



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

In the matter of:

Binod P. Sinha, M.D.
License No. 25MA0457200

FINAL ORDER OF
PERMANENT REVOCATION
LICENSURE

OVERVIEW

Binod P. Sinha, M.D. ("Respondent") was initially licensed in New Jersey in July 1983. Dr. Sinha has been the subject of four prior Orders of this Board, and his license has been suspended twice, initially in 1991 and again in 2000. In two prior actions, we found that Respondent engaged in repeated acts of medical negligence, which in one instance contributed to the death of a sixteen year old girl. Dr. Sinha has also repeatedly been found to have failed to prepare medical records in conformity with accepted standards. Dr. Sinha has three times before been assessed civil penalties and costs, twice been ordered to complete courses in medical ethics and once required to complete a course in record keeping. We have also required him to have his practice supervised, and have issued a public disciplinary letter cautioning him about the need to comply with requirements of a Board order.

Against that backdrop, Dr. Sinha now comes before the Board, having pled no contest and admitted liability to having engaged in repeated acts of gross negligence and indiscriminate prescribing of Controlled Dangerous Substances ("CDS"), including highly addictive opioids at high doses, without any medical justification, to six patients. He also concedes that he prescribed Endocet (a Schedule II CDS) to an undercover officer (who posed as a patient) during an office visit on July 2, 2014, without any medical justification for the prescription, that he charged the undercover investigator \$200 cash for that visit, and that he failed to perform any legitimate medical examination of the "patient" during that visit.

There is no doubt about what happened during "A.I.'s" office visit, as the entire encounter was video-taped, and we have viewed that video-tape. We thus unequivocally know, as a result of having peered through the "open window" into Dr. Sinha's office created by the video-tape, that the office visit was a sham. Dr. Sinha did little more than act as a drug dealer when he wrote A.I. a prescription for Endocet. We know further that approximately one and one-half years after that visit occurred, Dr. Sinha completely fabricated "A.I.'s" medical record in a manner that purported to memorialize his having completed a comprehensive medical examination and evaluation, and that he produced the fabricated record to the Board after being subpoenaed to do so. In short,

there is no doubt whatsoever that Dr. Sinha wrote a prescription for CDS in exchange for a cash payment, knowing full well that there was no medical justification for the prescription, and that he thereafter sought to evade detection by falsifying his medical record.

We have afforded Respondent an opportunity to present evidence in mitigation of penalty, and have carefully considered the testimony that was offered by patients, colleagues and Dr. Sinha himself. While we accept that Dr. Sinha is highly regarded by the patients and colleagues who testified at the mitigation hearing, and that he purports to be remorseful, we unanimously conclude that all mitigation evidence is vastly outweighed by Dr. Sinha's outrageous misconduct in this case -- to include not only his complete abrogation of all medical ethical standards in the case of "A.I.," but also his having provided grossly negligent medical care and having engaged in wildly indiscriminate prescribing when providing care to six other patients. Dr. Sinha clearly placed all six patients and "A.I." in harms' way or, in the alternative, facilitated the diversion of CDS. The egregiousness of Dr. Sinha's misconduct is all the more troubling given his prior disciplinary history before this Board, as it is clear that all of our prior efforts to seek to remediate Dr. Sinha's shortcomings through education and supervision have fallen far short. We are unanimously convinced that Dr. Sinha is not a suitable candidate

for remediation, and that no sanction short of a permanent revocation of licensure will adequately protect the public health, safety and welfare. We thus Order herein that Dr. Sinha's license be permanently revoked, and additionally assess a penalty of \$70,000 and costs of \$140,756.33. We set forth below in greater detail summations of the procedural history of this matter, Dr. Sinha's prior disciplinary history, the uncontested factual allegations and violations of law found in this matter, the evidence presented at the mitigation hearing and our determinations as to penalty.

PROCEDURAL HISTORY

This matter was initially opened before the Board on December 22, 2016, upon the filing of a Verified Complaint and an Order to Show Cause by Christopher S. Porrino, Attorney General of New Jersey by Joan D. Gelber, Senior Deputy Attorney General, seeking, among other things, the entry of an Order temporarily suspending Respondent's license to practice medicine and surgery in the State of New Jersey. The seven Count Complaint alleged that Respondent engaged in a pattern of indiscriminate, gross, repeated, and negligent prescribing of CDS, including highly addictive opioids, benzodiazepines and other drugs, without any legitimate medical purpose to seven patients, one of who was an undercover

investigator.¹ The Complaint further alleged that Respondent engaged in misrepresentation, professional misconduct, and falsification of patient records; in violation of N.J.S.A. 45:1-21(b), (c), (d), (e), (h) and (m) and N.J.S.A. 45:9-6; and that his continued practice of medicine and surgery presented a clear and imminent danger to the public such that Respondent's license to practice medicine and surgery should be immediately temporarily suspended pending the outcome of a plenary hearing.

An Order to Show Cause was issued by the Board on December 22, 2016, returnable on January 18, 2017. The Order to Show Cause was adjourned on January 9, 2017 and again on February 6, 2017, at Respondent's request through his counsel, Joseph Gorrell, Esq. An Interim Consent Order was filed on January 9, 2017, wherein Respondent agreed to cease and desist from any form of medical practice. On February 21, 2017, a second Interim Consent Order was filed, suspending Respondent's license to practice medicine and surgery in New Jersey. Respondent filed an Answer to the Complaint of March 30, 2017. Therein, Respondent denied all of the legal conclusions set forth in the Complaint.

On July 31, 2017, Respondent agreed to the entry of a Consent Order wherein he waived his opportunity for a plenary hearing. Respondent entered a plea of no contest to all of the

¹ The six patients identified in Counts 2 - 7 of the Complaint are identified by their initials, in order to protect their confidentiality.

allegations in the Complaint, and specifically admitted liability to all charges. Given Respondent's admission of liability, the Board withdrew the case from the Office of Administrative Law, and assumed jurisdiction of the matter for the purpose of holding a hearing limited to the issue of penalty assessment. Respondent was offered the opportunity to present evidence and legal arguments in mitigation of penalty, and Complainant likewise was afforded the opportunity to present argument and evidence in aggravation.

