

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Board of Registration
in Medicine

Adjudicatory Case No.
98-07

_____)
In the Matter of)
)
Alan Fisch, M.D.)
_____)

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STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine ("the Board") has reason to believe that Alan Fisch, M.D., ("the Respondent") has engaged in conduct which calls into question his competence to practice medicine, including billing an insurance company for psychotherapy visits with two patients in 1992, when he never actually provided these services.

Facts Relating to the Respondent

1. The Respondent, Alan Fisch, M.D. was born on March 19, 1938. His business address is 149 Buckminster Road, Brookline, Massachusetts 02146. The Respondent is a 1963 graduate of the Tufts University School of Medicine. His principle area of specialty is psychiatry and he is board certified in that field. He

has been licensed to practice medicine in the Commonwealth of Massachusetts since July 23, 1964 under Board Number 28176.

Facts Relating to Patient A and Patient A's wife

2. On divers days between September 1991 and January 1992, the Respondent provided psychotherapy services to Patient A.

3. In February 1992, the Respondent provided Patient A and his wife with a joint psychotherapy session. He thereafter impermissibly billed Patient A and his wife for separate psychotherapy sessions and he alleged that these visits had occurred on different dates.

4. Between February 1, 1992 and May 26, 1992, the Respondent billed Patient A's insurer for thirteen psychotherapy sessions that he never provided to Patient A.

5. Between February 1992 and June 1992, the Respondent billed Patient A's insurer for seven psychotherapy sessions that he provided to Patient A's wife, when in fact, he never provided these services to Patient A's wife.

Legal Basis for Proposed Relief

Pursuant to G.L. c. 112, sec. 5(c) and 243 CMR 1.03(5)(a)(3), the Board may discipline a physician who is guilty of engaging in conduct which calls into question his ability to practice medicine, including, but not limited to gross misconduct in the practice of medicine or practicing medicine fraudulently.

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Pursuant to G.L. c.112, sec 61, the Board may discipline a physician for gross misconduct in the practice of his or her profession.

Pursuant to 243 CMR 1.03(5)(a)(10), the Board may discipline a physician for practicing medicine deceitfully or engaging in conduct which has the capacity to deceive or defraud.

Pursuant to 243 CMR 1.03(5)(a)(18), the Board may discipline a physician for misconduct in the practice of medicine.

Under the provisions of *Raymond vs. Board of Registration in Medicine*, 387 Mass. 708 (1982) and *Levy vs. Board of Registration in Medicine*, 378 Mass. 519 (1979), the Board may discipline a physician for conduct that undermines public confidence in the integrity of the profession or for conduct which shows lack of good moral character.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, secs. 5, and 61. This adjudicatory proceeding will be conducted in accordance with the provisions of 801 CMR 1.01, et seq.

Nature of the Relief Sought

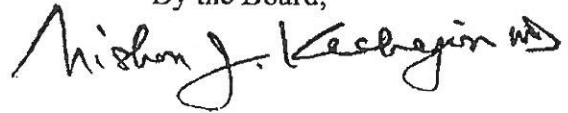
The Board is authorized and empowered to order appropriate disciplinary measures, which may include revocation or suspension of the Respondent's license. The Board may also order one or more of the following: reprimand, censure, fine, the performance of uncompensated public service, a course of

education and training or other limitations upon the Respondent's practice of
medicine.

Order

Wherefore, it is hereby **Ordered** that the Respondent show cause why he
should not be disciplined for the conduct described herein.

By the Board,



Nishan Kechejian, M.D.
Chairman

Dated: 2/11/98

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Mass. 708 (1982) and Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979).

