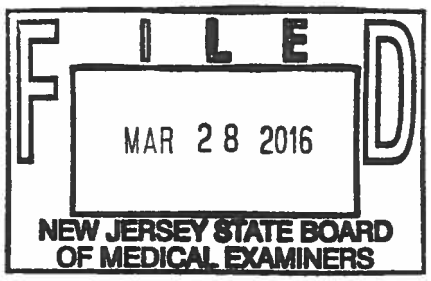

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
OAL DOCKET NO. BDS 14644-2011N

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

Amgad Hessein, M.D.
LICENSE NO.: 25MA067650

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

FINAL DECISION AND ORDER

This matter was returned to the New Jersey State Board of Medical Examiners ("the Board") to consider an Initial Decision by Administrative Law Judge Jesse H. Strauss (hereinafter "ALJ") entered on December 17, 2015 following a 17 day hearing at the Office of Administrative Law. Amgad Hessein, M.D. ("Respondent") is an anesthesiologist specializing in pain management who was charged, in an Administrative Complaint, with gross and repeated deviations from accepted standards of medical practice as demonstrated by his treatment of six patients, gross and repeated malpractice, incompetence, negligence, fraudulent billing and failure to maintain proper patient records. The ALJ found, based on the representative sample of six patients over a three year period, that Respondent engaged in a myriad of regulatory violations, fraudulent billing, and multiple acts of gross and repeated negligence related to his patient

care and his creation of false and fictitious patient records for procedures allegedly performed for individual patients on consecutive days or on days the office was closed. ALJ Strauss recommended that the Board revoke Respondent's license and impose a $50,000 civil penalty and costs.

Based upon our review of the record, post-hearing briefs, the Initial Decision, Exceptions submitted by both parties, and after consideration of oral argument of counsel, we have determined to adopt in their entirety all findings of fact and conclusions of law of the ALJ with the modifications and amplifications below. Based upon our independent review of the record, the exercise of our medical expertise and the evidence presented regarding sanctions, we adopt the ALJ's recommendation to revoke Respondent's license and impose payment of costs and we modify the recommended civil penalty to more accurately reflect Respondent's egregious conduct.

PROCEDURAL HISTORY

A Verified Complaint and Order to Show Cause seeking the temporary suspension of Respondent's license was filed by the New Jersey Attorney General on October 31, 2011. The Verified Complaint alleged that respondent engaged in multiple acts of dishonesty, fraud, deception, misrepresentation, false promise or false pretense in violation of N.J.S.A. 45:1-21(b); multiple acts of gross or repeated negligence, malpractice or incompetence, in violation of N.J.S.A. 45:1-21(c) or (d); professional misconduct, in violation of

N.J.S.A. 45:1-21(e); multiple acts constituting moral turpitude, in violation of N.J.S.A. 45:1-21(f); multiple violations of Board regulations, in contravention of N.J.S.A. 45:1-21(h), including the failure to maintain proper patient records (N.J.A.C. 13:35-6.5) and failure to dispose of expired medications (N.J.A.C. 13:35-7.5); insurance fraud, in violation of N.J.S.A. 45:1-21(k); and that Respondent indiscriminately prescribed controlled substances to his patients in violation of N.J.S.A. 45:1-21(m).

The Attorney General's Order to Show Cause seeking the temporary suspension of Respondent's license was heard and granted on November 9, 2011. In an Order of Temporary Suspension following hearing, the Board made a finding at a preliminary stage of this matter that Respondent's

> . . . continued practice palpably demonstrates a clear and imminent danger to the public health safety and welfare as his medical records are unreliable and unbelievable, having been fabricated to justify his extraordinary fraud.
>
> [Order of Temporary Suspension of License at 12.]

Respondent filed his Answer and Affirmative Defenses with the Board on December 15, 2011 in which he either denied or responded that he neither admitted nor denied all substantive allegations. The matter was then referred to the Office of Administrative Law for a hearing as a contested case.

