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NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

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

IN THE MATTER OF AN INQUIRY INTO THE PROFESSIONAL PRACTICE OF	ADMINISTRATIVE ACTION
SHANE M. HOLLAWELL, D.P.M. License No. 25MD00262900	CONSENT ORDER
PRACTICING PODIATRIC MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY:	

This matter was presented to the State Board of Medical Examiners by John J. Hoffman, Acting Attorney General of New Jersey, by Joan D. Gelber, Senior Deputy Attorney General, on inquiry into the professional practice of Shane M. Hollawell, D.P.M.

Dr. Hollawell is licensed to practice podiatric medicine and surgery in New Jersey, Pennsylvania and California. He is board-certified in that profession and practices at the "Orthopaedic Institute of Central New Jersey," with offices in Sea Girt, Red Bank, Freehold and Toms River, New Jersey. Respondent is represented by Scott C. Bushelli, Esq.

Respondent has acknowledged his transmittal and receipt of

CERTIFIED TRUE COPY

hundreds of text messages of an intimate nature exchanged on personal cellphones during the Spring of 2013 with a female who was concurrently his patient in the practice of podiatric surgery. He has also acknowledged arranging meetings with the patient away from the office for personal purposes.

Respondent has also acknowledged that his medical chart for that patient contains progress notes, some of which - contrary to Board rule - do not accurately describe the then current status of the patient's treatment or the known exacerbating circumstances affecting her response to treatment.

Respondent, aware that the Acting Attorney General was preparing to file an Administrative Complaint in this matter, has conferred with his counsel and has determined to waive his right to await that filing and, instead, to resolve these issues by Consent Order.

The Board has reviewed the text messages, and finds Respondent's conduct to have been grossly unprofessional and in violation of N.J.A.C. 13:35-6.3(e) and (i). Subsection (e) states: "A licensee shall not engage in any discussion of an intimate sexual nature with a patient, unless that discussion is related to legitimate patient needs. Such discussion shall not include disclosure by the licensee of his or her own intimate sexual relationships."

Subsection (i) states in pertinent part: "A licensee shall not engage in any other activity … which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or is for the sexual arousal, the sexual gratification … of the licensee or patient."

The Board's Policy Statement, attached to the rule, emphasizes the licensee's duty to maintain boundaries in all professional relationships. "Licensees should therefore avoid verbal or physical behavior which might be interpreted as inviting a romantic or

sexual relationship. Even if the patient encourages such behavior, it is the licensee's responsibility to maintain a professional manner."

These proscriptions have been an integral part of professional responsibility since the time of the Hippocratic Oath and continue to be an essential component of professional Codes of Ethics. Respondent's text messages are an egregious violation of the Board rule and of accepted standards of practice.

The Board has also reviewed progress notes preceding and following the surgeries on this patient, and finds that the notes during the patient's treatment in 2013 do not document, acknowledge or address the likely effect of the patient's known athletic activity on recurrence of her injury or the delayed healing of surgery, necessitating additional office visits. Those portions of the records do not comply with N.J.A.C. 13:35-6.5.

The Board therefore finds conduct by Respondent which constitutes violation of N.J.A.C. 13:35-6.3(e) and (i), N.J.A.C. 13:35-6.5, and thereby violation of N.J.S.A. 45:1-21(e) and (h).

The Board recognizes that Respondent has cooperated in this investigation and has assured that the conduct at issue shall not recur. Finding that the within disposition is expected to be sufficient to protect the public health, safety and welfare, and for good cause shown,

IT IS, ON THIS 8th DAY OF July 2015

ORDERED:

1. The license of Respondent Shane M. Hollawell, D.P.M. to practice podiatric medicine and surgery shall be suspended for a period of one year, the entirety of which shall be stayed and

served as a period of probation. During the probation period, Respondent is permitted to engage fully in unrestricted podiatric medicine and surgery, provided that he is compliant with all other terms of the Order;

2. Respondent is assessed costs of the investigation, totaling $3,393.34, pursuant to N.J.S.A. 45:1-25. The costs shall be paid in full to the State Board of Medical Examiners within 10 days of the entry of the Order;

3. Respondent is assessed a penalty of $10,000.00 payable to the State Board of Medical Examiners at the Board office, P.O. Box 183, Trenton, NJ 08625-0183. For any penalty payments which have not been paid in full within 10 days of the entry of this Order, a Certificate of Debt shall be filed pursuant to N.J.S.A. 45:1-24 to protect the judgment;

