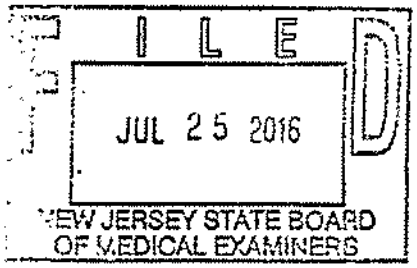

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
OAL DOCKET NO. BDS 2945-09

EFFECTIVE: JULY 13, 2016

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

JOHN L. HOCHBERG, M.D.
LICENSE NO.: 25MA04163600

FINAL DECISION AND ORDER

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

This matter was returned to the New Jersey State Board of Medical Examiners ("the Board") to consider a recommended Initial Decision by Administrative Law Judge Jeff S. Masin (hereinafter "ALJ") entered on May 2, 2016 following a nine day hearing at the Office of Administrative Law. The ALJ found, among other things, that Respondent had engaged in gross and repeated acts of negligence with regard to his treatment of five patients. Based on the findings made, ALJ Masin recommended that the Board suspend Respondent's license for a period of six months, impose costs and assess a penalty in the amount of $50,000.00. Based upon our review of the entire record, the Initial Decision, Exceptions and responses filed thereafter and consideration of oral argument of counsel, we have concluded that cause exists to adopt, in part, and reject and/or modify, in part, the recommended findings of fact and conclusions of law of the ALJ. We also find that

a longer period of suspension and an increased civil penalty are warranted given our expanded findings of multiple acts of gross and repeated negligence.

PROCEDURAL HISTORY

An Administrative Complaint was filed by the New Jersey Attorney General on March 24, 2009 against Respondent John L Hochberg, M.D. Respondent filed his answer with the Board on April 24, 2009 denying the majority of the substantive allegations. Thereafter, the Attorney General filed an amended complaint on December 15, 2009. Respondent filed his answer on December 30, 2009, again denying the majority of the substantive allegations.

Hearings took place on nine days commencing September 21, 2015 and continuing through November 17, 2016. The record closed on February 4, 2016, after submission of closing statements and legal arguments. The ALJ issued his initial decision on May 2, 2016.

The Respondent filed exceptions on May 25, 2016. The Attorney General filed Exceptions on May 27, 2016. The Respondent filed a reply to the Attorney General's exceptions on June 3, 2016. A hearing on the Exceptions was held before the Board of Medical Examiners on July 13, 2016.

ALJ's FINDINGS

In his 133 page Initial Decision, the ALJ found that Respondent had committed gross and repeated acts of negligence and violated numerous other Board of Medical Examiners statutes and regulations. He

also found that the Attorney General failed to meet the burden of proof in several instances and dismissed those portions of the Complaint. The ALJ generally found Dr. Goldberg, the State's expert, to be more persuasive than respondent's experts, Dr. Russo and Dr. Scotti. However, he did rely on the expert opinions of respondent's experts upon occasion, as discussed below. For clarity, we have synthesized the ALJ's findings as follows:

Count I - Patient A.G.

- The record maintained by Respondent "was not adequate to demonstrate that he had properly considered suggestions that A.G. had hypertension and had examined him adequately to assure that this posed no significant threat . . . failure to document was a serious violation of the regulations. . ." ID21.

- The note regarding a possible transient ischemic attack (TIA) "is confusing, and that it at least minimally fails to present sufficient clarity to show that the doctor was certain that no TIA had occurred. I conclude that this was a deviation from the standard set for record keeping, but it does not rise to the level of gross negligence." ID24.

- When confronted with the possible implications of patient A.G.'s elevated mean corpuscular volume (MCV) readings, Respondent failed to alert and/or coordinate with the patient's other physician "to make sure that their mutual patient was being properly served. . . A doctor cannot simply ignore signs of possible trouble for a patient merely by suggesting his limited treatment for the patient closes off more general responsibilities. This is a gross dereliction of responsibility and a gross deviation of the standard of care." ID27.