Hearings took place on 17 days commencing November 3, 2014. The record closed on August 25, 2015, after submission of post-hearing

briefs. The ALJ issued his Initial Decision on December 17, 2015. Respondent and the Attorney General filed timely Exceptions and a hearing on the Exceptions was initially scheduled before the Board on February 10, 2016. At the request of Respondent, and without objection by the Attorney General, the proceedings were adjourned and held before a quorum of the Board of Medical Examiners on March 9, 2016. Deputy Attorney General Susan Brown-Pietz represented the State and Patrick Toscano, Jr, Esq. appeared on behalf of Respondent.

ALJ's FINDINGS

In his 77 page Initial Decision, ALJ Strauss finds that Respondent engaged in repeated acts of negligence and gross negligence, fraud, indiscriminate dispensing of controlled substances and that he failed to adhere to Board statutes and regulations. Specifically, Respondent repeatedly and systematically created a plethora of false and fictitious treatment records for six patients, who the ALJ considered to be "merely a representative sample of Respondent's patient population." He created patient records and billed for medical services that were not provided and for services on dates the patients did not even come into his office. He tasked unlicensed employees to administer physical therapy modalities and did not obtain required patient consents prior to engaging in interventional pain procedures. He performed conscious sedation without recording vital signs, or, he improperly recorded them himself or allowed an unlicensed/uncertified individual to record

them. He failed to refer his patients for alternative treatment when his own treatment did not provide relief from their symptoms. And, in at least three cases, he failed to instruct a patient to cease anti-coagulant medications prior to receiving epidural injections.

The ALJ, in making these findings of fact, addressed the credibility of each witness. He found all of the State's witnesses to be credible, noting, for example, that

> . . . there was no basis for them (Investigators Galloni and Nucci) to embellish or fabricate any of their observations or to stage photographs in the office that were not accurate. Their testimony was straight-forward and professional with no scent of personal vendetta or faulty recollection. They were, without question, credible witnesses.
>
> [I.D. at 12.]

Similarly, the ALJ addressed the credibility of written sworn patient statements submitted by the Attorney General without oral testimony carefully and with great deliberation, drawing relevant connections between the written sworn statements, the testimony of others and the corroborating documentary evidence before ultimately allowing the statements into evidence subject to the residuum rule and finding

> . . . these statements do, indeed, corroborate the credible testimony of J.R., T.A. and A.G. as well as supporting documentation culled from the patient records and HealthQuist records. They support a pattern and practice as to how Hessein ran his office and engaged in certain billing practices. The statements are both credible and reliable and they are consistent with other competent evidence.

[I.D. at 37.]

The ALJ further found that the majority of fact witnesses presented by Respondent were lacking in credibility and/or their testimony should be given little to no weight. Finally, the ALJ's analysis of the expert testimony relevant to each allegation shows the care that he took to review this matter. In most cases, the ALJ found the State's expert to be more persuasive than Respondent's expert witness.

ARGUMENT ON EXCEPTIONS

Respondent, while acting pro se, submitted 31 pages of written Exceptions on his own behalf. Although somewhat difficult to follow and lacking any references to the transcripts or the Initial Decision, it appears that Respondent had two primary Exceptions: (1) the ALJ erred in finding the State's witnesses to be credible; (2) the ALJ should not have accepted into evidence and relied upon either the audiotape of J.C.'s office visit with Respondent or the Superbill for E.M.

Respondent's attorney, in written Exceptions and oral argument, primarily argued that the administrative licensing matter should have been placed on hold pending Respondent's criminal trial, despite Respondent's own request while represented by prior counsel that the OAL set trial dates. He argued that there should have been an extensive voir dire of Respondent on the record to ensure that he understood the consequences of moving forward with the hearing.

Further, he argued that Respondent has already "uncovered numerous exculpatory facts" regarding the criminal matter and that he anticipates that witnesses at the criminal trial will "clear" him.