Sanction and Order

In the past, the Board has consistently responded strictly to cases involving physicians who have engaged in fraudulent billing practices. See Feldstein v. Board of Registration in Medicine, 387 Mass. 339 (1982); Levy; supra; In the Matter of Reinaldo de los Heros, M.D., Adjudicatory Case No. 97-55-XX (Final Decision and Order, March 12, 1997); In the Matter of Richard F. Finkel, M.D., Adjudicatory Case No. 96-42-DALA (Final Decision and Order, July 11, 1996); In the Matter of Richard P. Skodnek, M.D., Adjudicatory Case No. 94-42-DALA (Final Decision and Order, December 27, 1995); In the Matter of Michael Pearlman, M.D., Adjudicatory Case No. 91-8-DALA (Final Decision and Order, September 9, 1992), In the Matter of Paula J. Hallett, M.D., Adjudicatory Case No. 88-54-TR (Final Decision and Order, September 6, 1989). As we stated in Pearlman, "...the absence of criminal prosecution ... does not diminish the wrongfulness of the Respondent's acts or the responsibility of the Board to impose a sanction." Id. at 2.

The Respondent claims that his acts were not the consequence of a deliberate plan to defraud, but that the false bills attributable to errors by his billing service and various secretaries, or the result of forgetfulness on the part of the patients regarding the dates of their psychotherapy sessions. However, as we stated in Hallett, a physician "is responsible for the acts [related to billing] of [his] employees, and there [is] no justification for these false bills having been issued." Id. at 19. We reject the Respondent's various explanations, as we agree with the Chief Administrative Magistrate who found that "a clear pattern forms when the three groups of patients are looked at together....There are simply too many errors to ascribe them to mistake or memory lapse."

It appears from the cases of Patients A, B and C that the Respondent inflated the number of visits of each patient beyond that which actually occurred. It also appears with respect to the spouses of Patients A, B and C that the Respondent similarly inflated the number of visits of each spouse. We consider two factors to be evidence of the Respondent's attempts to disguise his misconduct: (1) the Respondent's inserting "accurate" information in the treatment records of Patients B and C, but indicating that the information came from the patients on days when, in fact, the Respondent had not seen the patients; and (2) the Respondent's recording of the treatment records of Patients B and C, and their spouses, in pencil.

Finally, we find significant support in the Chief Administrative Magistrate's findings of evidence of the Respondent's motive for engaging in his misconduct. For example, after Patient A accused the Respondent of "double billing," the Respondent stated the "Baystate did not pay real well." Similarly, the Respondent complained to his secretary "about the limitations on reimbursement from insurance companies," and stated that he "'upcoded' or charged for more expensive services to make up for it."

Beyond the above-referenced pattern of misconduct found by the Chief Administrative Magistrate that initially gave rise to these proceedings, we also weigh heavily the coal seam of deceit that runs through the Respondent's various attempts at explaining the events in question. For instance, the Respondent advised the Board's investigator (and apparently also Bay State Health Care) that a billing error was attributable to the fact that his billing clerk confused the name of Patient A's wife with a similarly named person when he communicated the billing information to the clerk telephonically. The billing clerk, however, denied ever receiving this billing information telephonically. The Respondent also advised the Board's investigator that a billing error was attributable to the fact that his billing clerk had suffered a broken leg and the billing information had to be transmitted telephonically. The billing clerk testified that she never broke her leg. Finally, the

Respondent continued to maintain, under oath, at the hearing on this matter that he did, in fact, see Patient B and his spouse on all of the dates for which he billed.

The Chief Administrative rejected this sworn testimony, as do we.

The Board is required to police the medical profession, and discipline those physicians "who do not live up to the solemn nature of their public trust." Levy, supra; see, Feldstein supra. In the past, the Board has generally revoked the licenses of physicians who engage in insurance fraud. In imposing a sanction, the Board has considered the particular circumstances of the cases before it, as well as the high regard in which the Respondent is apparently held by colleagues. The Board also notes that the events at issue occurred over eight years ago and that there have been no complaints since then.

Therefore, in light of the foregoing, the Board hereby indefinitely suspends the Respondent's license to practice medicine and imposes a fine of \$5,000.00, to be paid within thirty days. This suspension is stayed for thirty days to allow for the termination and orderly transfer of the Respondent's patients. The Respondent may petition for a stay of such suspension after two years upon demonstrating (1) that restitution has been made; and (2) the completion of 200 hours of community service in accordance with a plan approved in advance by the Board. