General with regard to Respondent's responsibility to the State Board of Medical Examiners, all and solely in connection with professional Board statutes and regulations and accepted standards of practice.

23. The Disciplinary Directives attached hereto are incorporated in this document.

THIS ORDER IS EFFECTIVE UPON ENTRY

STATE BOARD OF MEDICAL EXAMINERS  
BY:   
Stewart A. Berkowitz, M.D.  
President

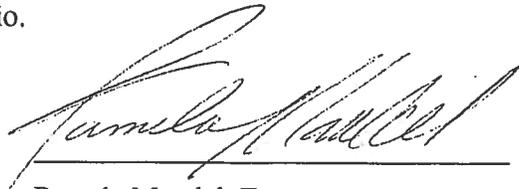
I have read and understood the above  
Order and I agree to abide by its terms.

  
10.7.14 4pm  
Robert Muscio, M.D.

Witness:

  
Attorney for Robert Muscio, M.D.

I am counsel to Dr. Robert Muscio. I have conferred with him by telephone today, at which time he advised that he has signed the Order and is transmitting it to me by mail and by e-mail and/or facsimile. I have received the signed document. I am familiar with his signature, and I attest that the signature on the Order is that of Dr. Muscio.

  
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Pamela Mandel, Esq.

10/7/14  
\_\_\_\_\_  
Date

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED<sup>3</sup>**

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Confidential Information page enclosed with these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 *et seq.* Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

**1. Document Return and Agency Notification**

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, 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.)

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<sup>3</sup>APPROVED BY THE BOARD ON MAY 10, 2000

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

### **3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies**

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

### **4. Medical Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

## **5. Probation/Monitoring Conditions**

With respect to any licensee who is the subject of an Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

**NOTICE OF REPORTING PRACTICES OF BOARD**  
**REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct: (1) Which revokes or suspends (or otherwise restricts) a license; (2) Which censures, reprimands or places on probation; (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such federal or State agency that is publicly available information.

Pursuant to N.J.S.A.45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders is 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.