Respondent also argued a number of Exceptions without explanation and/or without reference to the record:[1]

1. The ALJ erred in allowing the sworn statements of B.Z., D.C., E.M., and J.C. to be entered into evidence, thus depriving Respondent of cross-examination of the witnesses.
2. The ALJ erred in finding that the Superbills on the day the raid took place were filled out by Respondent when Respondent was not in the office the day of the raid.
3. The ALJ improperly shifted the burden of proof to Respondent to prove that each procedure was performed.
4. The ALJ erred in allowing into evidence and considering separate unrelated civil suits of former employees Gilmore and McDaniel.
5. The ALJ erred in making findings of fact when "not a single witness testified that they ever saw Dr. Hessein do anything improper or illegal."
6. The ALJ misapplied case law when assessing liability.

In written Exceptions and during oral argument, DAG Brown-Peitz made three primary arguments regarding Exceptions on liability. First, the ALJ erred in not finding that Respondent deviated from the

[1] There are thirteen numbered Exceptions in Mr. Toscano's written correspondence. These Exceptions have been condensed for ease of analysis.

standard of care in the type, dosage, frequency and number of steroidal injections administered to the five patients whose medical records were reviewed by the experts in this case. The DAG argued that the ALJ should not have rejected the testimony of the State's expert that when there is no one universally accepted guideline or standard, the "standard of care" is defined as the "care which a reasonably well-trained physician in that specialty would provide in similar circumstances." (P-5 at 0091). The DAG further argued that there is ample evidence to support Dr. Yanow's opinion that "there is absolutely no medical reason for the number of injections Dr. Hessein was performing." (P-5 at 0094). This argument is underscored by the ALJ's finding of fraudulent recordkeeping and the impossibility of conducting a complete history and physical exam and administering an injection in the 30 minutes or less that the patients testified they were in Respondent's office.[2] Similarly, Dr. Yanow testified that particulate steroid in epidural procedures create serious risks and that Kenalog is not indicated for epidural (especially neuraxial) injections. Even Respondent's expert agreed that if you are going to use Kenalog or other particulate steroid you must advise the patient of the risks and benefits - yet the ALJ found that Respondent did not obtain consent prior to injections and that his office procedure (or lack thereof) for obtaining consent rendered any consent obtained

[2] An audiotape entered into evidence at P-28 indicates that one patient was in Respondent's office only two minutes and twelve seconds before she received an injection.

meaningless. The DAG argued the ALJ erred in not finding that Respondent's manner of using Kenalog, a particulate steroid in his neuraxial procedures was a deviation from the standard of care.

The Attorney General's second argument was that the ALJ erred by not finding that Respondent's failure to utilize contrast dye under live fluoroscopy during neural foraminal steroid injections constitutes gross negligence and/or multiple acts of negligence. Dr. Yanow was very clear, and the ALJ agreed, Respondent failed to document the use of contrast dye as part of fluoroscopy in many instances. I.D. at 61. The Attorney General argued that the ALJ's findings warrant a conclusion that Respondent engaged in repeated acts of simple and gross negligence - not just shoddy recordkeeping.

The Attorney General's third argument was that the ALJ erred in not finding Respondent engaged in gross negligence based on his failure to conduct adequate examinations and patient histories and to follow-up with potentially dangerous symptoms and complaints. The Court noted Dr. Yanow's concerns that: Respondent did not follow up new neurologic deficits exhibited by B.Z. at her May 31, 2007 office visit prior to his administration of right axillary brachial plexus injection; Respondent documented no effort to examine A.G.'s abdomen or refer her for an abdominal evaluation when she presented with tenderness over her right lower quadrant - instead he performed three abdominal and groin nerve blocks; Respondent failed to document follow-through of J.C.'s complete foot drop less than two weeks after

he administered epidural injections to her; Respondent failed to document any effort to identify and examine A.G.'s swelling to determine whether she was febrile; Respondent performed an incision and drainage of a forearm abscess on B.Z. and failed to document the etiology of the abscess, what was drained, prescriptions for antibiotics and any follow-up of this procedure. (P-5 at 0098-0099; I.D. at 61-63). The Attorney General urged the Board to find that Respondent's failure to follow up with his patients' symptoms and complaints constitutes gross negligence - not just a pattern of shoddy recordkeeping, as found by the ALJ.

