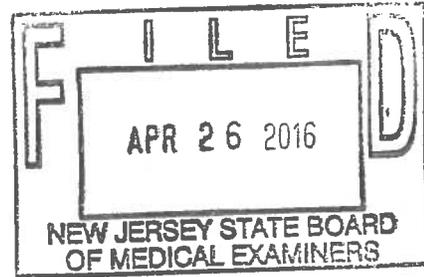


ROBERT LOUGY
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for the
State Board of Medical Examiners



NON-DISCIPLINARY

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

IN THE MATTER OF THE LICENSE OF

CHERYL ACKERMAN, M.D.
LICENSE NO. 25MA06096100

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

ADMINISTRATIVE ACTION

ORDER DENYING PETITION FOR
AMENDMENT OF CONSENT ORDER

This matter was reopened to the New Jersey State Board of Medical Examiners ("Board") on or about March 7, 2016, by a petition by Theodore Sliwinski, Esq., counsel for Dr. Cheryl Ackerman ("Respondent"), for emergent relief amending the November 16, 2015 Consent Order entered into between Respondent and the Board. That Consent Order granted Respondent licensure to practice medicine with certain restrictions. For the reasons detailed below, the Board denies Respondent's petition.

Procedural History

On October 24, 2011, Respondent entered into a Private Letter Agreement (PLA) with the Board in resolution of eight

patient complaints. The agreement entered into, with advice of counsel, required, among other things, that she comply with the requirements of the New Jersey Professional Assistance Program ("PAP"), including undergoing a psychiatric evaluation and providing psychiatric reports to the PAP. On February 21, 2012, the Board ultimately entered an Order automatically suspending Respondent's license for her failure to comply with the PLA and based on concerns the PAP expressed regarding her non-compliance with the PLA and Respondent's overall fitness to practice.¹ In May 2012, September 2012, April 2013 and July 2013, the Board denied Respondent's repeated petitions for reinstatement, finding that she had failed to satisfy requirements the Board and PAP had set. Said requirements stemmed from the Board's concerns based on prior evaluations and reports from multiple specialists that Respondent was unfit to practice due to a serious, progressive, debilitating neurological condition, Frontotemporal Dementia, impairing her abilities to safely practice. Respondent appealed the Board Denial of Reinstatement to the Appellate Division of the Superior Court. On September 9, 2014, the Appellate Division remanded the matter to the Office of Administrative Law (OAL) for a hearing.

As part of the OAL matter, on August 23, 2015, Dr. Mijail D. Serruya, M.D., Ph.D., a physician who is Board Certified in

¹

Order of automatic suspension attached and made a part hereto.

neurology and psychiatry, submitted to the Court and the Board a detailed report regarding Respondent's fitness to practice medicine. In the report, Dr. Serruya recounted his review of prior reports of physicians who evaluated Respondent as well as his own findings as detailed in his August 21, 2015 evaluation of Respondent. Recognizing that about half of the prior reviewing physicians had found Respondent unfit to practice medicine, in some capacity Dr. Serruya nevertheless then opined that Respondent's symptoms were sufficiently mild to render her fit to practice. In deference to Dr. Serruya and those other evaluators who found Respondent competent, and with the assistance of Administrative Law Judge ("ALJ") Jeffrey A. Gerson, who facilitated settlement negotiations, on November 16, 2015, a Consent Order was agreed to which resolved the matter. The Board and Respondent, with advice of competent counsel, negotiated and entered into an agreement reinstating Respondent's license with certain conditions. It is that agreement Respondent now seeks to have the Board set aside.

The specifics of the agreement are as follows: Respondent was required to obtain medical malpractice insurance or a letter of credit pursuant to Board regulation; resume practice only in the employ of another Board-approved physician; be evaluated by that employing physician; have another scan of her brain performed and have the results submitted to the Board's medical

director; and continue to undergo certain examinations and necessary treatment. Under the terms of the Consent Order, after practicing for two years as an employee, Respondent would be permitted to petition the Board for approval to practice in a solo setting. These conditions established the pathway to Respondent's full and unrestricted practice of medicine.

Respondent's Petition and the Board's Findings of Fact

In her instant petition, Respondent seeks the following relief: unrestricted licensure; removal of prior public Board orders pertaining to Respondent from online websites; a pronouncement that Respondent has fully complied with all psychological reporting obligations imposed by the Board; a guarantee that no further conditions will be placed on Respondent's license; a guarantee that no further psychological testing of Respondent will be required; and a guarantee that if a hearing in this matter becomes necessary, the hearing will occur at the OAL.

On April 13, 2016, at the Board's regularly scheduled meeting, the Board considered, on the papers, Respondent's petition and the State's opposition. After careful review and deliberation, the Board unanimously voted to deny Respondent's motion for emergent relief to amend the Consent Order.

The Board rejects Respondent's arguments in favor of the relief she seeks. First, contrary to Respondent's claims, ALJ

Gerson did not order the Board to enter an unrestricted license for Respondent. Rather, the ALJ facilitated settlement negotiations that resulted in the Consent Order at issue here. Given the Board's concerns over Respondent's competence to safely perform the function of a licensee, the Consent Order imposed more than reasonable conditions upon Respondent's reentry into and continued practice. Further, Respondent negotiated and agreed to these conditions with the advice of competent counsel who also signed the Consent Order. There is also a public policy in favor of finality; to allow litigants to rescind agreements would wreak havoc with our judicial system.