- "there were situations presented that demanded that Hochberg at least touch on the subject of mental health state, suicide risk and the like, as the patient he was treating was faced with deeply emotional matters and events and was dealing with his own significant problems….I CONCLUDE that his failure to adequately address these issues regarding A.G.'s mental health status constituted a gross violation of the standard of care." ID32.

- "… the documentation of these periodic assessments (regarding prescription of opioids) is not present. Since there appears to be no doubt that this patient actually needed significant and strong medication to attempt to manage their [sic] pain and that need was, as seems most probably, continuous, I CONCLUDE that this violation of the regulations does not meet the standard for gross violation." ID35.

Count II - Patient B.L.

- Respondent did not meet the standard of care for recordkeeping regarding his concerns and involvement in the treatment of A.G. This was a gross violation. ID42.

- Respondent did not fulfill his professional role in regard to coordinating the psychiatric aspects of B.L.'s care and management. This was not a gross violation. ID43.

- ALJ Masin dismissed paragraphs 50 and 51 of the Complaint which alleged that Respondent failed to assess B.L.'s chronic headaches and the patient's reaction to the medication prescribed. Finding Dr. Russo's assessment that Fioricet had worked for this patient for a long time to be persuasive, ALJ Masin noted "the record does not indicate any significant changes in the character of the headaches… there were no complaints of findings of changes or difficulties with vision or neurologic functions." ID46-47.

- Respondent's care of B.L.'s complaint of smoke inhalation on January 8, 2001 was adequate. "I FIND that Dr. Hochberg did conduct examinations of the chest, lungs, HENT, nasal passages, and heart. He had an x-ray performed and found it normal..." Insofar as Respondent did not record things he examined and found to be normal, this would be "at most a moderate deviation, not gross." ID52.

- ALJ Masin dismissed paragraph 48 of the Complaint, finding that the Attorney General failed to prove by a preponderance of the evidence that B.L. had any pulmonary disease. ID52.

- ALJ Masin dismissed paragraph 53 of the Complaint, which allege lack of sufficient detail in the medical record. He found that the medical record for patient B.L. for July 7, 1997 is "quite clear" and that "the alleged lack of any other explanation" (other than discussion of lab work) regarding discussion of dehydration at the September 15, 1997 "is not enough to raise this to the level of a deviation from the standard of care" ID54.

Count III - Patient S.B.

- Respondent's failure to enter into a pain contract with patient S.B., despite "ongoing suspicion" based on a series of "red flags" for abuse of controlled substances constitutes gross negligence. ID66-67.

- "… given the history, both in terms of how long he had been treating this patient and also, given the history of suspicious matters, Hochberg should have been more aggressive in attempting to have this patient see a specialist in pain management much earlier than he did, and to have established a written agreement about the use of the controlled substances… his failure to do so constitutes a gross violation of standards. ID67.

Count IV - Patient K.O.[1]

- "The record as a whole does not really ever seem to contain any specific examination for or any comment about the history of the asthma, or anything at all showing any thought or plan for its continued treatment, except for the continued prescription of medications." ID73.

- "… given her history of asthma, Dr. Hochberg's notes regarding his visits with and treatment of K.O. for her complaints of breathing in February 1998 were less than adequate… however, I CONCLUDE that these do not constitute gross deviations" The ALJ goes on to indicate that this is "another instance of the doctor's deficient records, it is an element in determining whether he is guilty of repeated acts of negligence." ID74.

- ALJ Masin characterized Dr. Goldberg's criticisms of Respondent's management of K.O.'s weight to be "well founded" while Dr. Russo's "conclusory denial of any violations was entirely unpersuasive." He concluded that Respondent grossly deviated from the standard of care, "if there was in fact proper management, with any appropriate exams or testing appropriate for managing her weight, the records do not reveal it." ID78.

- ALJ Masin dismissed paragraph 90 of the Complaint, finding: "As the record stands, the reported migraine of May 8 must be seen as a one-time occurrence, at least during the period under review. As such I find that the use of Stadol to treat it, with the understanding that the patient was already familiar enough with

[1] This patient is periodically referred to as K.O., K.O.N. and K.O.'N throughout the record.

the drug to know that it had helped her, was not inappropriate…" ID82.