Respondent further acknowledged in the July 31, 2017 Consent Order that the Exhibits submitted by the Attorney General in support of the Order to Show Cause, supplemented by a State Police video-tape of an undercover encounter in his office, were to be deemed by the Board to be admitted into evidence. This matter was then scheduled for a penalty assessment/mitigation hearing before the Board on October 11, 2017.²

RESPONDENT'S DISCIPLINARY HISTORY BEFORE THE BOARD

Respondent's disciplinary history before this Board is extensive. The Board first took action against Dr. Sinha in 1989, after finding that he engaged in repeated acts of negligence in his role as Director of Anesthesia at a clinic and as a supervisor of a nurse anesthetist. The Board further found that Respondent failed to assure that standard anesthesia protocols were followed prior to

² A comprehensive list of the Attorney General's exhibits agreed to via the July 31, 2017 Consent Order and additional exhibits entered into evidence by the Attorney General and Respondent's counsel at the hearing is annexed hereto as Appendix A.

and during the administration of anesthesia, and that his failures contributed to the death of a sixteen year old patient. See Final Decision and Order filed January 12, 1989, and Revised Finding of Fact and Conclusions on Remand dated May 10, 1991. Dr. Sinha's license was suspended for one year, with two months active and the remainder to be served as probation. Dr. Sinha was also assessed penalties and costs in excess of \$15,000.00.

Seven years later, Dr. Sinha was formally reprimanded, required to take a course in medical ethics and fined \$2500 in a Consent Order filed on June 20, 1996. The Board found that Dr. Sinha improperly added information to twelve anesthesia records, approximately five to six months after the records had been prepared, without dating or making any indication in the records to distinguish that information which had been contemporaneously recorded in the chart from information which was added months later.

Dr. Sinha's license was suspended a second time in November 2000, after Dr. Sinha was found to have engaged in repeated acts of negligence and in improper record keeping in three hospital anesthesia cases. The suspension was imposed for a period of three years, with a minimum of six months of active time, and we then ordered Dr. Sinha complete Board approved courses in ethics and record keeping, submit to an independent competency assessment,

and pay a penalty and costs of totaling \$47,425. See Final Decision and Order, November 22, 2000.³

Following the required independent competency assessment, concerns regarding Respondent's skills and competency were identified, which in turn resulted in the entry of a fourth Order filed on June 28, 2001. That Order required Respondent to have a practice supervisor and mandated that supervisor reports be submitted to the Board. Respondent subsequently failed to ensure that all required supervisory reports were in fact submitted, and we thereafter filed a public disciplinary letter on October 3, 2006 addressing those failures.

³ Perhaps foreshadowing the present action against Dr. Sinha, in our Final Decision and Order filed November 22, 2000, we specifically commented on the gravity of Respondent's repeated failures to have comported his conduct to expected medical standards and the paramount import of maintaining the integrity of patient records:

We took note, in making our penalty calculations that this is the third order we have entered against this licensee. In 1989 Respondent's license was suspended for "one year, two months active" based on findings that he had negligently supervised anesthesia services at an ambulatory care facility where he served as a director. In 1996 a second order issued, reprimanding Respondent for making false chart entries. In light of this disciplinary history, we find Respondent's present breaches and lack of insight are even more troubling. To be worthy of the trust which the Board and public place in licensee, Respondent must recognize that his first obligation is to act in the best interest of the patient, even if that may cast him in an unfavorable light. So [too], he must vigilantly record medications and patient conditions to ensure that others on the health care team are in the best possible position [to] advance the patient's best interest. And finally Respondent's chart omission and alterations cannot be tolerated. Maintaining the integrity of [the] patient record is a vital responsibility of every physician. [emphasis added].

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Turning to the case now before the Board, this matter was returned to the Board as an uncontested case, for the limited purpose of conducting a penalty phase hearing, after Respondent pled "no contest," and admitted liability, to the violations of law set forth in the Complaint. Initially, we recognize that a "no contest" plea is an admission of all alleged charges, and equivalent to a guilty plea. State v. Ramseur, 106 N.J. 123 (N.J. 1987); State v. Henson, 66 N.J.L. 601 (E & A. 1901). When agreeing to the entry of the July 31, 2017 Consent Order, Dr. Sinha waived his right to contest any and all of the charges against him set forth in the Administrative Complaint. While liability is thus not contested, we herein summarize the allegations set forth in the Complaint, as these charges ultimately form the predicate for the determinations that we make herein.

Patient "A.I."; Count 1

The First Count of the Complaint details what occurred during, and after, an undercover visit by a Detective with the New Jersey State Police on July 2, 2014. The entire encounter was audio- and video-taped, and the video-tape of that encounter is in evidence. "A.I." (the fictitious name used by the undercover Detective) saw Respondent for the first and only time on July 2, 2014. A.I. told Dr. Sinha that she had "pain" and asked whether she could get "prescriptions" from Dr. Sinha. While Dr. Sinha did

ask her some perfunctory background questions, he failed to conduct any meaningful medical evaluation or examine. Dr. Sinha failed to listen to "A.I.'s" heart and lungs, take her pulse or blood pressure, conduct any range of motion examination, or even ask her to isolate the area of her back where she was claiming to have "chronic" pain. Instead, Respondent wrote A.I. a prescription for 60 Endocet pills (and a prescription for a lumbar M.R.I.), accepted a \$200 cash payment for the "visit," and asked her to return to the office in two weeks. Respondent did not check the New Jersey Prescription Monitoring Program ("NJ PMP") when he wrote the prescription - rather, he in essence simply used his prescriptive privileges to "sell" Endocet to A.I., without regard for whether she had any real, medical need for the drug.

Eighteen months later, Respondent sought to disguise his actions by preparing a completely fictitious medical record to support his prescribing. After receiving a subpoena for A.I.'s medical records, (P-4, 5), Respondent, through his counsel, produced a record which he claimed was A.I.'s complete medical record. That record included multiple false statements regarding A.I.'s history and complaints, including claims that she had "excruciating back pain." Respondent also falsely documented that he had conducted an extensive clinical orthopedic evaluation. The actual video-tape of the office visit, however, vividly proves that Dr. Sinha's "medical record" was a fabrication. (P-4, P5, P6, P-7).

Patients Identified in Counts 2-7

The remainder of the Administrative Complaint (Counts 2 through 7) focus on Respondent's care of six patients. A brief summation highlighting some of the myriad issues identified in the Complaint for each patient is set forth below.

Patient D.A. (Count 2)

D.A., a twenty-four year old man from Brooklyn, New York, was treated by Respondent for approximately fourteen months from January 23, 2013 through March 24, 2014. His record includes ten recorded patient visits. Respondent prescribed large quantities of CDS -- over 2,700 pills -- including but not limited to Oxycodone, Percocet, MS Contin/Morphine and Fentanyl transdermal patches.

