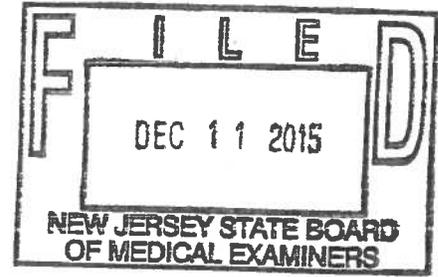


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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF : ADMINISTRATIVE ACTION
:
John Burger, D.O. :
LICENSE NO. 25MB03476300 : **CONSENT 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 ("Board") upon its receipt of eleven separate complaints by New Jersey Manufacturers Insurance Company ("NJM") concerning John Burger, D.O. The complaints alleged that, between 2004 and 2011, Dr. Burger submitted a series of bills for improperly and/or fraudulently performed electromyography ("EMG") and Nerve Conduction Velocity ("NCV") tests. As part of its investigation, the Board directed Dr. Burger to appear and testify before its Preliminary Evaluation Committee on November 28, 2012. The Board also inquired about Dr. Burger's continuing medical education ("CME") compliance.

From the aforementioned testimony and review of the eleven patient records pertaining to the NJM complaints, the Board was concerned that Dr. Burger lacked sufficient knowledge to safely and properly administer and supervise these tests. The Board also had serious concerns about Dr. Burger's overall ability to practice medicine and his specific competence in the area of neurology. To address these concerns, on August 23, 2013, the Board and Dr. Burger entered into an Interim Consent Order requiring Dr. Burger to submit to an independent assessment, at his expense, of his competence in general medicine; the performance, interpretation and billing of electro-diagnostic testing; his billing practices; and his recordkeeping practices. Dr. Burger agreed that a comprehensive report would be provided by the evaluator to the Board. He also agreed to comply with any recommendations the evaluator made, including but not limited to retraining.

Dr. Burger underwent the required evaluation at the Center for Personalized Education for Physicians ("CPEP") in December 2013. CPEP provided the Board with a comprehensive report of its findings in February 2014. Specifically, CPEP found that Dr. Burger demonstrated generally adequate knowledge of his practice area but that there were areas in which he needed reeducation, including clinical judgment and reasoning, recordkeeping, and evaluation of motor vehicle accident victims.

To remedy these inadequacies, CPEP recommended that Dr. Burger participate in a structured, individualized educational program. Under this program, Dr. Burger was to 1) retain an education preceptor who would meet weekly with Dr. Burger to review and discuss his treatment of car accident victims; 2) complete CME and self-study in the field of neurological testing and areas of general medicine such as performance of physical examinations, formulation of differential diagnoses, and creation of individualized patient treatment plans; and 3) complete coursework and receive training in medical documentation and recordkeeping.

Since Dr. Burger's last appearance before the Committee, he has significantly reduced the amount of neurological testing he performs to about one day's work per week. He has also refocused his practice so that he now principally performs laser tattoo removal and laser hair removal.

To assuage the Board's concerns regarding Dr. Burger's practice of neurological testing of car accident victims, and to avoid the expense of complying with those CPEP education plan elements pertaining to this practice area, Dr. Burger has decided to cease and desist from performing neurological testing. As ordered below, Dr. Burger will still be required to comply with various CPEP educational recommendations that address general medical knowledge.

The Board now finding the within disposition to be adequately protective of the public health, safety, and welfare, and all parties agreeing to the terms of this Order, and for other good cause shown,

IT IS on this 11th day of December, 2015,

ORDERED and AGREED:

1) Unless modified by a subsequent order of the Board, Dr. Burger shall permanently cease and desist from performing all neurological testing, including but not limited to, electromyography testing and Nerve Conduction Velocity testing.

2) Dr. Burger shall successfully complete a Board-approved comprehensive refresher course in general/internal medicine. To satisfy this requirement, Dr. Burger may take the comprehensive five-day review course in basic internal/general medicine offered by the American College of Physicians in June 2016.