- Respondent engaged in repeated acts of negligence, malpractice and professional misconduct with regard to his failure to include in the treatment records of K.O. an explanation and treatment plan for K.O.'s pain issues "beyond merely jumping from one to another serious medication." ID92-93.

Count V - Patient N.D.B.

- The ALJ found Respondent's expert, Dr. Scotti, to be persuasive in his argument that the standard of care does not mandate or prohibit a transfusion in a situation such as that presented by N.D.B. and found that the State had not proven by a preponderance of the evidence that failure to transfuse was a violation of the standard of care. ID124.

- Respondent engaged in gross negligence and failed to exercise clinical judgment within the standard of care by failing to consider that medication prescribed by N.D.B's psychiatrist may have been contributing to his deteriorating state and failing to consult with the psychiatrist. ID125-126.

ARGUMENT ON EXCEPTIONS

In his written exceptions and at oral argument, Respondent made one substantive argument regarding liability:

> At the time medical care was being administered to N.D.B. there is nothing in the electronic medical record (EMR) to indicate that any treating physician believed N.D.B. had contracted a disease other than anemia… There was insufficient evidence and expert testimony to show that Respondent's failure to diagnose and investigate the possibility that N.D.B. had contracted tricyclic toxicity (and his failure to consult Dr. Garcia during the last few days of N.D.B.'s life) constituted "gross" conduct in violation of N.J.S.A. 45:1-21(c),(d),(e).
>
> Respondent's May 25, 2016 Exceptions at Page 4 and 11.

Respondent supports this argument by referencing the EMR and Dr. Scotti's testimony that Respondent would not be expected to monitor Elavil levels in a patient who was prescribed Elavil by another treating physician, that there is not a great correlation between Elavil levels and symptoms, and that there was no life-saving treatment that Respondent should have seen and rendered, but did not. Respondent's May 25, 2016 Exceptions at page 6-7. Respondent argues that his failure to recognize the possibility that N.D.B. may have contracted tricyclic toxicity, and therefore failed to investigate and evaluate it, i.e. by consulting with Dr. Garcia was, at most, "ordinary" negligence and did not rise to the level of gross negligence. Respondent's May 25, 2016 Exceptions at page 10.

In written exceptions and at oral argument, the Attorney General made four substantive arguments on liability: (1) The Attorney General argued that ALJ Masin erred in concluding that Respondent's failure to order a transfusion was not a violation of the standard of care and that the record does not support a finding that there was a "lifesaving or potentially lifesaving" treatment that Respondent should have performed. State's Exceptions at 2 and 13. The Attorney General also argued that ALJ Masin did not go far enough in concluding that only Respondent's failure to coordinate with the psychiatrist was a gross deviation from the standard of care. The Attorney General maintains that N.D.B. was a "critically ill patient" who needed a transfusion, among other things. State's Exceptions at

13. In support of this argument, the Attorney General relied on specific references to the EMR showing the patient's deterioration and the expert testimony of Dr. Goldberg.

Respondent argues in reply that the Amended Complaint charged that Respondent deviated from the standard of care in that he failed to properly treat N.D.B.'s anemia, and that as a direct result, N.D.B. died. He argues that Judge Masin correctly decided that Dr. Scotti was the more qualified expert witness on this topic and correctly concluded that the care rendered by Respondent for the anemia did not violate the standard of care. Respondent's June 3, 2016 Exceptions at 3-5.

Respondent further argues that ALJ Masin erred in deciding that Respondent's failure to confer with the psychiatrist was gross misconduct and contends that

> The anemia was not dire enough to have required engagement in a medical procedure which may itself put N.D.B. at risk of death or harm. … *at the time Respondent was rendering care* for N.D.B., N.D.B.'s symptoms were not different enough from the *anemia* that it should have been apparent to Respondent that N.D.B. had possibly contracted an additional concurrent competing medical condition."
>
> Respondent's June 3, 2016 Exceptions at 6 and 7.