Throughout this entire time, Respondent never checked the NJ PMP to determine patient D.A.'s past CDS history and to see if D.A. was filling any additional opiate prescriptions from other practitioners. He also failed to address "red flags" for aberrant behavior, including multiple instances when D.A.'s lab results were negative for opiates, although Respondent was prescribing them. D.A.'s medical records are extremely scanty and have many errors, to include multiple instances when Respondent failed to appropriately document his prescribing of Schedule II narcotics. The medical file includes a prior practitioner's "referral letter" which stated he had serious injuries, however the correspondence

clearly references someone other than D.A. Respondent failed to follow up with the referring physician (who in fact was a dentist, who had never actually treated D.A.) and nonetheless proceeded to prescribe opioids.

Patient O.S. (Count 3)

O.S., a twenty-six year old man from Brooklyn, New York, was treated by Respondent for approximately fifteen months from June 22, 2013 through September 27, 2014. The record includes seven recorded patient visits. Respondent prescribed high-dose Schedule II narcotics along with other CDS, consisting of over 2,200 pills, including but not limited to Oxycodone, Percocet, Endocet, MS Contin/Morphine and Fentanyl transdermal patches. On O.S.' first patient visit, Respondent prescribed 120 Oxycodone pills without documenting a patient examination or diagnosis. In addition, O.S. presented with a prior practitioner's "referral letter" which stated he had serious injuries. That correspondence, however, failed to include information setting forth a diagnosis or any other details. Respondent failed to follow up with the referring physician (who in fact was a dentist, who had never actually treated O.S.).⁴ In addition, several times during O.S.' treatment, Respondent prescribed opiates without seeing him.

Throughout O.S.' medical records, Respondent recommended diagnostic testing such as an EMG and MRI for O.S.' treatment,

⁴ O.S.' "referral letter" was almost identical to patient D.A.'s "referral letter" from the same practitioner. (P-7).

however Respondent never made any necessary referrals, ordered and/or reviewed any results. During O.S.' treatment, Respondent never checked the NJ PMP and only ordered one urine test. That urine test yielded an aberrant result, as it was negative for drugs that Dr. Sinha prescribed. Notwithstanding that result, Respondent continued to prescribe O.S. those very same drugs, seemingly blind to the question whether O.S. was in fact taking the prescribed drugs or engaged in diversion.

Patient A.K. (Count 4)

A.K., a twenty-four year old man from Brooklyn, New York, was treated by Respondent for approximately twenty-seven months from April 1, 2013 through March 5, 2015, during which there are twenty recorded patient visits. Respondent prescribed large quantities of CDS, over 4,200 pills, including but not limited to Oxycodone HCl or Percocet/Endocet, Morphine Sulfate, Methadone, Fentanyl transdermal patches, Alprazolam, and Gabapentin. Respondent simultaneously prescribed A.K. benzodiazepines and high-dose opioids, and did nothing to address the risks associated with that simultaneous prescribing. In addition, Respondent prescribed A.K. narcotics several times when he was not seen at an office visit, and continued to prescribe narcotics to A.K. for months after his last patient visit.

A.K.'s records include multiple urine screens which were positive for marijuana and/or alcohol metabolites. Respondent

ignored these test results. He also failed to take any action when A.K. tested negative for Methadone, even though he had prescribed this narcotic to A.K. and notwithstanding that the test result should have caused Dr. Sinha to suspect that A.K. may have been engaged in diversion. Respondent failed to refer A.K. for consultations and/or diagnostic testing regarding his claimed lower back and neck pain.

Patient A.Z. (Count 5)

A.K., a twenty-eight year old man from Pennsylvania, was treated by Respondent for approximately ten months from August 8, 2014 through June 6, 2015. The record includes three documented patient visits. Respondent prescribed over 1,870 pills, including but not limited to Oxycodone HCl, Alprazolam and Fentanyl transdermal patches. During this time, Respondent repeatedly prescribed narcotics to A.Z. without seeing him. Furthermore, Respondent prescribed benzodiazepines and opioids together, placing A.Z. at a high risk for respiratory depression. Respondent failed to address this risk.

Respondent also failed to address signs of aberrant behavior, such as instances when A.Z.'s lab results were positive for opiates that Dr. Sinha did not prescribe and negative for narcotics that he did prescribe. After each concerning lab result, Respondent continued to prescribe narcotics without ever addressing the aberrant lab results. Respondent reviewed two imaging reports

from October 2014, including an MRI of A.Z.'s left shoulder noting a labral tear and a right wrist x-ray documenting a fracture of A.Z.'s navicular bone. However, at no time during A.Z.'s treatment did Respondent ever evaluate the injuries and/or refer him to a specialist for treatment.

Patient P.B. (Count 6)

P.B., a thirty-five old man from Waldwick, New Jersey, was treated by Respondent for thirty-three months from August 10, 2012 through May 28, 2015, during which there are thirty-seven recorded patient visits. Respondent (and/or his two Physician Assistants) prescribed large quantities of high dose opioids, including but not limited to Oxycodone, Oxycodone HCl, Zohydro, and Morphine Sulfate. Respondent ran P.B.'s NJ PMP data several times throughout his treatment. The NJ PMP revealed that P.B. filled his prescriptions at over fourteen pharmacies, but Respondent never addressed this "red flag" with his patient.

There were multiple urine tests which yielded aberrant results, to include positives for illegal substances including marijuana and cocaine. There is nothing in the records to suggest that Respondent addressed P.B.'s illegal drug use.

Patient K.S. (Count 7)

K.S., a twenty-five year old man from Elizabeth, New Jersey, was treated by Respondent (and by other physicians, P.A.s and an A.P.N. at Dr. Sinha's practice) from approximately October

31, 2013 through September 29, 2015. Respondent never once examined K.S. during the entire eight months he treated him, yet Respondent prescribed over 1,070 Suboxone pills. Respondent failed to formulate an appropriate treatment plan for K.S.

Dr. Sekhri's Expert Report

The entire record in this case, to include all seven patient records, along with pharmacy records and reports from the NJ PMP for dates between 2012 and 2015, were analyzed by the State's expert witness, Nitin K. Sekhri, M.D., a physician who holds board certifications in anesthesiology and pain medicine. We have carefully reviewed and considered Dr. Sekhri's thirty page expert report dated November 30, 2016. In his detailed and comprehensive report, Dr. Sekhri detailed numerous deviations from accepted standards of practice by Dr. Sinha, to include a "global" finding that Dr. Sinha repeatedly prescribed high-dose opioids⁵ to his patients without adequate medical justification.

We fully concur with, and herein fully adopt, the entirety of Dr. Sekhri's findings, to specifically include his conclusions that Dr. Sinha deviated from accepted standards of medical practice for the following reasons:

⁵ High-dose opioids are defined to be amounts greater than 90-100 mg of Morphine equivalents per day. As pointed out in Dr. Sekhri's expert report, that dose of Morphine is equivalent to about 60 mg of Oxycodone per day. Dr. Sekhri concluded, as do we, that Dr. Sinha prescribed five of the six patients identified in Counts 2 through 7 high-dose opioids. In doing so, he placed those patients at greater risk for overdose, and in several instances put patients at even higher risk when he simultaneously prescribed benzodiazepines, which can act as a synergistic respiratory depressant. (See Sekhri report, P-1, 8).

