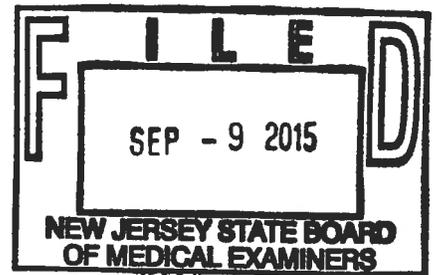


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STATE OF NEW JERSEY
DEP'T OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF AN INQUIRY :
INTO THE PROFESSIONAL PRACTICE OF

ADMINISTRATIVE ACTION

CRISTINA Z. XENACHIS, M.D.
LICENSE NO. 25MA0668300

ORDER OF REPRIMAND
BY CONSENT

PRACTICING MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY :

This matter was presented to the State Board of Medical Examiners by Joan D. Gelber, Senior Deputy Attorney General, on Medical Board inquiry into the professional practice of Cristina Z. Xenachis, M.D.

Respondent Dr. Xenachis has been licensed to practice medicine during all times pertinent herein. She denominates her practice as "Downtown Osteoporosis Center," 158 Main St., Suite 100, Matawan, NJ 07747.

Dr. Xenachis was requested by the Board of Medical Examiners to appear before a Board Committee in 2014. She had failed to respond to three successive Board letters sent over the course of the year 2013, requesting her records and a narrative response from her regarding the consumer complaint of her former patient, Ms.

S.A. Dr. Xenachis did not provide the records until May 2014, after being summoned to appear.

The patient alleged that payments made by the patient and her insurance carrier resulted in an overpayment of \$400.00, which Dr. Xenachis had failed to refund despite request from the patient, from her Health Advocate, and multiple requests from Dr. Xenachis' own billing service.

Dr. Xenachis appeared, with counsel, before the Committee. Dr. Xenachis did not deny having received the three Board letters, or the several refund requests noted above. The Board notes that Dr. Xenachis had retained none of that correspondence in her chart for this patient. Dr. Xenachis also claimed that a June 2, 2014 letter sent on behalf of the Board had not come to her attention until shortly before the Committee meeting, and had been sent to the "wrong address." Dr. Xenachis then acknowledged that the "wrong address" was, in fact, her home.

Dr. Xenachis' patient record for S.A. contains nine documents captioned "Consultation Reports". However, these documents are not, in fact, consultation reports, but are simply progress notes. They are prepared largely from an electronic medical record software program with many identically worded paragraphs in successive "Reports." Dr. Xenachis, who is board-certified in Internal Medicine, stated in subsequent correspondence to the Board that she deems herself an endocrinology specialist, and therefore purchased a computer software program drafted for consultants. She acknowledges, however, that none of the "Reports" are addressed to any referring physician, nor are any of those reports listed as being sent to any other physician, and there is no identification of any primary or other treating doctor in this chart except for physicians to whom Dr. Xenachis ultimately referred this patient for thyroid surgery.

It appears that Dr. Xenachis diagnosed patient S.A. in a single visit in 2007 for acquired hypothyroidism and nontoxic multinodular goiter. After that single visit, the patient next saw Dr. Xenachis in April 2010. Dr. Xenachis treated S.A. for those conditions and referred her to a surgeon for suspected carcinoma. After a complete thyroidectomy, the patient returned to Dr. Xenachis in July 2010. Dr. Xenachis stated in a letter to the Board that during 2010-2011 she treated the patient for thyroid problems, thyroid cancer, Lyme disease, arthritis, and depression. Notably, however, Dr. Xenachis' computer-generated progress notes regularly stated, under Review of Symptoms, that the patient denied depression, mood swings or anxiety. The Psychiatric section regularly stated that the patient's psychological status was normal, and displayed no evidence of depression, anxiety or agitation. Periodic visits by S.A. continued through October 2011. The patient was on constant antibiotics as well as thyroid medication. All of Dr. Xenachis' office visits on the software-generated progress notes are coded CPT 99215 and 99214.

The Board reviewed Dr. Xenachis' several forms of billing records for patient S.A. and found them troubling. The doctor's Account payment summary - as initially provided to the patient, lists charges for the office visits of April 21, 2010 and November 19, 2010 of \$100 each, which Dr. Xenachis later billed to S.A. at the higher rate of \$125 for each visit for the same services, with no explanation for the increases. Dr. Xenachis retroactively increased her fees, allegedly because of the patient's telephone calls, but the Board notes that telephone calls were not previously identified on Respondent's intake forms or on bills as chargeable events, nor had she identified phone call time on her billing statements, nor were phone calls specified by date in Dr. Xenachis' June 2, 2014 letter to the Board.

Another document, captioned "Itemized Payments," lists only the payments made by the patient, and omits insurance payments which were, in fact, received. Another document, although captioned "Itemized Charges", lists charges as well as credit card payments and insurance payments from HealthNet and (as of 2011) Oxford. Significantly, Dr. Xenachis' own Account Balance Summary lists total charges as \$1,345.00 minus write-offs as \$273.16 per her insurance provider contract, leaving a total balance due of \$1,071.84. As total payments were \$1,471.84, there was thus an overpayment of \$400.00.

Dr. Xenachis was asked to explain her disregard of three notices from her billing company telling her to repay the overcharge. Dr. Xenachis admitted the overpayment, and explained that she had refused to make the refund, and had also increased previously billed charges for two dates of service in 2010 because, she said, she had charged less at an earlier time when the patient did not have insurance, but after the patient did obtain insurance, Dr. Xenachis felt entitled to backcharge a higher fee as well as to keep the overpayment. Dr. Xenachis also asserted that the patient telephoned often, consuming Dr. Xenachis' time, for which Dr. Xenachis decided she should also be retrospectively compensated. However, the Board notes that there is no information in the chart alerting the patient that there will be a charge for telephone calls, nor any documentation of calls or their content, or length.