(2) The Attorney General argues that ALJ Masin erred in dismissing the charges related to Respondent's care and treatment of B.L. in paragraph 50 of the Amended Complaint. In support of this argument the Attorney General relies on B.L.'s patient record and the

testimony of Dr. Goldberg, concluding that the absence of critical information in the patient record indicates that Respondent did not appreciate the "reciprocal relationship between chronic pain and depression," and failed to evaluate the effect the controlled drugs were having on B.L. State's Exceptions at 17. The Attorney General argues that the Board should find that this conduct constituted negligence and professional misconduct.

(3) The Attorney General argues that ALJ Masin erred in dismissing the charges related to Respondent's care and treatment of B.L. in paragraph 51 of the Amended Complaint and concluding "there was no deviation from the standards and no basis for any violation relating to the management of B.L.'s headaches." (State's Exceptions at 18 citing I.D.46). The Attorney General supports this argument with references to B.L.'s patient record and to the testimony of Dr. Goldberg, noting that Respondent prescribed an opioid dependent dose of Fioricet to B.L. for headaches without record of any discussion regarding the cause of the headaches, whether the medicine was working, and whether B.L. should be referred to a neurologist. This was compounded by Respondent's long term prescription of Vicodin concurrently with the Fioricet. State's Exceptions at 19. The Attorney General argues that the Board should find this behavior constitutes repeated acts of negligence.

(4) The Attorney General argues that ALJ Masin erred in dismissing the charges alleging Respondent was negligent in his care

and treatment of K.O.'s migraine headaches in paragraph 90 of the Amended Complaint. Again, the Attorney General relies on the testimony of Dr. Goldberg and the lack of information in K.O.'s patient record, noting that Respondent did not discuss the historical aspect of the headaches, did not conduct periodic neurological exams and did not consider alternative treatment. State's Exceptions at 25.

In reply, Respondent argues that Judge Masin correctly found that Counts I, II, III and IV constituted only "records" violations and that most of the Attorney General's allegations assume facts not in evidence. He argues that failure to regularly write in the patient record is separate and distinct from an allegation that the treatment itself deviated from the standard of care or that medical services were not actually performed. Respondent's June 3, 2016 Exceptions at 8.

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 adopts the recommended findings of fact and conclusions of law of the ALJ in this matter except as set forth below regarding Counts II, IV and V. In most instances, we accept the fact as found, yet draw different conclusions as to its import. To the extent that ALJ Masin may have found that lack of documentation in the patient record was

insufficient to show that treatment was not done, we modify findings of fact as discussed below. We also reject Respondent's argument that failure to regularly write in the patient record is necessarily insufficient to support an allegation that medical services were not performed or deviated from the standard of care. The ALJ frequently noted throughout the Initial Decision, and we agree, that Respondent's patient records are such that it is impossible to determine to what extent Respondent was involved in the treatment of various diseases, understood his patients concerns, or had any treatment plan whatsoever other than the continued prescription of medications. See, e.g. ID42 and ID73. ALJ Masin noted that

> Dr. Goldberg criticized the nature of Dr. Hochberg's records, portraying them as at times cryptic, unrevealing, inadequate, unable to assist other practitioners or others with need to review the records to understand what had occurred, and "extremely unorthodox."
>
> ID10.

We concur with Dr. Goldberg's assessment of Respondent's patient records. We also note that if treatment is not documented in the patient record, we cannot assume that Respondent provided the treatment without some kind of reliable evidence. Respondent himself has chosen not to testify in this matter and has put forth no other witness or document to corroborate a claim that treatment not in the records actually occurred, and so, we rely on the documents available to us.

In adopting and modifying the ALJ's findings we have not disturbed his determinations regarding credibility of the non-expert witnesses, giving due regard to the opportunity of the trier of fact who heard the witnesses to judge their credibility. (See Mayflower Securities vs. Bureau of Securities, 64 N.J. 85, 92-93(1973). However, in some respects, using our collective medical expertise, we differ with the ALJ's evaluation of expert testimony.

COUNTS I and II - Patients A.G. and S.B.