-- Dr. Sinha failed to establish medical necessity before initiating opioid therapy for his patients.⁶ (P-1, 2-6);

-- Dr. Sinha failed to order or obtain diagnostic studies, and/or failed to review and act upon results of imaging studies that were obtained.⁷ (P-1, 6-7);

-- Dr. Sinha failed to perform "risk stratification" prior to initiating opioid therapy. (P-1, 7-8)⁸;

⁶ In order to establish medical necessity, it is imperative for a physician to have a physical diagnosis and documented failure of more conservative therapies, such as, non-controlled substance therapy, including non-steroidal anti-inflammatories, physical therapy modalities, behavioral interventions, and interventional pain management techniques, which Respondent consistently failed to perform. (P-1, 3). Although opioids are never the first-line treatment for chronic pain, Respondent prescribed opioids as his first-line therapy for almost all his patients. (P-1, 3).

Dr. Sinha's failure to have established medical necessity prior to prescribing opioids is further evidenced by his practice of failing to confirm patients' histories with previous prescribers. (P-1, 5). Dr. Sinha's lax practices are fully evidenced in the cases of patients O.S. and D.A., as although those records do include letters from a "referring physician," the letters contained patently insufficient and incorrect information (to include misidentification of the actual patient) that should have caused any reasonable physician to determine, or at a minimum strongly suspect, that the referral letters were likely fraudulent.

⁷ In the case of patient A.Z (Count 5), Dr. Sinha's first prescription for opioids was filled on September 2, 2014, although his first office note is dated in December 2014. (P-1, 6). A.Z. had several diagnostic tests after September 2, 2014, to include an MRI of the left shoulder revealing tendinosis and labral tear and an x-ray of the right wrist showing a fracture of the navicular bone. (P-1, 6). Those results were never reviewed with the patient. Alarming, Dr. Sinha's records do not suggest that he referred A.Z. to any specialist for treatment of the navicular bone fracture, which would ordinarily require a brace, cast or possible surgery for fixation. (P-1, 7).

⁸ Dr. Sehkri comments that a physician must make an assessment of the likelihood that a patient will divert, misuse or abuse opioid prescriptions prior to prescribing any CDS, and to assess the medical risk of opioid related adverse drug effects, particularly respiratory depression. Dr. Sehkri noted that none of Dr. Sinha's patient records included any documentation that Dr. Sinha sought to determine the individual patient's likelihood of diversion, misuse or abuse (P-1, 7) or the likelihood of adverse effects.

Dr. Sehkri also points out, and we fully concur, that Dr. Sinha's concurrent prescribing of benzodiazepines and high-dose opioids to certain patients placed those patients at significantly elevated risk of overdose and/or respiratory depression (P-1, 7).

-- Dr. Sinha failed to make efforts to assess whether individual patients were obtaining functional improvement while on opioid therapy, to include a failure to have ever established functional and treatment goals for most patients, and a repeated failure to have documented material information such as "pain scores." (P-1; 8-9);

-- Dr. Sinha failed to require patients to sign a pain management contract during the course of opioid therapy, and/or when his patients did sign the agreements, failed to have the documents completed in full and failed to require patients to adhere to conditions of the agreement, such as provisions limiting patients to filling prescriptions at one designated pharmacy.⁹ (P-1, 10-12); and

-- Dr. Sinha failed to modify his prescription practices (and failed to confront patients) when presented with "red flags" that should have suggested that his patients were engaged in aberrant behavior and/or were not taking the CDS which Dr. Sinha was supplying through his prescriptions. Most disturbingly, Dr. Sinha failed to modify his prescriptive practices for patients whose urine screens revealed marijuana metabolites, alcohol metabolites and, in certain instances, metabolites for drugs that Dr. Sinha did not prescribe, to include Morphine. He also failed to modify his prescriptive practices when urine screens revealed that his patients were not taking the drugs he prescribed, thereby blithely failing to address the very real possibility that his patients were engaged in drug diversion. (P-1, 12-17); and

-- Dr. Sinha failed to vigilantly monitor patients who were being prescribed high dose opioids. (P-1, 17-19).

Dr. Sehkri also found, and we fully concur, that the medical records which Dr. Sinha maintained were wholly inadequate.

As noted above, Dr. Sinha has entered a no contest plea and admits to liability in this case. For that reason, in conjunction with the findings we set forth above and our adoption

⁹ As Dr. Sehkri pointed out, the pain management agreement is generally considered to be the "cornerstone" of the doctor patient relationship when chronic opioid therapy is being prescribed as it outlines the expectations for both the patient and the provider. (P-1, 10-11).

of Dr. Sehkri's findings, we conclude as a matter of law that bases for disciplinary sanction against Respondent exist, for the conduct alleged in each and every Count of the Complaint, pursuant to N.J.S.A. 45:1-21 (b) (engaging in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense); N.J.S.A. 45:1-21(c) (engaging in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person), N.J.S.A. 45:1-21(d) (engaging in repeated acts of negligence, malpractice or incompetence); N.J.S.A. 45:1-21(e) (engaging in professional or occupational misconduct); 45:1-21(h) (violating or failing to comply with the provisions of any acts or regulations administered by the board), N.J.S.A. 45:1-21(m) (prescribing or dispensing controlled dangerous substances indiscriminately or without good cause, or where the applicant or holder knew or should have known that the substances were to be used for unauthorized consumption or distribution) and N.J.S.A. 45:9-6 (failure to maintain good moral character, as required for continued licensure as a physician, charged in Counts 1 through 6 of the Complaint).

MITIGATION HEARING

Pursuant to the agreed terms of the July 31, 2017 Consent Order, the Board conducted a hearing on October 11, 2017 for determination of sanctions. Joan D. Gelber, Senior Deputy Attorney General, appeared for complainant Attorney General of New Jersey,

and Joseph M. Gorrell, Esq. of Brach Eichler, LLC, appeared on behalf of Respondent. Respondent and sixteen (16) other witnesses testified on his behalf.¹⁰

In opening statements, Mr. Gorrell argued that the appropriate penalty in this case would not be a revocation of licensure, but instead a suspension of finite duration. (T:15, 22 - T:16, 4). Mr. Gorrell suggested that the Board has in the past often resolved matters involving allegations of indiscriminate prescribing with Consent Orders including suspensions of five years or fewer, and argued that the Board should not penalize Dr. Sinha in any greater measure than a finite license suspension.

