

FILED

November 9, 2011

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS
EFFECTIVE**

November 11, 2011
**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

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

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :
 :
AMGAD HESSEIN, M.D. : ORDER ADOPTING AND RATIFYING
LICENSE NO. MA067650 : BOARD COMMITTEE ORDER OF
 : OCTOBER 31, 2011
TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY :

This matter is before the State Board of Medical Examiners today on review of the action of its committee taken on October 26, 2011, as memorialized in its order of October 31, 2011. The Board entered an Order to Show Cause and filed a Verified Complaint in this matter at its meeting on October 12, 2011. Because the allegations of the Verified Complaint lodged against Amgad Hessein, M.D. (Dr. Hessein or respondent) presented exigent circumstances requiring a hearing before the next regularly scheduled monthly Board meeting to prevent further danger to the public and his patients, the Board delegated the hearing on the application for temporary suspension to a committee of the Board. That committee heard the matter on October 26, 2011,¹ and, at the conclusion of the hearing, entered an order finding that the

¹ The committee members were: Steven Lomazow, M.D.; Zeyad Baker, M.D.; Elliott Krauss, M.D.; George Ciechanowski, M.D.; and Stewart Berkowitz, M.D. Dr. Berkowitz is an officer of the Board.

physician's practice of substantiating massive, fraudulent billing by fabricating medical records presented a clear and imminent danger to the public health, safety, and welfare. It, therefore, temporarily suspended the license of respondent Amgad Hessein, M.D., to practice medicine and surgery in the State of New Jersey pending the completion of plenary proceedings in this matter, which includes a full opportunity to be heard at the Office of Administrative Law. See Order of Temporary Suspension of License, filed October 31, 2011, effective upon oral announcement of the committee's decision on October 26, 2011, appended to this order and adopted here in its entirety.²

The order of the committee, together with the record from the hearing (transcript and evidence), as well as the pleadings and briefs of counsel, were presented in advance to the full Board of Medical Examiners for review, so as to afford the full Board an opportunity to determine whether to ratify, reject or modify the action taken by the Committee. On that date, the Board reviewed

² The Board has been advised that respondent filed an emergent application in the Appellate Division of the Superior Court on October 28, 2011. The Honorable Philip Carchman, P.J.A.D., granted a stay and directed that the committee's order be filed and served by October 31, 2011, and that the parties submit briefs to the Court in the days following. The Appellate Division deferred ruling on the application until the Board considered the committee's order at its meeting on November 9, 2011..

written arguments of counsel.³

Respondent's counsel has argued in his November 7, 2011, letter that the delegation to a committee to hear the emergent application was improper. Respondent cites to statements in the record regarding the dates the full Board considered the Attorney General's request for consideration of the Order to Show Cause and the number of Board members present at the meeting. The issues raised do not change the facts: on October 12, 2011, during a meeting of the Board while a quorum was present, the Attorney General presented her request to enter the Order to Show Cause based on her Verified Complaint. Respondent attaches to his November 7, 2011, letter the Board's "Open Agenda," not the minutes of that meeting. The Board reviewed, amended, and ratified the October 12 minutes on November 9, 2011 (today). Those minutes will reflect that the Board at its October meeting, upon motion made and seconded, voted to authorize the filing of the Order to Show Cause and delegated its full authority to that committee to render a decision on its behalf to issue a temporary suspension order if warranted because of the emergent circumstances alleged in

³ Respondent by letter dated November 2, 2011, requested an opportunity to appear before the Board. The Attorney General, by letter of the same date, opposed that request. The Board president, Paul T. Jordan, M.D., declined to entertain oral argument but permitted written submissions. Respondent submitted a letter dated November 7, 2011.

the Order to Show Cause.⁴ The agenda's reference to lack of a quorum was for the specific matter listed (Parvez Dara, M.D.); the lack of quorum identified on the agenda was due to recusals known in advance of the meeting. Notably, the agenda did not list the Hessein matter because it was presented as an emergent matter. As noted in the minutes, the Board, with a quorum present, delegated to a committee, the authority to hear the Attorney General's emergent application and take action, if warranted. The committee's action was to be reviewed by the Board at its meeting on November 9, 2011.⁵

The Order to Show Cause itself reflects that it was entered on October 12, 2011 (page 2, which was signed by Kathryn Lambert, D.O., Vice President of the Board). The documents were marked filed on October 13, 2011, at the Board office.⁶ The filed date does not change the date of the Board's action: October 12.

⁴ Board minutes should be available several days following their ratification.

⁵ The specific delegation in an abundance of caution, but was unnecessary as the Board's policy, first adopted in 1979 (as amended in 1984) and in effect and repeatedly utilized since, provides that a Board officer alone may make interim decisions on behalf of the Board with respect to licensees whose conduct appears to pose a clear and imminent danger to the public. Thus Board treasurer Berkowitz, who served as a member of the committee, was authorized by consistently followed Board policy to take action after hearing, even sitting alone, and without the specific delegation effectuated by the Board on October 12, 2011. (Board policy attached).

⁶ The meeting is held in a different building and papers are brought to the Board office the day following the meeting.

Finally, the chairman of the committee mis-spoke during his opening comments. Far from respondent's claim that the delegation was a "fundamental disregard of the rule of law," the Board, in light of the emergent nature of the application, made a proper delegation to its committee. Inadvertent misstatements, whether orally or in writing, while preferably avoided, do not change that simple fact.