With regard to Counts I and III, no exceptions have been filed and we find ALJ Masin's findings of fact and conclusions of law to be well-reasoned and adopt them in their totality. Respondent's grossly negligent treatment of these patients, and specifically his failure to recognize and aggressively follow-up on such significant concerns as diabetes and substance abuse, placed his patients at risk of harm and are illustrative of Respondent's pattern of practice as reflected throughout this matter.

Count II - Patient B.L.

With regard to Count II, in our collective medical expertise, we reject the ALJ's dismissal of Paragraphs 50 and 51 of the complaint and find that Respondent's failure to evaluate the various CDS prescribed to B.L. and his failure to assess B.L.'s chronic headaches constitute repeated acts of negligence in violation of N.J.S.A. 45:1-21(d). We agree with the State's expert that you cannot effectively treat chronic pain or depression without treating the other condition

(1T172) and that the patient record indicates that Respondent did not adequately evaluate the effect the drugs were having on B.L. (1T174). In our medical expertise, we find that B.L. should have had a comprehensive evaluation, alternative therapies should have been considered and B.L. should have been referred to a neurologist, not just given a daily regimen of painkillers to mask his symptoms. We find the remainder of ALJ Masin's findings of fact and conclusions of law regarding Count II to be well reasoned and adopt them in their totality.

Count IV - Patient K.O.

The Board rejects the ALJ's dismissal of paragraph 90 and finds that Respondent's failure to take an adequate patient history or conduct a thorough physical exam over the course of treating K.O. for migraine headaches while repeatedly prescribing Stadol, constitutes repeated acts of negligence in violation of N.J.S.A. 45:1-21(d) and violations of N.J.A.C. 13:35-7.6 and 6.5. We agree with the State's expert (2T130-142) and find, in our collective medical expertise, that this patient should have had periodic neurological examinations and that alternative therapies should have been considered, especially because this patient presented with signs of being opioid dependent. We find the remainder of ALJ Masin's findings of fact and conclusions

of law regarding Count IV to be well reasoned and adopt them in their totality.[2]

Count V - Patient N.D.B.

While we adopt the ALJ's conclusion that Respondent was grossly negligent in violation of N.J.S.A. 45:1-21(c) in failing to seek a psychological consult during the last days of N.D.B.'s life, using our collective medical expertise, we reject the remainder of his conclusions of law and reject his finding that the expert opinion of Dr. Scotti was more persuasive than that of Dr. Goldberg on this topic.

As noted by ALJ Masin, and fully supported by the record, starting in October 2008 and continuing until shortly before his death in late January 2009, N.D.B. received injections to treat Hepatitis C. By November 13, 2008, N.D.B.'s hemoglobin levels had dropped to 11.2, a level that fell below the laboratory's listed lower limit of normal of 12.5. (ID95-96) N.D.B. also began complaining of general dizziness and flu-like symptoms in November 2008. (ID 97, referencing the testimony of Dr. Mucowski). N.D.B's hemoglobin levels continued to fall and the injections were terminated by a staff physician on or about January 9, 2009, when N.D.B.'s hemoglobin levels dropped to 6.4. (P7NDB297). The staff physician ordered administration of Epogen to

[2] The Attorney General takes exception to a perceived failure of ALJ Masin to find liability with regard to Respondent's care and treatment of K.O.'s asthma. We read ALJ Masin's Initial Decision in this matter to include a finding that Respondent's care and treatment of K.O.'s asthma did not meet the standard of care and constitutes repeated acts of negligence in violation of N.J.S.A. 45:1-21(d). We adopt this finding in its totality.