Deputy Attorney General Gelber argued that the constellation of admissions made by Respondent should be found to support the permanent revocation of Dr. Sinha's license. She urged the Board to carefully review and adopt the findings made within the detailed expert report of the State's expert, Dr. Sekhri, to include Dr. Sekhri's conclusion that Respondent is a threat to the public and should not be permitted to practice medicine. (T: 22, 1 - 14; 23, 2 - 10).

Dr. Sinha testified on his own behalf. After recounting his education, training and credentials, (T: 27, 1 - T: 28, 23), Dr. Sinha conceded that he was acutely aware that he had not met

¹⁰ The transcript of the October 11, 2017 hearing in this matter is referenced as "T".

the standard of care for a physician in the seven cases brought by the Attorney General's Office and he offered no excuses for his conduct. Respondent testified, however, that none of his improper conduct was intentional, his patients' interest always came first, and he is deeply sorry for his mistakes. (T: 29, 19 - T:30, 5).

Respondent stated that as soon as he became aware of the Complaint, he set out to remediate his professional shortcomings and regain the respect of the Board. To that end, he has completed several continuing education courses in pain management and in the prescribing of CDS, to include having gone to Case Western Reserve University School of Medicine ("Case Western") on three separate occasions to complete record-keeping and proper prescription prescribing courses. (T: 30, 14 - T:31, 4). Respondent testified that he has now learned the importance of medical documentation and how documentation contributes to good patient care, the fundamentals of good management of patients, risk stratifications, the dangers of combining narcotics with benzodiazepines, identifying patients with drug seeking behavior, and the importance of drug monitoring. (T: 31, 5 - 20). He promised that if he is given another opportunity to practice medicine again that he will strictly adhere to the accepted standards of care of a physician. (T:32, 19-25).

Following Respondent's testimony, Mr. Gorrell presented sixteen mitigation witnesses. Two witnesses affiliated with Case

Western testified about Respondent's attendance at continuing medical education courses offered at Case Western subsequent to the initiation of this action. Specifically, Eric Remer, M.D., who teaches a course in medical record keeping, testified that Dr. Sinha attended his course in February 2017 and was an active engaged participant. (R-12; T:41, 1-13). Theodore V. Parran, Jr., M.D., the Medical Director for the Continuing Education Program and co-director of the Addiction Fellowship Training Program at Case Western, (T:48, 15-21), testified that he met Dr. Sinha when he attended courses at Case Western and opined that Dr. Sinha was an open, eager learner who appears to approach his knowledge and skills deficits as an opportunity to improve his clinical abilities, and he seems truly committed to provide the best quality of care to his future patients. (T:54, 11-17). On cross-examination, both Dr. Remer and Dr. Parran conceded that they were not familiar with the specific allegations that were made in this case against Dr. Sinha.

A broad spectrum of additional mitigation witnesses were presented, to include individual pain management patients from Dr. Sinha's practices, employees of Dr. Sinha, a paramedic who had entered into a business venture to teach an Advanced Cardiac Life

Saving course with Dr. Sinha,¹¹ and physician and chiropractic colleagues.

Individual patients testified generally that Dr. Sinha was a caring, honest, and thoughtful physician, who provided them with information regarding addiction during their appointments with him, and at times reduced their opioid dosage medications.¹²

Two employees testified generally regarding their employment by Dr. Sinha, and a nurse who has worked alongside Dr. Sinha testified generally about Dr. Sinha's skill and compassion when providing anesthesia to patients.¹³

Colleagues, to include Sudhir Diwan, M.D.,¹⁴ Daniel Rice, M.D.,¹⁵ Vinod Sinha, M.D.,¹⁶ Sudhanshu Prasad, M.D.,¹⁷ Kamal Dutta,

¹¹ Donald Schwartz a retired Army Medical Service Corps paramedic and a private paramedic, has had a "handshake" partnership with Respondent for over fifteen years. They teach Advanced Cardiac Life Support together and "split everything fifty-fifty." (T:127, 1-15). Mr. Schwartz testified that Respondent is a superior teacher and an honest man. (T:128, 12-24).

¹² Testifying patients included Lisa Salonna, Edward Asmar (a physical therapist), A.K. (the subject of Count 4 of the Complaint) and Andrew Farro.

¹³ Melissa Grullon and Suzanne Ramos were presented as individuals who had been employed by Respondent for many years. Ms. Grullon and Ms. Ramos suggested that they were aware that information regarding certain patients was missing in the computerized medical records as a result of problems with "Spin Charts." (T: 108, 11 - T:113, 24).

Samantha Kennedy, R.N., testified that she has been working at the Clifton Surgery Center since 1996. She testified that Respondent is caring and compassionate with his pain management and anesthesia patients, he does a thorough evaluation of his patients. Ms. Kennedy testified that she specifically requested that Dr. Sinha administer her anesthesia when she underwent three separate surgeries, because he is an excellent anesthesiologist. (T:118, 2 - T:119, 20).

¹⁴ Dr. Diwan is Board certified in Interventional Pain Medicine and is a consultant for the New York Office of Professional Misconduct ("NY OPMC"). (T: 69, 90-T: 70,10). Dr. Diwan stated that he has reviewed the majority of the evidence in this matter. He testified he found Respondent to be very honest and

M.D.,¹⁸ and Robert Kovacs, D.C.¹⁹ all testified in support of Dr. Sinha. All six witnesses suggested that Dr. Sinha was a respected colleague and a skilled anesthesiologist/physician.

Deputy Attorney General Gelber did not call any witnesses, but did play a portion of the video of the undercover patient encounter. The video, along with State Police Sgt. Andrea

accepting of his knowledge and skills deficits, takes ownership for his wrongdoing, and really wants to learn to revise his practice to prevent putting patients in harms warm. (T:73, 2 - T:74, 8).

¹⁵ Daniel Rice, M.D., attested that he is a shareholder of Clifton Surgery Center where Respondent was previously a shareholder and employee and Respondent has administered anesthesia on many of his patients over the years. (T:100, 6-25). Dr. Rice believes Respondent is good at communicating with his patients, gave his patients excellent care and was never aware of any clinical problems with the patients Respondent treated. (T:102, 5 - T:103, 14). On cross-examination Dr. Rice testified that he was aware of a few but not all of Respondent's past disciplinary history with the Board. (T:104, 21 - T:105, 24).

¹⁶ Dr. Sinha, an internist, has known Respondent since medical school and testified that he is an intelligent and very compassionate person. (T: 133, 13 - T:134, 12). Dr. Sinha has referred patients to Respondent since 1991 for anesthesia and then later for pain management, all with success. (T:135, 1-14).

