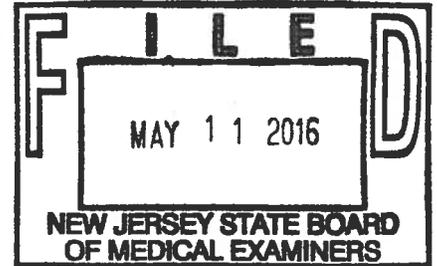


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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the matter of:

BRIAN BERBERIAN, M.D.

CONSENT ORDER

This matter was opened before the New Jersey State Board of Medical Examiners (the "Board") upon the Board's receipt of a report from the Medical Practitioner Review Panel (the "Panel") detailing findings made at the conclusion of the Panel's investigation of reported information detailing that, on or about October 4, 2012, a payment of \$1,000,000 was made on behalf of respondent Brian Berberian, M.D., to settle a civil malpractice action brought against him by the estate of patient R.S. Specifically, it had been alleged in the civil action that Dr. Berberian performed an unnecessary Endoscopic Retrograde

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Cholangiopancreatography ("ERCP"),¹ and that complications from the procedure caused necrotizing pancreatitis, ultimately leading to R.S.' death.

The Panel reviewed available information concerning this matter, to include hospital records from Our Lady of Lourdes Medical Center ("OLLMC") for patient R.S. and expert reports prepared during the pendency of the litigation. The Panel has additionally considered testimony which was offered by Dr. Berberian when he appeared for an investigative hearing on January 22, 2016. Dr. Berberian is represented in this matter by Steve Drake, Esq. As authorized by N.J.S.A. 45:9-19.9(c), the Panel was assisted by a consultant, Richard Eichel, M.D., in its investigation of this matter.

Upon review of available information, the Panel found that R.S., a 62 year old woman, presented to OLLMC on August 8, 2009, after she had received a call from her primary care physician in Georgia, who recommended that she go to the hospital for evaluation of elevated liver enzymes found on recent blood tests. The hospital chart memorializes that R.S. presented with a chief complaint of abdominal pain associated with nausea, and that R.S.

¹ An ERCP is an invasive procedure generally performed to allow for study of the bile ducts, pancreatic duct and gallbladder. The procedure is performed by passing an endoscope through a patient's mouth, esophagus and stomach into the duodenum, followed by passing a catheter through the pancreatic or biliary ducts.

was admitted to the hospital for evaluation of abdominal pain and abnormal liver functions.

Dr. Berberian was called as a gastroenterology consultant. In his initial consultation report dated August 10, 2009, respondent recorded an assessment of "increased liver function tests" and a plan of "ANA, AMA, ferritin, percent saturation, to consider liver biopsy." A surgical consultant was also called, and that consultant recommended that a non-invasive Magnetic Resonance Cholangiopancreatography (MRCP)² be performed (i.e., rather than an invasive ERCP). Notwithstanding that Dr. Berberian was aware of the surgical consultant's recommendation, Dr. Berberian elected to perform an ERCP on August 13, 2009.

In his operative report, Dr. Berberian recorded the indication for the procedure to be "abnormal liver function tests, rule out microlithiasis." During the procedure, Dr. Berberian was unable to cannulate the common bile duct, but nonetheless attempted to place a stent in the pancreatic duct. The stent traversed into the pancreas and could not be retrieved.

Subsequent to the ERCP, a CT scan of the abdomen revealed perforation of the duodenum. R.S. developed severe abdominal pain and was diagnosed with necrotizing pancreatitis. Later in her hospitalization, she suffered cardiac arrest, anoxic encephalopathy

² An MRCP is a special type of MRI exam that produces detailed images of the hepatobiliary and pancreatic systems, including the liver, gallbladder, bile ducts, pancreas and pancreatic duct.

and loss of all cerebral function. R.S. expired on September 3, 2009.

The Panel found that Dr. Berberian engaged in two distinct acts of gross negligence when providing care to R.S.:

(1) Dr. Berberian performed an ERCP for unacceptable reasons, as all available laboratory studies and radiology reports suggested that the elevation of R.S.' liver transaminases was caused by parenchymal disease rather than biliary duct disease. The Panel thus found that Dr. Berberian's decision to perform an ERCP, rather than a liver biopsy or an MRCP, constituted gross negligence.

(2) Dr. Berberian also committed an act of gross negligence during the procedure, when he failed to abort the procedure after he was unable to cannulate the common bile duct. Specifically, the Panel found that there was no indication for Dr. Berberian to have then attempted to place a stent in the pancreatic duct, particularly given that the pancreatic duct was not dilated.³

The Board herein adopts all of the findings and conclusions set forth above which were made by the Panel. The Board thus finds that cause for disciplinary sanction against respondent exists pursuant to N.J.S.A. 45:1-21(c) (engaging in gross negligence, malpractice or incompetence).

³ The Panel noted that Dr. Berberian stated in his operative report that the pancreatic duct measured "4 mm in size," which is a normal size.

The parties desiring to resolve this matter without need for additional administrative proceedings, and the Board being satisfied that good cause exists for the entry of this Order,

IT IS on this 11th day of May, 2016

ORDERED and AGREED:

1. Respondent Brian Berberian, M.D., is formally reprimanded for having engaged in gross negligence when providing care to patient R.S. during her hospitalization in August 2009, for the reasons set forth above.

2. Respondent is assessed a civil penalty of \$7,500, which penalty shall be payable in full upon entry of this Order.

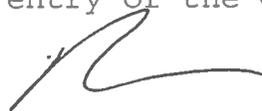
NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By:



Stewart A. Berkowitz, M.D.
Board President

I represent that I have carefully read and considered this Order, understand its terms, agree to comply with said terms and consent to the entry of the Order by the Board.



Brian Berberian, M.D.

Dated:

5/12/16

Consent to form of Order and to the entry
of this Order by the Board.



Steve Drake, Esq.
Counsel for Dr. Berberian

Dated:

5/3/14

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ORDERS/ACTIONS

All Orders filed by the New Jersey State Board of Medical Examiners are "government records" as defined under the Open Public Records Act and are available for public inspection, copying or examination. See N.J.S.A. 47:1A-1, et seq., N.J.S.A. 52:14B-3(3). Should any inquiry be made to the Board concerning the status of a licensee who has been the subject of a Board Order, the inquirer will be informed of the existence of the Order and a copy will be provided on request. Unless sealed or otherwise confidential, all documents filed in public actions taken against licensees, to include documents filed or introduced into evidence in evidentiary hearings, proceedings on motions or other applications conducted as public hearings, and the transcripts of any such proceedings, are "government records" available for public inspection, copying or examination.

Pursuant to N.J.S.A. 45:9-22, a description of any final board disciplinary action taken within the most recent ten years is included on the New Jersey Health Care Profile maintained by the Division of Consumer Affairs for all licensed physicians. Links to copies of Orders described thereon are also available on the Profile website. See <http://www.njdoctorlist.com>.

Copies of disciplinary Orders entered by the Board are additionally posted and available for inspection or download on the Board of Medical Examiners' website.

See <http://www.njconsumeraffairs.gov/bme>.

Pursuant to federal law, the Board is required to report to the National Practitioner Data Bank (the "NPDB") certain adverse licensure actions taken against licensees related to professional competence or conduct, generally including the revocation or suspension of a license; reprimand; censure; and/or probation. Additionally, any negative action or finding by the Board that, under New Jersey law, is publicly available information is reportable to the NPDB, to include, without limitation, limitations on scope of practice and final adverse actions that occur in conjunction with settlements in which no finding of liability has been made. Additional information regarding the specific actions which the Board is required to report to the National Practitioner Data Bank can be found in the NPDB Guidebook issued by the U.S. Department of Health and Human Services in April 2015. See <http://www.npdb.hrsa.gov/resources/npdbguidebook.pdf>.

Pursuant to N.J.S.A.45:9-19.13, in any case in which the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, the Board is required 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 entered by the Board is provided to the Federation on a monthly basis.

From time to time, the Press Office of the Division of Consumer Affairs may issue press releases including information regarding public actions taken by the Board.

Nothing herein is intended in any way to limit the Board, the Division of Consumer Affairs or the Attorney General from disclosing any public document.