Finally, the DAG addressed Respondent's more substantive Exceptions. She reminded the Board that there has been a concurrent criminal matter from the inception of the administrative proceedings. The DAG requested that the OAL matter be put on the inactive list. The matter was taken off the inactive list at Respondent's request when he was represented by prior counsel Michael Keating, Esq. There was no obligation on Judge Strauss' part to go back and revisit this request three months later when Respondent decided to move forward pro se. Additionally, there were numerous trial dates in this matter and numerous opportunities for Respondent to provide exculpatory information. The criminal matter is a separate and distinct proceeding.

DAG Brown-Pietz urged the Board to review Respondent's

pro se submission with caution, as she asserted there is no way to figure out what portion of his claims are supported by the record and what is not.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon consideration of the entire record, written and oral arguments of counsel regarding Exceptions, and a review of submissions, the Board deliberated in executive session, and voted on and announced its decision on the record in open session. The Board unanimously determined to adopt the findings of fact and conclusions of law as set forth in the 77 page well-reasoned Initial Decision of ALJ Strauss in this matter with modifications indicated below which were made using the Board's collective medical expertise.

We do not find the Exceptions submitted by Respondent and his attorney to be persuasive and note they do not refer to the record as required by N.J.A.C. 1:1-18.4. Nonetheless, we considered them. Respondent's pro se Exceptions are rambling and appear to be an attempt to supplement the record with testimony and evidence that may not have been presented at the time of hearing and were therefore accorded little weight. The Exceptions submitted by Respondent's attorney were also not persuasive. Nothing precludes this Board from proceeding with a matter when there are concurrent criminal proceedings. Not only are criminal and administrative proceedings subject to different standards of proof, we agree with the Attorney General that there is nothing that can happen in the criminal matter

that will affect "what Judge Strauss heard, what credibility issues he formulated, what findings of fact he made and what legal conclusions he made." (Transcript of Exceptions Hearing at 27). Further, the ALJ's findings regarding lay witness testimony was eminently reasonable and well supported by sufficient, competent and credible evidence in the record. Accordingly, this Board cannot, and will not, reject ALJ Strauss' credibility findings. Respondent, represented by counsel, himself asked that the matter be taken off the inactive list and that the hearing go forward. The State prevailed at the OAL and the ALJ recommended revocation of Respondent's license. Respondent now seeks to adjourn these proceedings in which findings were made against him and during which he had ample opportunities to submit evidence and argument on his own behalf. The State has expended considerable resources to try this case and is entitled to finality. We decline to put this matter on hold until the conclusion of the criminal trial.

The remainder of Respondent's Exceptions are unsupported by the record: The ALJ correctly applied the residuum rule when he allowed in the written statements of patients who did not testify based upon his review of the oral testimony and other credible evidence entered, such as medical records, which corroborate and are consistent with the written statements. It is immaterial whether Respondent was in the office the day of the criminal raid, the point is that the Superbills for services purportedly performed that day were filled

out before any services were rendered. The ALJ never "shifted the burden of proof" to Respondent to prove that each procedure was performed, rather, the ALJ accepted credible patient testimony that the patients did not receive the number of injections reflected in patient and/or billing records and reviewed patient records which did not include signed consent forms for the services allegedly rendered.[3] In his initial decision, the ALJ correctly referenced the testimony of Respondent's former employees Gilmore and McDaniel regarding their civil suits relative to his overall determination of their credibility, he did not discuss the particulars of the civil suits and does not appear to have relied upon this aspect of their testimony in making findings of fact and conclusions of law in the instant matter. The medical records, signed consent forms and log book entries (or lack thereof) and the fact and expert testimony presented in this case are more than sufficient to support the ALJ's findings of fact. Respondent's bald assertion that the ALJ misapplied "the Polk/Kerlin standard" is without explanation or support in the record.