3) Dr. Burger shall successfully complete a Board-approved recordkeeping course. To satisfy this requirement, Dr. Burger may take the Medical Record Keeping course offered by CPEP on December 4, 2015.

4) Dr. Burger shall successfully complete Board-approved courses in (a) laser tattoo removal, and (b) laser hair removal. To satisfy the requirements of this paragraph, Dr. Burger may take the comprehensive two-day cosmetic laser training course offered by Empire Medical Training.

5) For the purpose of this Consent Order, "successfully complete" shall mean that all sessions were attended, all assignments were properly and appropriately completed and a passing grade was achieved which was unconditional and without reservation.

6) Dr. Burger shall be solely responsible for the costs of attendance of the courses enumerated above.

7) Except for the course identified in paragraphs 2 and 4, supra, and/or unless Respondent obtains the permission of the Board's medical consultant or designee, Dr. Burger shall complete these courses within ninety days of the entry of this Order.

8) Dr. Burger shall submit proof of successful completion of the above-described coursework and CME credit to the Board. Dr. Burger may not count any of the above described coursework or CME credit toward the Board's biennial CME requirement.

9) Within sixty (60) days of the filing of this Consent Order, Dr. Burger will submit to the Board for review and approval the name and Curriculum Vitae of a billing monitor whom he intends to retain.

10) If approved, Dr. Burger shall so retain that billing monitor, who will provide quarterly reports to the Board of Dr. Burger's billing practices. Such reporting will continue for one year, unless the Board's Medical Consultant, or his designee, determines in good faith that it should be continued. The quarterly billing reports shall provide a detailed summation of Dr.

Burger's billing practices, including, but not limited to, the following: (a) the services for which Dr. Burger bills; (b) the manner in which he bills for such services; (c) the frequency with which Dr. Burger bills his patients; (d) if a third-party is billed, the identity of the individual(s) or entit(ies) to which Dr. Burger submits claims or other requests for payment; (e) the fees for the services Dr. Burger provides; and (f) the reasonableness of Dr. Burger's fees and billing practices.

11) Dr. Burger is assessed a penalty of Seven Hundred Fifty and 00/100 Dollars (\$750.00) for misrepresenting completion of continuing medical education ("CME") requirements on his 2011 biennial registration, as required by N.J.S.A. 45:9-7.1; a penalty of Fifty and 00/100 Dollars (\$50.00) per-credit for failure to complete forty (40) CME credits for the 2009-2011 biennial renewal period as required by N.J.A.C. 13:35-6.15, and for failure to complete six (6) cultural competency credits as required by N.J.A.C. 13:35-6.25, totaling Two Thousand Three Hundred and 00/100 (\$2,300.00).

12) Dr. Burger shall pay the above-mentioned penalties, totaling Three Thousand Fifty and 00/100 Dollars (\$3,050.00), simultaneously upon the execution of this Order by certified check, bank check, money order, wire transfer, or credit card, payable to William Roeder, Executive Director, Board of Medical Examiners, P.O. Box 183 Trenton, NJ 08625-0183. If a form of payment is

presented other than the approved forms noted herein, it shall be rejected and returned to the Respondent.

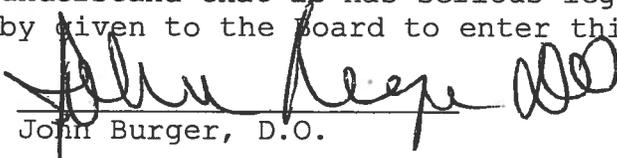
13) Entry of this Order is without prejudice to any further action by the Board, the Acting Attorney General, the Drug Control Unit, the Director of the Division of Consumer Affairs or other law enforcement entities based on Dr. Burger's conduct occurring prior or subsequent to entry of this Order, including but not limited to any failure by Dr. Burger to obtain sufficient CME credits in any license renewal period.

14) Failure to comply with any provision of this Order may result in subsequent disciplinary proceedings.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: 
Stewart A. Berkowitz, M.D.
President

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


John Burger, D.O.

12/18/15
Date

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


J. Barry Cocozziello, Esq.

12/11/15
Date

**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.