

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:

JAROSLAW S. PONDO, M.D.

CONSENT ORDER

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This matter was opened before the New Jersey State Board of Medical Examiners (the "Board") upon receipt of a report from the Medical Practitioner Review Panel (the "Panel") detailing findings and recommendations made by the Panel at the conclusion of an investigation of respondent Jaroslaw S. Pondo, M.D. Specifically, the Panel commenced an investigation of respondent's practice upon its receipt of an adverse action report from Hackensack University Medical Center ("HUMC") detailing that, on or about October 8, 2015, Dr. Pondo's privileges at HUMC were summarily suspended and Dr. Pondo was discharged from the medical staff for falsifying information in a patient's electronic medical record. Specifically, an Investigation Committee at HUMC found that Dr. Pondo entered medical history and physical assessment findings ("H&P"), purporting to memorialize his having performed an H&P on patient R.W., approximately three and one-half hours after R.W. had been declared dead. The Committee reported that it did not believe that Dr. Pondo had acted with malicious or fraudulent

intent, or to cover up his failure to have timely seen the patient, but nonetheless found that Dr. Pondo's conduct constituted falsification of a medical record, which conduct was grounds for revocation of hospital privileges.<sup>1</sup>

The Panel reviewed available documentation provided by HUMC, and considered testimony offered by respondent when he appeared before the Panel on December 16, 2016 for an investigative hearing. Respondent is represented in this matter by Dennis J. Alessi, Esq.

Following review of available information, the Panel found that respondent was the primary care physician for patient R.W. for a period of approximately five years before R.W.'s death on August 26, 2015. Respondent treated R.W. for chronic obstructive pulmonary disease, chronic respiratory failure, hypertension, coronary artery disease and congestive heart failure.

On or about August 24, 2015, R.W. was found unresponsive at his home, and was taken by ambulance to Meadowlands Hospital, a facility where respondent was not privileged. R.W. contacted respondent from Meadowlands Hospital and requested that respondent arrange for a transfer to HUMC, so that respondent could provide care. Respondent made arrangements for that transfer.

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<sup>1</sup> As of the date of Dr. Pondo's appearance before the Panel (December 16, 2016), respondent was appealing HUMC's action, and further hearings were expected to be conducted before a hospital committee.

When appearing before the Panel, Dr. Pondo testified that he received a phone call at approximately 10:00 p.m. on August 25, 201 informing him that R.W. had been transferred to HUMC. Respondent stated that he had then intended to take a brief nap using his cell phone as an "alarm" to awaken him, and to thereafter go to HUMC to examine R.W. within three hours of his admission to HUMC. Respondent further explained that he mistakenly placed his cell phone on "vibration," and as a result did not hear either the alarm he had set or two phone calls which were placed to him regarding his patient's deteriorating condition and subsequent death. Respondent awoke at approximately 5:00 a.m., listened to the two voice mails (including a message specifically advising him that R.W. had been declared dead at approximately 4:00 a.m.) and immediately returned the calls. Respondent thus never saw R.W. in the six hour period between R.W.'s admission to HUMC and his death at that facility.

At approximately 7:30 a.m., Dr. Pondo accessed the HUMC medical record-keeping system remotely from his office in Rutherford, New Jersey, and entered a H&P in R.W.'s chart. The H&P was timed 7:30 a.m., and purported to detail findings made following an on-site, contemporaneous examination of the patient. When appearing before the Panel, Dr. Pondo testified that he had

used a template, maintained on his computer, to prepare the H&P.<sup>2</sup> Later that morning, at approximately 11:30 a.m., Dr. Pondo made a further entry into the chart where he recorded that R.W. was deceased.

The Panel found and concluded that Dr. Pondo entered a fabricated H&P in R.W.'s medical record, at a time that he knew R.W. was deceased. Respondent did so knowing that he had not performed the documented H&P, and knowing that he had not even seen R.W. during the six hour period that R.W. was admitted to HUMC. While the Panel noted, in mitigation, that respondent testified in a contrite manner and conceded that his conduct was improper, the Panel nonetheless specifically found that respondent falsified a medical record, and that basis for disciplinary sanction against respondent exists pursuant to N.J.S.A. 45:1-21(b).

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

IT IS on this 14<sup>th</sup> day of June, 2017

ORDERED and AGREED:

1. Respondent Jaroslaw S. Pondo, M.D., is formally reprimanded for having falsified a medical record when he entered a

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<sup>2</sup> Respondent asserted that the information which he entered in R.W.'s chart was "accurate," as it was based on an H&P which he had performed on R.W. prior to R.W.'s discharge from a prior hospital admission. The Panel found that assertion to be specious, given the undisputed fact that respondent did not examine R.W. on August 25 or 26, 2015.

H&P in the chart of patient R.W., knowing that R.W. had been declared dead approximately three and one-half hours before the H&P was entered, as more fully detailed above.

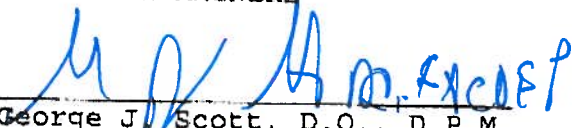
2. Respondent is assessed a civil penalty in the amount of \$3,500, which penalty shall be payable in full, by certified check or money order (or by any alternative payment method deemed acceptable by the Board) at the time of entry of this Order.

3. Respondent shall, within six months of the date of entry of this Order, take and successfully complete courses in: (1) medical ethics and (2) medical record keeping. Respondent may satisfy the requirements of this paragraph by completing any ethics and/or medical record keeping course(s) that is presently approved by the Board (a list of such courses has been made available to respondent). Alternatively, respondent shall be required to secure written pre-approval from the Medical Director of the Board for any course(s) he may propose to take to satisfy the requirements herein, which he may seek by providing all available information concerning any proposed course(s) to the Medical Director of the Board. The Medical Director shall review said information and determine whether the proposed course is or is not acceptable to the Board. Respondent shall be responsible to ensure that documentation of successful completion of both courses taken to satisfy the requirements of this paragraph is forwarded by the course provider(s) to the Board. In the event that respondent

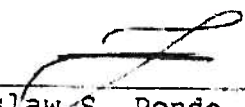
fails to successfully complete the course work required herein in a timely fashion (that is, in the event the Board does not receive documentation of successful completion of approved courses within six months of the date of entry of this Order), respondent shall be deemed to have failed to comply with the requirements of this Order, and his license may then be immediately suspended by the Board for failure to comply with the terms of this Order. In the event an Order of immediate suspension for failure to comply with the terms of this Order is entered, respondent's license shall thereafter continue to be actively suspended until such time as he successfully completes the required course work, documentation thereof is submitted to the Board, and written notice of reinstatement is provided by the Board to respondent.

NEW JERSEY STATE BOARD OF  
MEDICAL EXAMINERS

By:

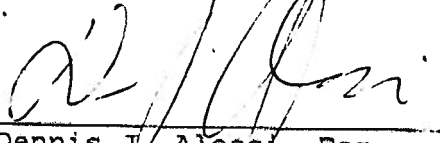
  
George J. Scott, D.O., D.P.M.  
Board President

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

  
Jaroslav S. Pondo, M.D.

Dated: \_\_\_\_\_

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

A handwritten signature in dark ink, appearing to read "D.J. Alessi", is written over a horizontal line.

Dennis J. Alessi, Esq.  
Counsel for Respondent

**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.