We find the Exceptions submitted by the Attorney General were persuasive and well supported by the record in this matter and we

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[3] The ALJ actually opined: "In the absence of signed Consent Forms by patients, the burden to prove that each of the purported procedures occurred would fall on Hessein. He did not meet this burden. Several examples cited by Hessein to suggest a procedure where a Consent Form was inadvertently missing hardly impugns the integrity of an analysis that disclosed 175 purported visits where there are no signed Consent Forms. He cannot try to interject through closing argument alleged facts that he declined to present through his own testimony. A patient signature on a Consent Form more credibly confirms an actual visit than a reference to a patient consent in a Progress Note authored totally by Hessein." I.D. at 21.

modify the ALJ's Initial Decision accordingly to find that the following also constitute gross and repeated acts of negligence.[4] We concur in our expertise with the opinion of the Attorney General's expert and find that the evidenced adduced at trial supports Dr. Yannow's assessment that Respondent's "practice of performing injections with inadequate history and physical examination is an example of a gross deviation from all acceptable medical practices, and creates a significant potential for harm to patients." (P-5 at 10). The testimony of multiple patients that office visits lasted no more than 30 minutes, combined with the audio intercept of patient J.C.'s visit to Respondent's office, reflecting a mere 2 minutes of doctor/patient communication prior to an injection, support our conclusion that Respondent was not conducting sufficient histories and physical exams. Without a complete history and physical exam,

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[4] While we do not rely on the following additional findings of fact and conclusions of law in determining penalty, we cannot condone Respondent's behavior and include our concerns in this order as yet further examples of Respondent's pattern of repeated negligence and gross negligence: (1) State Investigators observed approximately 110 packs, bottles, vials and sheets of various expired medications in drawers, cabinets and a refrigerator commingled with non-expired medications. We find this pattern of behavior unconscionable. (2) Respondent documented three steroid injections three days in a row on multiple occasions. If these injections actually occurred (which we are convinced they did not based upon the evidence submitted in this matter) it would constitute gross negligence. For example, patient J.C.'s medical records document she received 250 ml of Marcaine within a very brief period. This is a potentially lethal dose and there is no treatment for Marcaine toxicity. (3) For many of the procedures purportedly done, the technique described is not appropriate or safe. For example, needle placement is not reported in the patient record and, when Respondent performed transforaminal injections, he would record only one placement, when transforaminal injections require two placements. (4) Respondent did not have a sufficient fund of knowledge to safely perform radio frequency ablation on patient Z.B. He utilized 90 degrees Celsius, when the standard is a maximum of 80 degrees. (5) Patient J.C. had 4 level discography and then 2 level discectomy on the same date, suggesting that Respondent intended to perform surgery regardless of the outcome of the discography.

there can be no way to ensure that an injection was medically necessary.

We also concur with the Attorney General's argument that the evidence adduced at trial amply supports Dr. Yannow's opinion, with which we again agree in our expertise, that Respondent committed gross negligence for his repeated administration of steroid-containing injections despite the lack of apparent benefit to the patient. (P-5 at 0104). For example, patient T.A. attended twenty office visits during calendar year 2009 during which he received ten epidural injections, four facet joint injections, two stellate blocks and three suprascapular procedures, an average of one procedure every three weeks. For sixteen of these visits, Respondent recorded T.A.'s pain level as either an 8 or a 9. For the remaining four visits, Respondent failed to record any pain level at all. We adopt the ALJ's finding that Respondent improperly subjected patients to repeated injections and failed to refer the patients for alternative treatment when they did not receive the benefit of the injections. In our medical expertise, we also find that Respondent engaged in gross negligence when he did not stop administering the ineffective steroid injections.