More recently, Dr. Xenachis sought to justify her billing by claiming that she provided to the patient the injectable medication thyrogen and that she had not charged the patient for it. But the Board notes that while the dispensing of this medication is listed in a November 19, 2010 chart entry, there is no document indicating the price of the medication or that Dr. Xenachis had the patient's advance agreement to pay for it. Indeed, the chart does not

disclose any bill for it, and the billing company had sent its three reminders to Dr. Xenachis approximately two years later. Dr. Xenachis had never mentioned an unpaid charge for this medication in any of her several communications to the Board, nor at her appearance before the Board Committee. The claim is thus belated and unsupported by the records.

The Board finds several matters of concern here.

N.J.A.C. 13:45C-1 et seq. requires a licensee to cooperate in a Board investigation by, in part, timely providing requested information and records. Also, N.J.A.C. 13:35-6.5(b) requires a licensee to respond to a Board request to produce records. When records are computerized, they must be produced "as soon as practicable and no later than 10 days after notice." Here, the Board provided ample time for Dr. Xenachis to respond, but she failed to do so, in flagrant disregard of Board rule and authority, until June 2, 2014. Dr. Xenachis provided no proof of any prior document submission. Further, Dr. Xenachis increased billings to patient S.A., retroactively and also without justification. In addition, the charges were not consistent with her own office's list of charges and actual payments from the patient and from the insurance carrier, which shows that she received \$400 more than was billed, as her billing service had repeatedly advised her. The Board found Dr. Xenachis not remorseful about her conduct, although she said she would refund the \$400 "if the Board insists."

Dr. Xenachis' failure to refund the known overpayment of \$400 and her unjustified retroactive fee increases constitute professional misconduct; N.J.S.A. 45:1-21(e).

The Board is also concerned at the inflated appearance of Dr. Xenachis' progress notes, which misrepresented their status as "Consultation Reports" (although she did not use CPT codes for consultation), and the implausible content of what appear to have

been largely pre-programmed notes, visit after visit (albeit with some added individualization). Use of computer-generated progress notes such as these - often containing internally inconsistent wording, suggests that the record is not reliable, and does not comply with the Board's requirement to prepare an accurate account of treatments and services rendered; N.J.A.C. 13:35-6.5 and thus N.J.S.A. 45:1-21(h).¹

Dr. Xenachis, formerly represented by counsel, is now representing herself. She has considered this matter and acknowledges that she has had the opportunity to consult with counsel.

The Board has taken into account all of the above, including her subsequent correspondence, and has determined that the above violations warrant the following disposition, which is expected to be adequately protective of the public health, safety and welfare.

For sufficient cause shown,

IT IS, ON THIS 9 DAY OF September 2015

ORDERED:

1. Respondent is hereby reprimanded for the conduct set forth above.

2. Respondent shall cease and desist from said conduct and shall implement measures at her office to assure compliance with Board rules, as referenced above. Respondent shall provide clear advance notice to patients of her charges for regular services; she shall issue to patients a billing statement which identifies all dated services and charges, all adjustments of fee, and all payments (whether by the patient or by a third party payer)

¹ Dr. Xenachis recently wrote to the Board stating that she has changed her computerized records program, but she did not identify any differences and did not offer an example. In any event, the program she was using for at least four years was inappropriate.

3. Respondent shall modify her office's electronic medical record program to allow subject headings, which shall then be completed by Dr. Xenachis for each patient at each visit; there shall be no pre-programmed *verbatim* repetition of prior material.

4. Respondent shall immediately refund the \$400 overpayment to patient S.A., and submit proof of payment to the Board.

5. Respondent shall assure that henceforth, she retains documentation of completion of the required number of CME credits for each cycle, and is able to produce it on Board demand.

6. Respondent is assessed a penalty of \$2,000.00 for the cited deficiencies in conduct. The financial assessment of \$2,000.00 shall be paid within 10 days of the entry of this Order, by certified bank check, Postal Service Money Order, wire transfer or credit card, payable to the State Board of Medical Examiners, 140 E. Front St., 2nd floor, P.O. Box 183, Trenton, NJ 08625-0183. Any other form of payment will be rejected and returned to the party making payment. If installment payments are requested, and granted for good cause shown, a Certificate of Debt shall be filed by the Board for the unpaid balance, pursuant to N.J.S.A. 45:1-24, with interest.

7. Within six months of the entry of this Order, Respondent shall submit proof of having received an unconditional passing grade in a Board-approved course in professional ethics and also a Board-approved course in professional billing.²

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

² A list of approved courses is available from the Board office. Such courses include but are not limited to, those offered by Center for Personalized Education for Physicians. See: <http://www.cpepd.org/programs-courses/probe>.

THIS ORDER IS EFFECTIVE UPON ENTRY.

STATE BOARD OF MEDICAL EXAMINERS

By:

Stewart A. Berkowitz
STEWART A. BERKOWITZ, M.D.
President

I have read and understood
the within Order and I agree
to comply with its terms.

Cristina Xenachis M.D.
Cristina Z. Xenachis, M.D.

Witness:

Notary Public

James J. Adonizio, Esq.
Attorney at Law
State of PA
Admin. Seal 12/6/78

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED³**

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

³APPROVED BY THE BOARD ON MAY 10, 2000

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 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.