Second, since the date the Board filed the Consent Order, Respondent has made numerous written submissions, independent of her counsel, to the Board. These writings indicate extremely problematic thought processes, with significant and repeated written errors not typical of a licensee with Respondent's education and career responsibilities. Respondent's recent submissions regarding this motion have also demonstrated her continued inability to follow the Board's prior direction. The Board is aware from prior proceedings in this matter that Respondent has previously received instruction from the Board's attorneys and staff not to communicate directly with the Board while represented by counsel. Collectively, these issues cause the Board great concern about the status of Respondent's mental

health, her ability to control her impulses and her own insight into her condition and abilities.

Third, in none of Respondent's submissions, one of which was 52 pages, did she include or refer to the addendum to a report prepared by Dr. Serruya, the expert who most recently evaluated Respondent's fitness to practice medicine. Though Dr. Serruya reported initially that he believed Respondent was fit to practice, in his addendum, which was submitted after entry of the Consent Order, Dr. Serruya expressed deep reservations based on information about Respondent he subsequently obtained. Specifically, Dr. Serruya addressed a letter Respondent sent to him after he had evaluated her. That letter, which Dr. Serruya provided to the Board, contains the same type of errors and flaws observed by the Board in Respondent's many other submissions. Dr. Serruya explained that these errors could indicate Agrammatic Primary Progressive Aphasia, which he stated could be pathophysiologically related to Frontotemporal Dementia. Notably, other physicians had previously diagnosed Respondent as having Frontotemporal Dementia, a progressive neurological disease. Dr. Serruya also addressed in his addendum the results of scans of Respondent's brain from 2012 and 2013, which he reviewed only after submitting his initial report. He described the scan results as "concerning." He explained that the scans revealed,

evidence for extensive subcortical white matter changes, especially in the periventricular areas... most consistent with either an autoimmune process - such as a one-time acute demyelinating encephalomyelitis (ADEM) that was so fulminant as to have caused static subcortical damage or chronic multiple sclerosis - or small vessel ischemic disease.

Based on this new information Dr. Serruya recommended that Respondent undergo at least a brain MRI, and potentially additional testing, in the "near future."

We find that the Board need not deny the instant petition to rescind the Consent Order based on a finding with medical certainty that Respondent has a diagnosis of Frontotemporal Dementia. However, we do reaffirm our finding that it is not in the interest of public safety to permit Respondent to practice absent, at the very least, the protections embodied in the Consent Order to which she agreed. Therefore we deny the relief sought.

In addition to the above reasons for denying the relief Respondent seeks, the Board is precluded by both statute and case law from granting Respondent's request for essentially what amounts to expungement of her prior Board orders. "Expungement is a legislatively authorized remedy, expressly limited to certain prescribed criminal, quasi-criminal, juvenile and other enumerated offenses." In re D'Aconti, 316 N.J. Super. 1, 9 (App. Div. 1998). New Jersey's expungement statute "expressly applies

to only criminal charges[;]... the expungement power does not extend to licensing agencies." Ibid.

In the alternative, the Board is further prohibited from granting Respondent's request to shield her prior orders from the public by removing them from the website. There is a strong public policy interest in transparency. Patients, other physicians and the public have an interest in the access to information regarding actions a licensing board takes concerning licensees. Further the New Jersey's Open Public Records Act ("OPRA"). OPRA requires that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State... for the protection of the public interest." N.J.S.A. 47:1A-1. There is a statutory obligation to provide this information upon request. In fact, any public official who violates OPRA is subject to disciplinary action and civil fines not less - and potentially many times more - than \$1,000.00.

We also note that the practice restrictions to which Respondent consented are not preventing her from obtaining medical malpractice coverage, as Respondent claims. Rather, letters from various insurance companies to Respondent, which Respondent submitted to the Board, make clear that Respondent's prior discipline, -- namely, the suspension of her license -- not the current restrictions on her license, that have caused

insurers to not provide her with quotes for coverage or to direct her to seek excess coverage.

The Board has compassion for Respondent, who the Board believes is not well. The Consent Order Respondent entered into with the advice of counsel allows her to practice medicine, albeit with protections for the public, and provides a pathway for Respondent's practice with fewer restrictions. We find that working under the employ of another physician and continued therapy and testing are necessary conditions at this point in time. The Board has determined that in light of the lengthy history of interactions between the Board and Respondent and the evidence discussed above, especially Dr. Serruya's addendum to his report, the Board cannot at this time safely permit Respondent to practice medicine under less restrictive conditions than those delineated in the November 16, 2015 Consent Order, which the Board declines to amend.

Based upon these findings, and for other good cause,

IT IS, on this 26th day of April, 2016,

ORDERED THAT:

1. Respondent's emergent motion to amend the November 16, 2015 Consent Order and to immediately remove any and all restrictions on Respondent's medical license is denied in its entirety.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS



Stewart A. Berkowitz, M.D.
President

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.