We concur with Dr. Yanow's testimony that the use of Kenalog impacts on the assessment of the appropriate timing and number of injections (P-5 at 0092 and 0095). Dr. Yanow cautioned against the use of Kenalog, a particulate steroid, in neuraxial procedures. We

agree that the use of Kenalog in neuraxial procedures for the cervical spine is contraindicated, especially with lack of informed consent, and find that Respondent's use of particulate steroids in such procedures constitute gross negligence.

ALJ Strauss correctly found that the use of contrast dye under live fluoroscopy in the administration of neural foraminal injections is an absolute standard of care. I.D. at 61. The ALJ also correctly found that, with only a few exceptions, the patient's medical records fail to document that any medication was injected other than a local anesthetic or that contrast dye was used and that copies of the fluoroscopy image were not in the patient records (I.D. 60-61). There is nothing in the record to support a conclusion that Respondent used contrast dye. We find that Respondent's failure to use contrast dye under live fluoroscopy, especially for cervical transforaminal injections, constitutes repeated and gross negligence.

Respondent's failure to address new symptoms and complaints and follow-up on patient's responses to prior procedures is well documented by the patient records as noted by the Court and Dr. Yanow (I.D. at 62-63). The ALJ correctly found that Respondent's failure to follow-up regarding potentially dangerous issues "demonstrate a disturbing pattern, rather than isolated occurrences, of shoddy and potentially dangerous recordkeeping." Dr. Yanow opined, and we agree and find, that Respondent engaged in gross negligence when he failed to follow-up with potentially dangerous symptoms and complaints.

ALJ Strauss found that Respondent violated several statutes and regulations but did not quantify the level of misconduct. After careful review of the entire record in this matter, and in our medical expertise, we amplify the Initial Decision and find that the following violations constitute repeated and gross negligence: allowing and billing for unlicensed employees to render physical therapy; performing conscious sedation without an appropriately certified person present and without appropriate written policies and procedures (a "major deviation" I.D. at 68); indiscriminate prescribing of opiates to patient J.R. without documentation of medical necessity; and failing to perform and then billing for alcohol and substance abuse counseling. Respondent's haphazard and self-serving manner of practicing medicine put vulnerable patients at very real risk of harm. Respondent's shocking disregard for patient safety and welfare supports our conclusion that Respondent is a fundamentally corrupt and/or incompetent practitioner.

PENALTY HEARING

Immediately following the Board's announcement of its determination that violations of Board statutes and regulations and cause for discipline had been found, the Board proceeded to a hearing for determination of penalties.

Counsel for Respondent argued briefly that the Board should hold any penalty in abeyance pending the criminal matter as additional information may be revealed that would assist the Board in determining an appropriate penalty. Counsel argued, without documentary support, that Respondent's ability to pay any penalty or costs that might be imposed by the Board depends on the outcome of the criminal matter, as all of his assets have been confiscated and/or frozen by the criminal authorities. He also asserted the ALJ misapplied case law when assessing sanctions and should have considered alternative remedies as enunciated in N.J.S.A. 45:1-22.

Respondent testified on his own behalf after confirming that he understood that he could be cross-examined and that his testimony could be used against him in subsequent proceedings. He emphasized that all his patients were happy with the treatment he provided and that he is well-respected by his colleagues. He indicated that he was "overworked" with responsibilities at three offices and nursing homes in addition to being available at St. Michaels hospital whenever he was needed. He asserted his belief that he followed and treated all patients properly, even if he "didn't pay attention to every small chart and every progress note." Respondent asked that the Board be lenient with him.

The Attorney General did not cross-examine Respondent and moved immediately to argument regarding penalty. The DAG argued that the breadth of allegations in this matter was extraordinary and touched

upon almost every aspect of Respondent's practice such that revocation of Respondent's license and the imposition of costs[5] is certainly supported by the record. She asked the Board to consider that the ALJ's recommended civil penalty of $50,000 is insufficient given that ALJ Strauss described Respondent as a "fundamentally corrupt licensee" and found that he violated (on multiple occasions) no less than seven of the Board's statutes and regulations.

