

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

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In the matter of:

NICHOLAS J. LEGGIERO, D.O.

INTERIM ORDER

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This matter was opened before the New Jersey State Board of Medical Examiners on November 2, 2016, upon the filing of a six count Administrative Complaint against respondent Nicholas J. Leggiero, D.O., alleging *inter alia* that respondent indiscriminately prescribed opiates and other Controlled Dangerous Substances to six specific patients; that his care of those patients, in each instance, constituted gross negligence and/or negligence; and that his continued practice of medicine would present clear and imminent danger to the public health, safety and welfare. An Order to Show Cause was also filed on November 2, 2016, requiring respondent to appear before the Board on November 9, 2016 for a hearing on an application for the temporary suspension of his license. The Complaint and Order to Show Cause were served on respondent in the afternoon on November 2, 2016. Respondent subsequently retained counsel, Kern Augustine, P.C., Daniel Giaquinto, Esq. and Svetlana Ros, Esq., appearing, to represent him in this matter.

CERTIFIED TRUE COPY

Respondent, through his counsel, sought an adjournment of the scheduled return date for this matter, to afford additional time for counsel to review the voluminous patient records (over 2,000 pages of medical records were submitted as Exhibits to the Certification of Deputy Attorney General Kate Calendar) and to prepare a defense to the Attorney General's application for temporary suspension. The Attorney General objected to the adjournment request.

On November 7, 2016, respondent's counsel made application to the Board President, George J. Scott, D.O., D.P.M., for an adjournment of the return date of the Order to Show Cause. As set forth in detail in a letter from Dr. Scott to the parties dated November 7, 2016 (said letter is attached hereto and incorporated herein by reference), a conference call was conducted during which Dr. Scott entertained oral argument from Svetlana Ros, Esq. and Deputy Attorney General Kate J. Calendar on the adjournment request. Following oral argument, Dr. Scott, acting in his Executive Capacity as President of the Board, issued an opinion wherein he recommended that:

[T]he Board grant the adjournment request, and that this matter be rescheduled for hearing on December 14, 2016, subject to conditions that: (1) Dr. Leggiere immediately cease and desist prescribing and/or dispensing CDS to all patients; (2) Dr. Leggiere immediately cease and desist treating all six patients identified in the Administrative Complaint, and that he also immediately cease and desist treating any and all other patient(s) that he may presently be providing "pain management" care

to, and that he ensure that arrangements for transfer of care of all such patients to another physician(s) [at another practice setting, i.e., those patients are not to be transferred to any other physician(s) employed at Dr. Leggiero's medical practice] are made within thirty days. Additionally, any adjournment should be conditioned on Dr. Leggiero's express representation and acknowledgment that the Board will not grant any further adjournment requests he and/or his counsel may make, regardless of the reason therefore, absent entry of an Order temporarily suspending his license until the temporary suspension application is heard.

This matter was then considered by the full Board on November 9, 2016, at which time Dr. Leggiero appeared, represented by Svetlana Ros, Esq., and the Attorney General appeared, by Deputy Attorney General Kate Calendar. Dr. Leggiero was sworn, and then acknowledged on the record that he understood and agreed to comply with each of the conditions that Dr. Scott recommended be imposed on his practice, pending a hearing on the Attorney General's application for the temporary suspension of his license.

The Board finding good cause to adopt, in full, all recommendations made by Dr. Scott, for the reasons set forth within Dr. Scott's letter, and Dr. Leggiero having, in sworn testimony, agreed to all of the interim conditions and limitations on his practice of medicine in the State of New Jersey imposed below,

IT IS on this 10<sup>th</sup> day of November, 2016,

ORDERED, effective November 9, 2016:

1. Respondent Nicholas Leggiere shall immediately cease and desist prescribing and/or dispensing any and all Controlled Dangerous Substances to any and all patients.

2. Respondent shall immediately cease and desist providing medical treatment to all of the six patients identified in the Administrative Complaint and to all other patients that he is providing "pain management" care to, and shall ensure that arrangements for the transfer of care of all such patients are made within thirty days of the effective date of this Order (specifically, by the close of business on December 9, 2016). Said patients are to be transferred to a physician(s) at another practice setting, and may not continue to be treated at respondent's medical practice by any other physician(s) who work at said practice.

3. This matter is scheduled for a hearing on the Attorney General's application for temporary suspension, to be held before the full Board on December 14, 2016. No further adjournment requests by respondent and/or his counsel shall be granted, regardless of the reason therefor, absent the entry of an Order of full temporary suspension of license.

4. Any violation of the express conditions and limitations set forth in paragraph 1 or 2 above by respondent shall constitute grounds for the entry of an Order of full temporary suspension of license. In the event the Attorney General obtains

any evidence that respondent hereafter violates any of the terms of this Order, the Attorney General may make application before the President of the Board (or his designee) for the entry of an Order of full temporary suspension of license, on 24 hours' notice to respondent. The sole issue that would then need to be considered by the Board President is whether respondent violated the terms of this Order.