stimulate bone marrow and produce more red blood cells. (5T20). On January 14, 2009, the lab contacted the prison with a "panic value" of 5.1. (7T55, P7NDB267). Respondent saw N.D.B. on January 15 and 16, 2009, did not reference the 5.1 hemoglobin level and took no action. (P7NDB240, 248-250). Meanwhile, nurses and the psychiatrist documented that N.D.B. continued to complain of dizziness. Over the next few days, N.D.B.'s hemoglobin dropped to 4.3 (P7NDB195, 210-211, 274) and N.D.B. complained that he was shaky, kept falling, had muscle weakness and was confused as to time of day. (P7NDB160-161,192, 207-210). After N.D.B. fell and sustained a laceration and bruises on his face on January 20, 2009 (P7NDB197), Respondent examined N.D.B. and found him to be stable and in no distress. (P7NDB200). Respondent nonetheless advised the office of the statewide medical director that if N.D.B.'s hemoglobin dropped and further and he became "symptomatic" he might need a transfusion over the weekend. (P10UMDNJ0011). As noted by the ALJ, Respondent was advised to begin taking steps to admit N.D.B. to the hospital for a transfusion and reminded that transfusions were only done on Fridays. ID 104. Respondent instead waited to see if N.D.B. would become symptomatic. Respondent examined the patient on January 23, 2009, but his note reflects nothing about N.D.B.'s deteriorating condition as documented in the nurses notes. (P7NDB167). Later the following day, N.D.B. died. (P7NDB156).

We are not persuaded by the argument of Respondent as testified to by Dr. Scotti that Respondent was somehow justified in withholding

necessary treatment because he was waiting for the patient to become symptomatic and/or respond to the newly ordered hemopoietin and cessation of anti-viral medication. It is inconceivable to this Board that an individual with a hemoglobin level of 4.3 would not be symptomatic. In fact, the patient record indicates that N.D.B. was symptomatic and experiencing syncope, disorientation and muscle weakness. We concur with the State's expert that the most minimal standard of care would require checking the stool for blood, evaluation by a neurologist and a hematologist, and a CT scan. (4T98; 3T119). Respondent did not even have these simple tests performed.

Respondent's argument that he was concerned about the possible side effects of a transfusion on this already compromised patient is also without merit. In our collective medical expertise, the risks of not doing a transfusion on a patient presenting as N.D.B. did far outweighed the possible risks of the transfusion itself.

In our collective medical expertise, and consistent with the expert opinion of Dr. Goldberg, we find that N.D.B. was a critically ill patient. The precise cause of N.D.B.'s condition (i.e. anemia, tricyclic toxemia, etc.) is immaterial - he needed to be transferred to an acute care setting and needed a blood transfusion. We find that Respondent's failure to have addressed N.D.B.'s critically low hemoglobin levels constituted gross negligence in violation of N.J.S.A. 45:1-21(c).

PENALTY HEARING

Immediately following the Board's announcement of its determination that cause for discipline had been found, the Board proceeded to a hearing regarding mitigating and aggravating circumstances for determination of penalties. The State and Respondent relied solely on oral argument, no witnesses were presented.

In his written exception, Respondent argued that ALJ Masin's recommended penalty for Counts 1 through 4 is appropriate and should be adopted without modification. In conjunction with his argument that ALJ Masin erred in finding gross negligence regarding the treatment of N.D.B., Respondent argued that the imposition of a six month suspension, plus fines and costs should be rejected. Counsel for Respondent argued briefly at the hearing that Respondent's ability to put on mitigation is severely compromised by the fact that one of the doctors who was treating N.D.B. has since died. Most of the other people involved were witnesses for the State. With regard to counts 1-4, at least one of the patients died, others are not around or not available.[3] Counsel argued that Respondent earnestly treated N.D.B. in a way he thought was appropriate and which Dr. Scotti believed was appropriate.

[3] The patient records speak for themselves. If Respondent wanted to contest the content of the records or expand upon them, he had the opportunity to cross-examine all of the witnesses presented by the State. We note that Respondent declined to testify both at the OAL hearing and at the mitigation hearing held before this Board.

In written exceptions and at oral argument the Attorney General urged the Board to revoke Respondent's license based upon the multiple findings of gross deviations from the standard of care and repeated acts of negligence.

DISCUSSION ON SANCTIONS

The Board has considered the arguments made by counsel and concludes that cause exists to modify A.L.J. Masin's recommended penalty.

ALJ Masin found that an appropriate sanction regarding Respondent's acts of gross negligence and repeated acts of negligence with respect to the patients in Count I through IV of the Complaint would include the imposition of costs, a civil penalty of $30,000.00 and re-training as the Board might recommend regarding record-keeping. In coming to this recommendation, ALJ Masin appears to have relied heavily on the age of the conduct - some of which occurred between fifteen and twenty years ago. ID127-128. As ALJ Masin recognized the allegations regarding N.D.B. were more recent, he recommended that Respondent's gross negligence associated with Count V of the Complaint warranted a sanction to include a six month suspension of license, costs of investigation and a civil penalty of $20,000.00.