4. In addition but not in lieu of the filing stated above, Respondent may request, and the Board will allow the penalty to be paid in 24 equal monthly installments. Each payment shall be due on the first business day of each month, commencing September 1, 2015. Failure to make any payment timely shall result in the entire balance being due and owing. Respondent may prepay at any time. Interest on all financial assessments shall accrue in accordance with Rule of Court 4:42-11. All payments shall be made by certified bank check, certified check, money order, wire transfer or credit card payable to the State of New Jersey. Any other form of payment will be rejected and will be returned to the party making payment. In the event that a monthly payment is not received within five days of its due date, the entire balance of the civil penalty and costs shall become due and owing;

5. Within six months of the entry of this Consent Order, pursuant to N.J.S.A. 45:1-22(f),(g) and (h), Respondent shall successfully complete each of the following remedial training programs, each of which shall be in an in-person program having the

prior approval of the Board[1], to wit:

a) Course in maintaining professional boundaries;

b) Course in professional ethics;

6. Within ten days of the entry of this Order, Respondent shall provide the Board and the Deputy on behalf of the Acting Attorney General, with documentation confirming the scheduling of the courses and evaluation and assessment. Said courses are not to be counted toward the total of continuing medical education credits required by N.J.S.A. 45:9-7.1;

7. Respondent is responsible for the cost of the remedial ethical and educational programs which shall not be passed on to patients, and for his compliance with all recommendations which may be made by the program(s).

8. Respondent agrees that none of the persons proposed and/or designated as instructors, evaluators, supervisors, or consultants in the remedial programs, have or shall incur any liability to Respondent as a result of their good faith performance of their educational, supervisory, or consultant service.

9. Respondent shall submit to the Board written verification that he has satisfactorily completed all required coursework. Successful completion of courses means that Respondent has attended all sessions of the course(s), fully participated in the course, and received a final evaluation resulting in an unconditional "pass." Documentation of successful completion shall be forwarded to the attention of the Medical Director of the State Board of Medical Examiners, 140 E. Front St., P.O. Box 183, Trenton, NJ 08625-0183. Any recommendations, evaluations or reports issued by the evaluator may be introduced into the record, in the event of any future disciplinary proceedings.

10. In the event that the program finds reasonable cause to

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[1] Lists of Board-approved programs may be obtained from the Board.

warrant additional evaluations or professional supervision to be necessary for appropriate professional practice, Respondent shall promptly commence or continue such training and accept such supervision to remediate the deficiency. Proof of such remediation or acceptance of supervision shall be provided to both the Board and the Deputy on behalf of the Acting Attorney General.

11. During the period of stayed suspension, Respondent shall comply with all applicable terms of the Board's Directives Applicable to any Medical Board licensee who is disciplined or whose Surrender of Licensure has been Accepted," attached hereto.

12. During the period of stayed suspension and for the duration of Respondent's licensed practice of podiatric medicine and surgery, he shall engage in no text messaging with patients, he shall assure that his practice is within the bounds of N.J.S.A. 45:5-1 *et seq.*, he shall comply with Board rules applicable thereto, and he shall scrupulously refrain from any violation of N.J.A.C. 13:35-6.3, whether in person or in any form of media.

13. Failure to comply with any of the terms of this Consent Order shall be deemed to constitute professional misconduct in violation of N.J.S.A. 45:1-21(e) and (h). In that event, the Board may extend the period of stayed suspension of license or may activate the suspension in New Jersey and/or impose other sanctions as the Board deems necessary to protect the public.

14. It is hereby stipulated that the entry of this Consent Order shall not limit the authority of the Acting Attorney General, the Drug Control Unit or the Director of the Division of Consumer affairs, or any other jurisdiction, nor shall the Order limit any other person or other agency to initiate any further action permitted by law in any court or other forum of competent jurisdiction in connection with any matters coming within that jurisdiction.

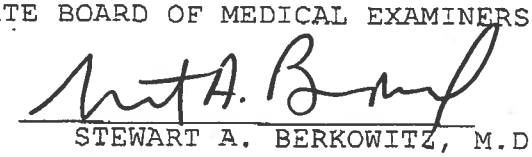
15. Upon receipt of any reliable information indicating that

Respondent has violated any term of this Consent Order, the Attorney General reserves the right to bring further disciplinary proceedings, including seeking activation of the suspension period or any other remedy available at law, and including the initiation of additional proceedings regarding any matter not already known and addressed in these proceedings.

16. The Board shall retain jurisdiction to enforce the terms of this Consent Order.

THIS ORDER SHALL BE EFFECTIVE UPON ENTRY.

STATE BOARD OF MEDICAL EXAMINERS

BY: 

STEWART A. BERKOWITZ, M.D.
President

I have read and I understand the Within Consent Order, and I agree to be bound by its terms. I consent to the entry of this Order.

Shane Hollawell

Shane M. Hollawell, D.P.M.

Date: 7/6/15

Consent as to form,

Scott C. Bushell, Esq.,
Counsel to Dr. Hollawell

DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE HAS BEEN ACCEPTED[2]

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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[2]**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 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.