¹⁷ Dr. Prasad, an internist, knows Respondent both professionally and personally. He refers patients to Respondent for pain management therapy and his patients are very satisfied with their care. (T:130, 19 - T:131, 13). Dr. Prasad attested that Respondent is a supportive friend, goes out of his way to help people, and has an excellent reputation in the community.

¹⁸ Dr. Dutta, an obstetrician and gynecologist, has known Respondent since 1985. He stated that Respondent administered anesthesia to many of his patients over the years and he believes Respondent is one of the best anesthesiologists he has ever worked with. (T:138, 4-14). Dr. Dutta was once a partner with Respondent in approximately 2006 and 2007. Dr. Dutta testified that Dr. Sinha handled over 1,307 pain management cases and Dr. Dutta didn't recall any problems with Respondent's treatment of his patients. (T:138, 3 - T:139, 25).

¹⁹ Dr. Kovacs has known Respondent for over thirteen years and has been referring his chiropractic patients to him for pain management, with great success for many years. (T:122, 9-18). On cross-examination Dr. Kovacs stated that at one point in the past he had an office next door to Respondent. He claimed that he never noticed lines of people waiting to get into Respondent's office outside in the street, or out-of-state cars pulling up to the office on Fridays. (T:123, 18 - T:124,16).

Savlatini's Certification, reveal that on July 2, 2014, A.I. went with a confidential informant to Respondent's office when it was closed to other patients. A.I. said to Respondent "I always have a pain, like a chronic pain, and [the informant] said I could get prescriptions through you - nothing too strong." (P-4, 2). Respondent asked A.I. a few cursory questions about her medical history and then gave her two prescriptions, one for 60 Endocet 10/325 mg (CDS II) and one for a lumbar MRI. A.I. was charged and paid \$200 cash for the office visit. (P-4, 2-3). The video demonstrates that, through the entirety of the encounter, Respondent never used a stethoscope to listen to her heart or lungs, did not take her pulse or blood pressure, did not perform any palpatory examination, and did not have her remove any clothing. Respondent did not touch A.I., perform any range of motion evaluation or perform any sensory or reflex exams. He did not ask her to point to her "back pain", did not ask her how she injured her back, did not ask her about the nature of the "pain" and did not inquire why she claimed the pain was "chronic". (P-4, 3). The informant was in the room with A.I. throughout the entire encounter. Respondent told A.I. to "get insurance, Obamacare, ...get an MRI and make an appointment to see him in two weeks." (P-4, 4).

After the video ended, through redirect examination, Respondent testified that A.I.'s boyfriend [the informant] called his cell phone and said, "do me a favor, just see her." Respondent

claimed that it was his understanding that she was in acute pain and that it was urgent that he see A.I. (T:151, 1-8). After he saw her he gave A.I. two prescriptions, one for Percocet (name brand for Endocet) and one for an MRI, and asked to see her soon. (T:151, 21-25). Respondent conceded that the patient encounter with A.I. was not appropriate. (T:152, 1-9). Regarding the falsifying of A.I.'s medical records Respondent stated "I'm still mystified, what I did was not right, I would never do that (again) and I never did it before." (T:152, 16-21).²⁰

DISCUSSION ON PENALTY

We have considered all of the established facts, evidence and mitigation testimony, and find and conclude that no sanction short of an Order of permanent revocation would be sufficiently protective of the public and/or otherwise appropriate in this matter. We start by observing that the record in this case - standing alone - forms a compelling predicate to support license revocation. Respondent's "treatment" of the six patients whose care is the subject of Counts 2-7 of this Complaint was grossly negligent. Time and time again, Dr. Sinha abused his privilege to

²⁰ Joan Gelber, Senior Deputy Attorney General, moved into evidence without objection; P-26 payment voucher for Dr. Sekhri's expert report for \$9,800, P-27 certification of costs of the Enforcement Bureau for \$21,896.33, P-28 time sheet report for Joan Gelber, SDAG totaling \$109,060.00, P-29 the Board's prior disciplinary orders for Respondent including; Final Decision and Order dated January 12, 1989, Revised Finding of Fact and Conclusions on Remand dated May 10, 1991, Appellate Division unpublished opinion dated September 4, 1991, Consent Order dated June 20, 1996, Final Decision and Order dated November 22, 2000, Supplemental Order, dated June 28, 2001, and Public Letter dated October 3, 2006.

practice medicine and concomitant privilege to prescribe drugs to alleviate suffering by prescribing high-dose opioids without adhering to established practice norms. The litany of deviations catalogued in Dr. Sehkri's expert report, and fully adopted by this Board, evidence Dr. Sinha's complete eschewal of his fundamental obligations as a physician. It is clear that Dr. Sinha facilitated the abuse and diversion of Controlled Dangerous Substances, and did so in a manner that placed his patients, and the public alike, at grave risk of harm.

In addition to all of the above, we are absolutely persuaded that Dr. Sinha's conduct on July 2, 2014 at the time of A.I.'s office visit - and eighteen months later when he falsified A.I.'s medical record - provides compelling evidence to support a conclusion that Dr. Sinha is, fundamentally, a morally bereft practitioner. It is not often that we as a Board have an opportunity to actually see and hear what occurs during a patient encounter, but in this instance, that opportunity presented itself because A.I. was an undercover police officer who video-taped her encounter with Dr. Sinha. The video unquestionably reveals that Dr. Sinha did little more than act as a drug dealer when he "supplied" A.I. with a prescription for 60 Endocet, knowing full well that he had not conducted any medical examination to establish whether A.I. in fact needed the drugs, and accepting a \$200 cash payment for the sham of an office visit. Respondent's actions

during the office visit were completely antithetical to any semblance of legitimate medical practice. The depth of Respondent's fundamental moral corruption, however, extended beyond that one office visit, as he thereafter chose to and did intentionally falsify A.I.'s medical record in an effort to "cover his tracks."

We commented in 2000 that we were deeply troubled by Respondent's repeated and extensive disciplinary history with the Board, which history included repeated instances where Dr. Sinha failed to conform to practice standards and multiple instances where he altered medical records. While we elected to then afford Respondent an opportunity to return to practice after a finite period of suspension, an assessment and completion of remedial course work, we decline to do so now. Respondent's disciplinary history is an aggravating factor that we have weighed in our penalty calculus, although we point out that the record in this case alone is compelling and fully supports the permanent revocation of Dr. Sinha's license.

As we noted above, Respondent has offered testimony from colleagues, employees, patients and educators that suggest that he is a respected physician. Notwithstanding that testimony, however, we have not been presented with any mitigation testimony which would condone, explain or discount the gravity of Respondent's repeated and egregious misconduct.

While it is commendable that Respondent undertook efforts to participate in targeted medical education subsequent to the filing of this Complaint, Dr. Sinha has been afforded multiple opportunities over many years to remediate gaps in his fundamental medical knowledge, but has been unable to do so. He has been required to take ethics and record keeping courses, but those courses clearly did not cause Dr. Sinha to bring his record keeping to even minimal standards, nor to act in accord with ethical norms. Fundamentally, we are convinced that no additional ethics course or record keeping courses will now cause Respondent to practice in a responsible manner in the future, as no such courses can teach a fundamentally corrupt physician like Dr. Sinha to practice responsibly and ethically in the future.

We are unanimously convinced that an Order of permanent revocation is fully supported on the record before us. That record abundantly demonstrates that Dr. Sinha lacks the moral integrity, medical judgment and skill to be allowed to ever again resume practice. He has time and time again engaged in acts of gross and repeated medical negligence, indiscriminate prescribing and morally corrupt behavior. He is not a candidate for remediation. We have a paramount obligation to protect the public health, safety and welfare, and that interest and obligation demands nothing less than our present ordering of the final and permanent revocation of Dr. Sinha's license.

In light of the severity of the action we order herein, and on consideration of the mitigation testimony offered, we are persuaded that cause exists to assess monetary penalties in an amount significantly below statutory limits, but at a level that is commensurate with the breadth of misconduct established herein.²¹ On balance, we conclude that Dr. Sinha should be assessed an aggregate civil penalty of \$70,000 (calculated at \$10,000 for each of the seven Counts of the Complaint), and that he should be required to pay the established costs of this action. Finally, we have reviewed the Attorney General's cost submissions, and find that the costs sought in this matter are fully supported by the documentation offered in support thereof, to include the certifications offered by Enforcement Bureau Investigators and Deputy Attorney General Gelber's time sheets memorializing the legal work that she performed during the pendency of this action. We further find that the hourly rates sought for the services of the investigators from the Enforcement Bureau and for Deputy Attorney General Gelber's legal work are reasonable. We therefore

²¹ N.J.S.A. 45:1-25(a) allows for the assessment penalties of up to \$20,000 for every violation established in this case (specifically, the Act provides that \$20,000 may be assessed for an individual who has been the subject of a prior administrative order, and provides further that, for purposes of statutory construction, "each act in violation of any provision of an act or regulation administered by a board shall constitute a separate violation. As Dr. Sinha has been charged with violating multiple provisions of the Uniform Enforcement Act, the Medical Practices Act and/or Board regulations in each and every Count of this Complaint, potential penalties could easily reach into the hundreds of thousands of dollars were the Board inclined to assess penalties at or anywhere near the statutory allowable limits.

Order that Respondent reimburse the Board costs incurred in this matter in the aggregate total of \$140,756.33, which sum includes \$9,800 in expert fees, \$21,896.33 in investigative costs and \$109,060 in attorney fees.

WHEREFORE it is on this 6th day of December 2017:

As set forth on the Record on October 11, 2017,

ORDERED:

1. The license of Binod P Sinha, M.D., to practice medicine and surgery in the State of New Jersey shall be and is hereby permanently revoked.

2. Respondent is assessed a total civil penalty of \$70,000 (\$10,000 penalty for each of the seven Counts in the Complaint).

3. Respondent is assessed costs in the amount of \$140,756.33.

4. Payment of the civil penalty and costs ordered herein (which total \$210,756.33) shall be made no later than thirty (30) days from the date of entry of this Order, unless installment payments are sought from and approved by the Board prior to the due date. Payment shall be made at the Board office at P.O. Box 183 Trenton, New Jersey 08625-0183 by certified bank check, certified check, money order, wire transfer or credit card payable to the State of New Jersey. Any other form of payment will be rejected and will be returned. For an assessment which has not been paid in

full within thirty (30) days of the entry of this Order, a Certificate of Debt shall be filed pursuant to N.J.S.A. 45:1-24. Interest shall accrue in accordance with Rule of Court 4:42-11.

5. The annexed "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," are incorporated herein, and Respondent shall comply fully with all requirements and obligations set forth therein.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By:



Paul J. Carniol, M.D.
Board President

APPENDIX A

BINOD P. SINHA, M.D.

Evidence List

- P-1 Expert Report of Nitin K. Sekhri, M.D., certification.
- P-2 Dr. Sekhri's Curriculum Vitae.
- P-3 Package of subpoenas dated September 21, 2015 and January 27, 2016, and responding letter from attorney Joseph M. Gorrell.
- P-4 Certification of Sgt. Andrea Salvatini, New Jersey State Police, including prescription for 60 Endocet 10/325 and prescription for MRI received from Binod P. Sinha, M.D.
- P-5 Respondent's chart for patient "Andrea Iero/Lero", certification signed by Binod P. Sinha, Neil Sinha, M.D. and Minesh Patel, P.A., produced in response to Medical Board subpoena, via attorney Gorrell.
- P-6 Respondent's chart for patient D/Z.A., including October 16, 2012 letter from "Ralph T. Costagliola, M.D.", produced in response to Medical Board subpoena, via attorney Gorrell
- P-7 February 23, 2016 Certification of Ralph T. Costagliola, DDS, sent to Attorney General in response to February 19, 2016 inquiry regarding letter about D/Z.A.
- P-8 Attorney General's chart placing in chronological order CDS prescriptions reported by various pharmacies as issued in the name of D/Z.A.
- P-9 Package of certified pharmacy profiles for D/Z.A. from Town Drugs and Surgical Pharmacy, with sample prescriptions, and from Buena Care Pharmacy, produced in response to Medical Board subpoenas.
- P-10 Respondent's chart for patient O.S., containing letter dated November 22, 2012 from Ralph T. Costagliola, M.D.,

- produced in response to Medical Board subpoena, via attorney Gorrell.
- P-11 February 23, 2016 Certification of Ralph T. Costagliola, DDS, sent to Attorney General in response to February 19, 2016 inquiry regarding letter about O.S.
- P-12 Attorney General's chart placing in chronological order CDS prescriptions reported by various pharmacies as issued in the name of O.S.
- P-13 Certified Prescription Profiles of O.S. from Walgreen's Pharmacy, Town Drugs and Surgical Pharmacy, Buena Care Pharmacy, Smith Pharmacy.
- P-14 Respondent's chart for patient A.K. produced in response to Medical Board subpoena, via attorney Gorrell.
- P-15 Attorney General's chart placing in chronological order CDS prescriptions reported by various pharmacies as issued in the name of A.K.
- P-16 Certified Prescription Profiles of A.K. from Walgreen's Pharmacy, Town Drugs and Surgical Pharmacy, Advanced Pharmacy, Buena Care Pharmacy, Quick Chek Pharmacy.
- P-17 Respondent's chart for patient A.Z. produced in response to Medical Board subpoena, via attorney Gorrell.
- P-18 Attorney General's chart placing in chronological order CDS prescriptions reported by various pharmacies as issued in the name of A.Z.
- P-19 Certified Prescription Profiles of A.Z. from Town Drugs and Surgical Pharmacy, Advanced Pharmacy, Amboy Pharmacy.
- P-20 Excerpts from Respondent's chart for patient P.B.: progress notes for September 8, 2012, December 8, 2012, August 12, 2013, December 16, 2013, January 14, 2014, July 7, 2014, September 27, 2014, and the January 4, 2016 note by Neil Sinha, MD, from the full chart of over 400 pages, produced in response to Medical Board subpoena, via attorney Gorrell.