In response to Respondent's testimony during the penalty phase of this proceeding, the DAG argued that the patients did not sign consent forms and there is no indication they understood that particulate steroid injections are meant to provide long term relief. If the patients didn't know they were supposed to receive long term relief, they would be happy with whatever relief they got. Similarly, Respondent was prescribing opiates at the same time the patients were receiving injections. These patients may have been quite happy with their pain medication, but their treatments were not necessarily appropriate.

DISCUSSION ON SANCTIONS

This Board finds the magnitude of Respondent's conduct to have been so egregious and woven throughout so many facets of the practice of medicine that the sanctions recommended by the ALJ, while significant, support additional monetary penalties and we therefore modify the Initial Decision to increase monetary sanctions.

[5] The Attorney General submitted, and the Board accepted, a Certification of Costs into evidence at S-1.

Respondent's judgment and character is so fundamentally corrupt and presents such a pervasive pattern of dishonesty and flagrant disregard for the safety of his patients that we find the most serious of sanctions, revocation, is the only action that will adequately protect the public in this matter. No course, supervision or other limitation, suggested by Respondent's counsel pursuant to N.J.S.A. 45:1-22, would adequately address Respondent's conduct. Nor do we believe a suspension for a limited number of years is sufficiently protective. We cannot envision a circumstance in which such a fundamentally dishonest and negligent physician would ever be sufficiently rehabilitated to be trusted to hold a medical license again.

Respondent's continued refusal to recognize any failing on his part, to accept responsibility or be in any way apologetic for the activity in which he engaged is disturbing. He systematically and flagrantly ignored Board statutes and regulations, engaged in gross negligence and placed his patients at risk of harm while defrauding payors for years. The ALJ described Respondent's grossly negligent care of the six patients that were the subject the Compliant in this matter to be representative of Respondent's general practice. We also accept that these six patients are merely a reflection of Respondent's pattern of misconduct and gross negligence.

We have also considered that the abrogation of Respondent's duty to accurately record his patient's conditions and treatment rendered

is not a technicality. Respondent's patients do not have a medical record; they have documentation supporting Respondent's massive, fraudulent billing scheme. Third party-payors, whether the government through Medicare or Medicaid or private insurers, as well as private persons paying for medical treatment out of pocket, are all victimized by false records. Respondent has betrayed the trust of his patients, the public, and the regulated community, and has raided the public coffers.

As to monetary penalties, the record before us shows that, over a period of three years, Respondent created false records on a minimum of 132 occasions, allowed unlicensed employees to administer physical therapy modalities which he billed as if they were licensed on at least eight occasions, and improperly subjected at least four patients to repeated injections when the treatments he administered were clearly not working. If we were to count each of these instances as a separate violation we would be justified in imposing a civil penalty in excess of $2 million pursuant to N.J.S.A. 45:1-25. We believe this is unreasonable. Respondent has violated a minimum of seven statutory provisions on multiple occasions. Accordingly, we determined to impose a civil penalty of $130,000 which reflects $10,000 for the first violation and $20,000 for each of the remaining six statutory provisions violated. While this amount may not be the maximum penalty allowed in this case, it is significant and, we

believe, appropriate given the magnitude and seriousness of the violations involved.

As to the imposition of costs in this matter, we have reviewed the costs sought by the State and find the application sufficiently detailed and the amount reasonable given the length of time expended and complexity of the prosecution of this matter. Costs are traditionally imposed pursuant to N.J.S.A. 45:1-25 so as not to pass the cost of the proceedings onto licensees who support Board activities through licensing fees. Similarly, we find the application for investigative, transcript, expert and attorney costs sufficiently detailed and the amount reasonable and order that Respondent pay costs in the amount of $308, 749.53. Our analysis follows.