We find that the ALJ's recommended penalty in this matter is insufficient given our expanded findings including multiple acts of gross and repeated negligence. We are not persuaded that the age of some of the conduct necessarily warrants a reduced sanction and we

note that Respondent's treatment of N.D.B. in 2009 was almost contemporaneous with the filing of the initial Administrative Complaint in this matter. The record before us indicates a clear pattern, spanning more than ten years, of failure to recognize and aggressively treat significant medical issues and poor recordkeeping. The delay in the processing of administrative charges due to several changes in Respondent's legal representation, the assignment of different deputies attorney general and the assignment of several different ALJ's to supervise the case should not vitiate the need for significant sanctions given the gravity of the conduct. Respondent has been able to practice without restriction during the pendency of this matter, yet has provided no evidence that he is remorseful for his conduct or that he has changed his practice in any way.

We find that the imposition of a period of suspension of five years, with a minimum of two years served as a period of active suspension, and a larger monetary penalty is necessary in order to both further our paramount obligation to protect the public health, safety and welfare and reach a balanced and just resolution. We have thus attempted to impose a sanction recognizing the multiplicity of serious violations that impacted patients in this matter while providing Respondent with an opportunity for re-training and a return to practice.

We adopt the ALJ's recommendation to impose costs[4] and find that a somewhat larger civil penalty is also warranted given the expanded scope and significant findings made and order that Respondent be assessed a $10,000 penalty for each of the first four counts, and a $20,000 penalty for Count V, for a total of $60,000.

Respondent's consistent failure to adequately document patient care and his grossly negligent care of the five patients who are the subject of the Amended Complaint is such that we must question his ability to provide competent basic medical care. At a minimum, prior to reinstatement, Respondent must undergo a skills assessment (to include a CDS prescribing component). He must also enroll in and successfully complete a recordkeeping course.

IT IS THEREFORE ON THIS 25th DAY OF JULY, 2016

AS ORALLY ORDERED ON THE RECORD ON JULY 13, 2016:

[4] The State's application for costs was submitted on Monday July 11, 2016. Respondent's attorney did not receive the application until it was entered into evidence, over the objection of Respondent, at the July 13, 2016 penalty hearing. The State's certifications regarding attorney costs and investigative costs are not fully detailed or explained. In order to afford the State time to augment its application and afford the Respondent meaningful time to respond to the State's application we are providing eight days to the State to submit a more specific certification detailing, to the extent available, the tasks completed by the DAG and the enforcement bureau investigators. The certifications should be submitted to the Board and Respondent on or before July 21, 2016. Respondent will then have eight days to submit a written response, and/or certified tax returns to demonstrate hardship, on or before July 29, 2016. (Following the hearing, on July 20, 2016, the State requested additional time to complete the required submissions, without consent of Respondent. The Board President granted a four day extension to the State and similarly extended Respondent's time to submit a response). The Board will review the submissions without further oral argument at the next available Board meeting and issue a supplemental order addressing costs.

1. Respondent's license to practice medicine and surgery in the State of New Jersey is hereby suspended for five years, effective August 12, 2016.[5] A minimum of the first two years shall be served as a period of active suspension. The remaining period of suspension may be stayed and served as a period of probation provided Respondent complies with all other terms of this Order.

2. Upon submission of application for reinstatement, Respondent must demonstrate fitness and competency practice medicine to the satisfaction of the Board. Without limitation, Respondent must demonstrate successful completion of a skills assessment, which should include a CDS prescribing component, to be conducted by an assessment entity pre-approved by the Board. After demonstration of compliance with all requirements of this Order, Respondent shall be scheduled for an appearance before a committee of the Board. We specifically reserve the right to impose limitations on practice during the period of probation depending upon and consistent with any findings or recommendations that are made at the time Respondent completes his skills assessment. Respondent shall also demonstrate successful completion of recordkeeping course pre-approved by the Board.

3. Respondent shall pay civil penalties in the amount of $60,000. Payment shall be made within thirty days of the entry of this Order by certified check or money order, payable to the State of

[5] Respondent has been given a 30 day "wind-down" period to allow him to transfer his patients to other practitioners. During this period, Respondent shall not take on any new patients.

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. Notwithstanding any installment payment agreement, payment of penalties in full shall be made prior to any application for reinstatement.

4. For any civil penalty payments not paid in full within 30 days of the entry of this Order, a Certificate of Debt shall be filed pursuant to N.J.S.A. 45:1-24 to protect the judgment.

5. In addition to, but not in lieu of, filing of the Certificate of Debt, Respondent may request, and the Board will allow the penalty to be paid in equal monthly installments of no less than $1250 through September 1, 2020. Each payment shall be due on the first business day of each month, commencing on September 1, 2016. Respondent may prepay at any time. Interest on all financial assessments shall accrue in accordance with Rule of Court 4:42-11. All payments shall be made by certified bank check, certified check or money order payable to the State of New Jersey and sent to the attention of Bill Roeder, Executive Director, Board of Medical Examiners, 140 East Front Street, 2nd Floor, Trenton New Jersey, 08608. Any other form of payment will be rejected and will be returned to the party making payment. In the event that a monthly payment is not received within

five days of its due date, the entire balance of the civil penalty and costs shall become due and owing.

6. Respondent shall pay costs as determined by the Board after review of the supplemental materials requested on the record at the hearing on July 13, 2016. A written, Supplemental Order, will be entered affixing the costs to be paid by Respondent and detailing the Board's reasoning.

7. The attached Directives regarding future activities of a Board licensee who has been disciplined are incorporated into this Order.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: George J. Scott DO. FACOFP

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

EVIDENCE

P-1	Curriculum Vitae of Paul Edward Goldberg, M.D.
P-2	Report by Dr. Goldberg, dated September 24, 2007
P-3	Patient records of A.G.
P-3B	Transcript of records of A.G.
P-4	Patient records of B.L.
P-4B	Transcript of records of B.L.
P-5	Patient records for S.B.
P-5B	Transcript of records of S.B.
P-6	Patient records of K.O.
P-6B	Transcript of records of K.O.
P-7	Certification and Medical Records for N.D.B.
P-8	Amended Report of Dr. Goldberg, dated October 15, 2009
P-9	No Exhibit
P-10	E-mail Hochberg, M.D. to Soliman, M.D., dated January 21, 2009
P-11	Mortality and Morbidity Review, Date of Review February 19, 2009
P-12	Certification of Arthur M. Brewer, M.D., dated June 23, 2014
P-13	Transcript of testimony of John Hochberg, M.D., before Preliminary Evaluation Committee of the Board of Medical Examiners on September 24, 2003
R-1	Carson, Kleinman, Indications and Hemoglobin Thresholds for Red Blood Cell Transfusion in the Adult, UpToDate (WoltersKluwer Health, www.uptodate.com) 2014
R-2	Certification of Manuel O. Garcia, M.D., dated June 19, 2014
R-3	Curriculum Vitae of Angelo T. Scotti, M.D.
R-4	Recombinant Erythropoietin Criteria for Use for Hepatitis C Treatment - Related Anemia, VHA Pharmacy Benefits Management Strategic Healthcare Group and Medical Advisory Panel, April 2007.
R-5	"Tighter Recommendations Issued for Blood Cell Transfusions," U.S. News and World Report, March 27, 2012
R-6	Press Release: ABB Clinical Practice Guideline on Red Cell Transfusion Published in Annals of Internal Medicine, March 27, 2012
R-7	Report of Dr. Scotti, dated December 3, 2010
R-8	Supplemental report of Dr. Scotti, dated January 31, 2014
R-9	Curriculum Vitae of Dr. Scotti
R-10	Report and Curriculum Vitae of John A. Russo, M.D.; report dated May 16, 2011

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

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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.

incurred on a patient's behalf prior to the effective date of the Board order.

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.