- P-21 Attorney General's chart placing in chronological order CDS prescriptions reported by approximately 20 pharmacies as issued in the name of P.B. by Respondent or his Physician Assistants.
- P-22 Certified Prescription Profiles of P.B. from: Walgreen's Pharmacy (7 stores), Rite Aid (4 stores), CVS CareMark Pharmacy (7 stores), Oakland Drugs, Millers of Wyckoff Pharmacy.
- P-23 Respondent's chart for patient K.S. produced in response to Medical Board subpoena, via attorney Gorrell.
- P-24 Attorney General's chart placing in chronological order CDS prescriptions reported by various pharmacies as issued in the name of K.S.
- P-25 Certified Prescription Profiles of K.S. from Elmora Pharmacy, CVS Caremark Pharmacy, Horowitz-Supremo Pharmacy, Take Care Pharmacy.
- P-26 Nitin K. Sekhri, M.D.: payment Voucher for review of records, consultation preparation of expert report, and face to face meetings.
- P-27 Certification of Costs for investigation: CyndyGohl, David Menedez, Kathleen Cefala: Certification by Ann O'Rourke.
- P-28 Joan D. Gelber: Timesheet Report for period of 1/1/2013 to 9/28/2017
- P-29 Final Decision and Order filed on 1/12/1989, suspending Sinha's license for 1 year: penalty of \$4100; and costs associated with prosecution and investigation \$11,271.91.
- P-30 Administrative Action Certification of Joan D. Gelber, and Memorandum showing the uniform rate of compensation.
- R-1 Case Western Reserve School of Medicine, Intensive Course in Medical Documentation. February 23-24, 2017.
- R-2 Certificate of Participation: The American Academy of Pain Medicine: March 16,-19, 2017.
- R-3 Certificate of Participation: The American Academy of Pain Medicine: March 16, -19, 2017.

- R-4 Certificate of Participation: American College of Physicians: March 26, 2017.
- R-5 Certificate of Participation: Boston University: March 28, 2017.
- R-6 Certificate of Participation: American Society of Addiction Medicine: April 6, 2017.
- R-7 Certificate of Completion: American Society of Addition Medicine: April 6-9, 2017.
- R-8 Case Western Reserve University School of Medicine: Intensive Course in Controlled Substance Prescribing: June 5-7, 2017.
- R-9 Case Western Reserve University School of Medicine: Buprenorphine: Keeping Up With The Changing Landscape of Office Based Opioid Treatment: October 4, 2017.
- R-10 Letter from Ted Parran, M.D., FACP, FASAMM, dated October 3, 2017.
- R-11 Curriculum Vitae of Theodore V. Parran, Jr., M.D.
- R-12 Letter from Erica Remer, M.D.
- R-13 Curriculum Vitae of Sudhir Diwan, M.D., DABIPP, FIPP

**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.

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

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended or who is ordered to cease practice for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A disqualified licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall also divest him/herself of all financial interest. Such divestiture of the licensee's interest in the limited liability company or professional service corporation shall occur within 90 days following the entry of the order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Division of Revenue and Enterprise Services demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation or sole member of the limited liability company, the corporation must be dissolved within 90 days of the licensee's disqualification unless it is lawfully transferred to another licensee and documentation of the valuation process and consideration paid is also provided to the Board.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that (during the three (3) month period) immediately following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. If the licensee has a website, a notice shall be posted on the website as well.

At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

6. Payment of Civil and Criminal Penalties and Costs.

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

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

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ORDERS/ACTIONS

All Orders filed by the New Jersey State Board of Medical Examiners are "government records" as defined under the Open Public Records Act and are available for public inspection, copying or examination. See N.J.S.A. 47:1A-1, et seq., N.J.S.A. 52:14B-3(3). Should any inquiry be made to the Board concerning the status of a licensee who has been the subject of a Board Order, the inquirer will be informed of the existence of the Order and a copy will be provided on request. Unless sealed or otherwise confidential, all documents filed in public actions taken against licensees, to include documents filed or introduced into evidence in evidentiary hearings, proceedings on motions or other applications conducted as public hearings, and the transcripts of any such proceedings, are "government records" available for public inspection, copying or examination.

Pursuant to N.J.S.A. 45:9-22, a description of any final board disciplinary action taken within the most recent ten years is included on the New Jersey Health Care Profile maintained by the Division of Consumer Affairs for all licensed physicians. Links to copies of Orders described thereon are also available on the Profile website. See <http://www.njdoctorlist.com>.

Copies of disciplinary Orders entered by the Board are additionally posted and available for inspection or download on the Board of Medical Examiners' website.

See <http://www.njconsumeraffairs.gov/bme>.

Pursuant to federal law, the Board is required to report to the National Practitioner Data Bank (the "NPDB") certain adverse licensure actions taken against licensees related to professional competence or conduct, generally including the revocation or suspension of a license; reprimand; censure; and/or probation. Additionally, any negative action or finding by the Board that, under New Jersey law, is publicly available information is reportable to the NPDB, to include, without limitation, limitations on scope of practice and final adverse actions that occur in conjunction with settlements in which no finding of liability has been made. Additional information regarding the specific actions which the Board is required to report to the National Practitioner Data Bank can be found in the NPDB Guidebook issued by the U.S. Department of Health and Human Services in April 2015. See <http://www.npdb.hrsa.gov/resources/npdbguidebook.pdf>.

Pursuant to N.J.S.A.45:9-19.13, in any case in which the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, the Board is required to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders entered by the Board is provided to the Federation on a monthly basis.

From time to time, the Press Office of the Division of Consumer Affairs may issue press releases including information regarding public actions taken by the Board.

Nothing herein is intended in any way to limit the Board, the Division of Consumer Affairs or the Attorney General from disclosing any public document.