5. The conditions and limitations set forth in paragraphs 1 and 2 above shall continue in full force and effect until further Order of this Board, to be entered following the hearing scheduled for December 14, 2016 (and/or upon any proceedings that may occur consistent with the terms of ¶4 above).

NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

By:



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Chetan Shah, M.D.  
Board Vice-President



CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

## New Jersey Office of the Attorney General

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State Board of Medical Examiners  
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November 7, 2016

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Svetlana Ros, Esq.  
Kern Augustine, P.C.  
1120 Route 22 East  
Bridgewater, New Jersey 08807

Re: In the Matter of Nicholas J. Leggiero, D.O.

Dear Ms. Ros and DAG Calendar:

This letter is to advise you of my recommended decision on Dr. Leggiero's request that the return date of the Order to Show Cause be adjourned from November 9, 2016 to December 14, 2016. Specifically, for the reasons set forth below, **I am recommending that the Board grant the adjournment request, and that this matter be rescheduled for hearing on December 14, 2016, subject to conditions that: (1) Dr. Leggiero immediately cease and desist prescribing and/or dispensing CDS to all patients; (2) Dr. Leggiero immediately cease and desist treating all six patients identified in the Administrative Complaint, and that he also immediately cease and desist treating any and all other patient(s) that he may presently be providing "pain management" care to, and that he ensure that arrangements for transfer of care of all such patients to another physician(s) [at another practice setting, i.e., those patients are not to be transferred to any other physician(s) employed at Dr. Leggiero's medical practice] are made within thirty days. Additionally, any adjournment should be conditioned on Dr. Leggiero's express representation and acknowledgment that the Board will not grant any further adjournment requests he and/or his counsel may make, regardless of the reason therefore, absent entry of an Order temporarily suspending his license until the temporary suspension application is heard.**

By way of background, the Attorney General filed a six count Administrative Complaint against Dr. Leggiero on October 27, 2016, alleging generally that Dr. Leggiero has indiscriminately prescribed Controlled Dangerous Substances to six specific patients, and that his care of those patients, in each case, constitutes gross negligence and/or negligence. The Attorney General is also moving for the entry of an Order temporarily suspending Dr. Leggiero's license to practice, pending a plenary hearing, and is alleging that his continued practice would present clear and imminent danger to the public health, safety and welfare. Counsel for Dr. Leggiero has requested an adjournment of the proceeding.

The parties had initial discussions on Friday, November 4, 2016 on the adjournment request, but could not reach any voluntary agreement on terms for an adjournment. I was then asked, in my Executive capacity as President of the Board, to hear argument on the adjournment request during a conference call which was held at approximately 11:00 a.m. on Monday, November 07, 2016. At that time, Svetlana Ros, Esq., appeared for respondent Nicholas Leggiero, and Deputy Attorney General Kate Calendar appeared for the Attorney General.

Ms. Ros argues that Dr. Leggiero simply has not been afforded adequate time to prepare a defense to the temporary suspension hearing. Dr. Leggiero was served with the Complaint and Order to Show Cause in the afternoon on Wednesday, November 2, 2016 (DAG Calendar advised that copies of the compliant were left both at his office and his home address). He thus received, at most, one week's notice of the scheduled temporary suspension hearing. Dr. Leggiero promptly retained counsel (Ms. Ros advises that she and Dan Giaquinto, Esq., of Kern Augustine were retained on November 4, 2016).

Ms. Ros suggests that, absent an adjournment, there is not sufficient time to allow her and Mr. Giaquinto to review the extensive record in this case, which includes over 2,000 pages of medical records, and to then prepare a defense to the charges. Additionally, she argues that there is a patent unfairness to proceeding on such short notice given that the Board has been investigating Dr. Leggiero's care of all six patients for an extensive time, and that the Board in fact addressed Dr. Leggiero's care of all six patients over two years ago when Dr. Leggiero appeared before a Preliminary Evaluation Committee in July 2014. Finally, she suggested that any requirement to fully cease and desist practice would have a devastating effect on patients, as Dr. Leggiero's office practice had been staffed by three physicians, one of whom just left the practice to move to Maryland approximately two weeks before this application was filed.

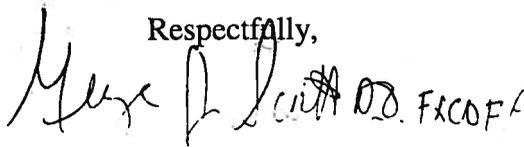
Deputy Attorney General Calendar maintains that the public interest would be compromised were any adjournment to be granted. She maintains that the case against Dr. Leggiero involves far more than just indiscriminate prescribing, but instead implicates Dr. Leggiero's competency and judgment as a physician. She points out that the Attorney General is also alleging that Dr. Leggiero's patients are at risk from continued prescribing of acetaminophen to patients, and that his records are "cookie-cutter." DAG Calendar also pointed out that the urgency of the matter is underscored by the fact that Dr. Leggiero was clearly aware of the Board's concerns regarding his practice patterns with each of the six patients, and that the danger he presents is all the greater given that he did not change his practice patterns despite being aware of those concerns. Deputy Attorney General Calendar is thus maintaining that no adjournment should be granted absent a requirement that Dr. Leggiero fully cease and desist from practice pending the temporary suspension hearing.

While I fully appreciate the gravity of the charges against Dr. Leggiero, and the Attorney General's concerns that his full patient population could be at risk if he is allowed to continue in practice pending the hearing in this matter, I am also convinced that the concerns raised by Dr. Leggiero's counsel regarding the need for adequate time to prepare a defense are meritorious. The conditions and limitations that I recommend imposing reflect my efforts to craft a fair balance between the competing concerns in this case. I am confident that the proposed conditions and limitations will provide a measure of protection for Dr. Leggiero's patients during the five week adjournment period, while at the same time affording Dr. Leggiero and his counsel adequate time to prepare his defense.

I point out that Dr. Leggiero should be required to appear before the Board on Wednesday, November 9, 2016, be sworn in, and then required to acknowledge under oath his willingness to comply with each of the proposed conditions and limitations on his practice. Further, I suggest that any Order then entered by the Board should include a provision that, in the event Dr. Leggiero were to fail to comply with the express conditions and limitations, the Attorney General could then move before the Board President, on 24 hours' notice, for entry of an Order of full temporary suspension.

This decision will be placed before the full Board on November 9, 2016, and may then be adopted, rejected or modified by the full Board. In the event the Board rejects the decision, and decides that the adjournment request should not be granted, then the scheduled hearing on the application for temporary suspension should proceed.

Respectfully,

A handwritten signature in black ink, appearing to read "George J. Scott". To the right of the signature, there is a stamp that reads "DR. FRCOFF".

George J. Scott, D.O, D.P.M.  
Board President

Cc: Steven Flanzman, SDAG

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
OR CESSATION OF PRACTICE HAS BEEN ORDERED OR AGREED UPON**

**APPROVED BY THE BOARD ON AUGUST 12, 2015**

All licensees who are the subject of a disciplinary order or surrender or cessation order (herein after, "Order") of the Board shall provide the information required on the addendum to these directives. 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 licensee is suspended, revoked, has surrendered his or her license, or entered into an agreement to cease practice, with or without prejudice, whether on an interim or final basis. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains probationary terms 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. Prior to the resumption of any prescribing of controlled dangerous substances, the licensee shall petition the Director of Consumer Affairs for a return of the CDS registration if the basis for discipline involved CDS misconduct. 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, surrender or cessation, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The licensee subject to the order

is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The licensee subject to the order may contract for, accept payment from another licensee for rent at fair market value for office premises and/or equipment. In no case may the licensee subject to the order 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 subject to the order 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), subject to the order for the payment of salaries for office staff employed at the time of the Board action.

A licensee whose license has been revoked, suspended or subject to a surrender or cessation order for one (1) year or more must immediately take steps to 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 subject to the order 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.<sup>1</sup> 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 order.

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<sup>1</sup> This bar on the receipt of any fee for professional services is not applicable to cease and desist orders where there are no findings that would be a basis for Board action, such as those entered adjourning a hearing.

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 or who is ordered to cease practice 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 disqualified licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall also divest him/herself of all financial interest. Such divestiture of the licensee's interest in the limited liability company or professional service corporation 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 Division of Revenue and Enterprise Services demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation or sole member of the limited liability company, the corporation must be dissolved within 90 days of the licensee's disqualification unless it is lawfully transferred to another licensee and documentation of the valuation process and consideration paid is also provided to the Board.

#### **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) immediately 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. If the licensee has a website, a notice shall be posted on the website as well.

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 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 any 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.

## **6. Payment of Civil and Criminal Penalties and Costs.**

With respect to any licensee who is the subject of any order imposing a civil penalty and/or costs, the licensee shall satisfy the payment obligations within the time period ordered by the Board or be subject to collection efforts or the filing of a certificate of debt. The Board shall not consider any application for reinstatement nor shall any appearance before a committee of the Board seeking reinstatement be scheduled until such time as the Board ordered payments are satisfied in full. (The Board at its discretion may grant installment payments for not more than a 24 months period.)

As to the satisfaction of criminal penalties and civil forfeitures, the Board will consider a reinstatement application so long as the licensee is current in his or her payment plans.

**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.