The Attorney General's certification in this matter extensively documented the time the various attorneys, paralegals, investigators and experts spent in this matter and the transcription services expended in these proceedings, detailing costs beginning in 2011. The certification sought a total of attorney fees for DAG Brown-Pietz in the amount of $235,830.00. The rate charged by the Division of Law of $300 per hour for a Deputy Attorney General with more than 20 years of experience has been approved in prior litigated matters and appears to be well below the community standard. We find the application to be sufficiently detailed to permit our conclusion that the amount of time spent on each activity, and the overall fees

sought are objectively reasonable as well. See, Poritz v. Stang, 288 N.J. Super. 217 (App. Div. 1996). We find that the Attorney General has adequately documented the legal work necessary to advance the prosecution of this case.

Although the total amount is large, we find that it is justified and note that it is already heavily discounted from the actual costs incurred by the State. Attorneys fees were sought only for the period between September 2013 and the completion of this matter at the OAL. Although multiple DAsG and attorney assistants worked on this matter, the Attorney General sought fees only for a single paralegal and DAG Susan Brown-Pietz. Attorney time spent on pre-complaint investigation and drafting of the initial complaint, the temporary suspension hearing, and early discovery issues were not included in the application. We note that Respondent's own ongoing failure to comply with discovery demands contributed greatly to the amount of time billed by the Attorney General - ALJ Strauss described the discovery process in this matter as "an arduous one involving a series of orders as far back as March 2012." We are thus satisfied that the Attorney General's claims are reasonable, especially when viewed in the context of the seriousness and scope of the action maintained against the Respondent, the complexity of the case and voluminous evidence.

We take notice that investigative costs, approved many times in the past, are based on salaries, overhead and costs of state

employees. Considering the important state interest to be vindicated, protection of the public by assuring physicians practice within the standard of care, the investigative costs of $42,386.23 are certainly reasonable.

Similarly, the expert testimony and court reporting/transcript fees are documented by invoices and appear necessary and reasonable to this proceeding, especially when one considers that the OAL hearing spanned 17 days. Transcription costs for the March 9, 2016 hearing on Exceptions have not been sought.

We are thus satisfied that the costs we are awarding are reasonable especially when viewed in the context of the seriousness of the action maintained against Respondent. We further find that Respondent has not objected to the amount or imposition of costs and that he provided no documentation of any inability to pay such costs as required (if he sought consideration to reduce the amount) by notification provided to him well before the hearing date in this matter. The costs imposed are as follows:

Expert Costs	$13,500.00
Transcript Costs	$14,993.30
Investigative Costs	$42,386.23
Attorney's Fees	$237,870.00
TOTAL	**$308,749.53**

Finally, as Respondent is currently unable to practice pursuant to a Temporary Suspension Order, we make this decision effective March 28, 2016.

IT IS THEREFORE ON THIS 28th DAY OF MARCH, 2016

AS ORALLY ORDERED ON THE RECORD ON MARCH 9, 2016:

1. Respondent's license to practice medicine and surgery in the State of New Jersey is hereby revoked, effective March 28, 2016. The attached Directives regarding future activities of a Board licensee who has been disciplined is incorporated into this Order.

2. Respondent shall pay civil penalties in the amount of $130,000. Payment shall be made within thirty days of the entry of this Order by certified check or money order, payable to the State of New Jersey and forwarded to the attention of Bill Roeder, Executive Director, Board of Medical Examiners, 140 East Front Street, 2nd Floor, Trenton, New Jersey, 08608, unless installment payments are sought from and approved by the Board prior to the date due.

3. Respondent shall pay costs in the amount of $308,749.53. Payment shall be made within thirty days of the entry of this Order by certified check or money order, payable to the State of New Jersey and forwarded to the attention of Bill Roeder, Executive Director, Board of Medical Examiners, 140 East Front Street, 2nd Floor, Trenton New Jersey, 08608, unless installment payments are sought from and approved by the Board prior to the date due.

4. Failure to make timely payment of penalties and costs under this Order shall result in the filing of a certificate of debt, and such other proceedings as are permitted by law.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By: _____
Stewart Berkowitz, M.D.
President

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.[1] 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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[1] 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 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.