The Board also adopts the committee's reasoning that the exhibits attached to the Verified Complaint, all of which were accepted into evidence at the hearing, provided an adequate basis to meet the verification requirements of N.J.S.A. 45:1-22. The committee's findings were based in part on portions of the transcripts of taped statements of Dr. Hessein's patients and employees. Those individuals represented that they would provide truthful answers to questions posed by Detective Nechamkin (see committee Order, page 3). When read in conjunction with the exhibits containing medical and billing records, they demonstrate that Dr. Hessein's patients' charts cannot be trusted to determine the dates or nature of the treatment rendered, whether the treatment was performed within the standard of care, or whether it was rendered at all. The records cannot even be relied on to document the most basic information regarding the patient's condition. That, coupled with the certified statements of investigators who analyzed the billing and medical records and provided damning compilations showing the pervasive fraud

respondent engaged in, led the committee, and now this Board, to conclude that a clear and imminent danger has been palpably demonstrated.

Respondent correctly notes that the Attorney General cannot personally verify the complaint, and N.J.S.A. 45:1-22, in its requirement that the application be duly verified" does not require her to do so. Of necessity, these filings may be via a series of documents that verify the facts underlying the allegations of the complaint. In this application, the Attorney General has presented statements that contain sufficient indicia of reliability to allow the Board to take action at this juncture, where the Board, after a hearing of more than nine hours including deliberations, has found clear and imminent danger exists. Respondent had an opportunity to present evidence before the committee and did so - including four expert reports highlighting respondent's supposed medical acumen, but nothing to rebut the overwhelming evidence that he has fabricated medical records and engaged in massive billing fraud.

As this is a contested case, the Board will transmit it to the Office of Administrative Law for a plenary hearing where respondent will have every opportunity to test the evidence and rebut the allegations against him. The parties may also choose to seek to accelerate the proceedings as permitted by N.J.A.C. 1:1-9.4. The Board's decision today is not a final order.

Finally, respondent argues that the committee, and with this ratification, now this Board, temporarily suspended his license based on the August 2011 indictment, in which he and his brother (who worked as his office manager) were charged with multiple counts of health care fraud. This action is not predicated on the indictment. The finding of clear and imminent danger is based on evidence that demonstrates egregious conduct in fabricating medical records and in billing for services not rendered. As noted by the committee, "The veracity and trustworthiness of medical records are the very foundation of the practice of medicine." (Order at page 14). Our evaluation of respondent's clinical practice has been critically hampered by his failure to have created and maintained patient records that meet the standards for record keeping in this State. That evidence of pervasive fraud forms the basis of an indictment in Union County does not prevent this agency from reviewing it, assessing it, and finding it supports the Board's conclusion that Dr. Hessein has demonstrated judgment and character so flawed that his continued practice constitutes a clear and imminent danger.

As noted, the full Board was provided with copies of the record several days before the meeting. It has reviewed the committee's order and considered arguments of counsel, both those made during the hearing and those submitted post hearing. The Board unanimously votes to ratify and adopt, in its entirety, the

temporary order of the committee. The Board finds the reasoning of the committee, outlined at length in the committee's order, convincingly supports the committee's conclusion, and now this Board's conclusion, that a palpable demonstration has been made that respondent's continued practice would present clear and imminent danger to public health, safety and welfare. The pervasive nature of billing fraud has led to respondent's widespread creation of medical records designed to justify billing and which now prevent reviewers from determining what care was - or was not - rendered to patients. Moreover, that failure to create and maintain accurate, contemporaneous records, has deprived patients of a most critical record, one that would allow subsequent health care providers to continue care for vulnerable, pain management patients.

We are cognizant that our charge is to address a finding of clear and imminent danger in the least restrictive manner. There is no adequate way to monitor the practice of this physician and safeguard patient care, for it is not just his billing practices that are at issue. He has routinely created notes in charts where there was no patient visit. On many days when patients were present, he has noted procedures that he has not performed. He has billed for hundreds of days when the office was closed, including when he was out of the country. Every aspect of his practice has been called into question. Therefore, because his judgment is so

flawed, the Board has concluded that no measure short of the temporary suspension of respondent's license would be sufficiently protective in this case.

The license of respondent Amgad Hessein, M.D., shall therefore be temporarily suspended, pending the completion of plenary proceedings in this matter, for the reasons set forth at length in the order of the committee. Because respondent has been able to practice since being granted an emergent stay by the Appellate Division, his counsel has asked, in the event the Board were to adopt the committee's decision, that respondent be given a period to permit him to wind down his practice. Having found that his continued practice represents a clear and imminent danger to the public health, safety, and welfare, the Board will grant a very brief period, for the benefit of patients who may be hospitalized or scheduled for procedures, until November 11, 2011, at 5 PM, before the suspension shall take effect, and declines to stay this order pending appeal.

THEREFORE, IT IS ON THIS 9th DAY OF November, 2011,

ORDERED:

1. The Board adopts, in its entirety, the order of its committee filed on October 31, 2011.

2. The license of respondent Amgad Hessein, M.D., shall be temporarily suspended as of 5:00 PM on November 11, 2011, pending the completion of plenary proceedings in this matter or further

Order of the Board.

3. Respondent's motion to stay the effect of this order is denied.

NEW JERSEY STATE BOARD OF
OF MEDICAL EXAMINERS

By: _____


Paul T. Jordan, M.D.
Board President