

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

**IN RE: HOWARD SETH WEISS, M.D.
 License No.: 0101-039476**

ORDER

In accordance with the provisions of Sections 54.1-2917 and 9-6.14:12 of the Code of Virginia (1950), as amended ("Code"), a formal administrative hearing was convened before the Virginia Board of Medicine ("Board"), on October 13, 1995, in Richmond, Virginia, to act upon Dr. Weiss' petition for the reinstatement of his license to practice medicine in the Commonwealth of Virginia, which was mandatorily suspended by Order of the Department of Health Professions entered April 21, 1995, as set forth in a Notice of Hearing from the Board dated September 11, 1995.

Pursuant to Sections 9-6.14:14.1F and 54.1-2400 of the Code, the hearing was held before a panel of the Board with the Board's President presiding. The proceedings were recorded by a certified court reporter. The case was prosecuted by Grace DiLiberto, Assistant Attorney General. Lynne R. Fleming, Assistant Attorney General, was present as counsel to the Board. Dr. Weiss appeared at the formal administrative hearing and was represented by legal counsel, Franklin A. Swartz, Esquire.

FINDINGS OF FACT

Now, having properly considered the evidence and testimony presented, the Board finds the following facts by clear and convincing evidence:

1. On April 11, 1995, Howard Seth Weiss, M.D., was convicted of mail fraud, a felony, in violation of 18 United States Code Section 1341, in the United States District Court for the Eastern District of Virginia. This felony conviction was based upon Dr. Weiss' submission of false and fraudulent claims for patient services to third party payors between approximately January 1990 through December 1991. The fraudulent billing involved upcoding, in that Dr. Weiss included certain services in claims he submitted to Blue Cross/Blue Shield of Virginia, CHAMPUS, and Medicare for inpatient psychiatric treatment. These

Dr. Weiss

services included time spent completing documentation, research, records, coordinating care with specialists, nursing conferences, rounds, and family conferences and contacts. As a result of the false and fraudulent claims Dr. Weiss submitted to Blue Cross/Blue Shield of Virginia, CHAMPUS, and Medicare, he received approximately \$35,576.00 in payments to which he was not entitled. Dr. Weiss terminated this billing practice when doctors with whom he shared office space came under investigation for criminal activity involving false and fraudulent billing.

2. On April 21, 1995, the Virginia Department of Health Professions mandatorily suspended the license of Howard Seth Weiss, M.D., to practice medicine in the Commonwealth of Virginia pursuant to Section 54.1-2409 of the Code of Virginia, due to the above-referenced felony conviction.

3. By letter from his attorney, Franklin A. Swartz, Esquire, dated June 5, 1995, Dr. Weiss petitioned for reinstatement of his license to practice medicine in the Commonwealth.

4. Dr. Weiss has served his home confinement and is in compliance with his federal probation.

CONCLUSIONS OF LAW

Based on Finding of Fact #1, the Board concludes that Dr. Weiss is in violation of Section 54.1-2915.A(1) and (3), as further defined in Section 54.1-2914.A(7), (9) and (13), and Section 54.1-2916.A(1) of the Code of Virginia.

ORDER

WHEREFORE, it is hereby ORDERED that the license of Howard Seth Weiss, M.D., to practice medicine in the Commonwealth of Virginia be, and hereby is, REINSTATED on INDEFINITE PROBATION with the following terms and conditions:

1. Dr. Weiss shall comply with the terms of his federal probation.
2. Within one year of entry of this Order, Dr. Weiss shall successfully complete a course on CPT coding.

Dr. Weiss

3. Dr. Weiss shall make his billing records available to an agent of the Department of Health Professions upon request for inspection and copying.

4. Dr. Weiss shall appear before an Informal Conference Committee of the Board at the end of his federal probation. Said Committee shall be the instrument of the Board responsible for reviewing and approving all information relative to this Order, to include any modifications, and shall determine the frequency of further appearances by Dr. Weiss before it.

As provided by Rule 2A:2 of the Supreme Court of Virginia, Dr. Weiss has thirty (30) days from the date of service (the date he actually received this decision or the date it was mailed to him, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Warren W. Koontz, M.D., Executive Director, Board of Medicine. In the event that this decision is served by mail, three (3) days are added to that period.

Pursuant to Section 9-6.14:14 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public inspection and copying upon request.

FOR THE BOARD

Warren W. Koontz
Warren W. Koontz, M.D.
Executive Director
Virginia Board of Medicine

ENTERED: OCT 20, 1995

RECEIVED: OCT 23, 1995

John W. Hasty
John W. Hasty, Director
Department of Health Professions

LM/vb101602.ORDERS

I hereby certify that the attached document is a true and exact copy of a Board Order presented before me this 12th day of April 1995
Walter S. Anderson
Notary Public
My commission expires 7/31/97
Notary Public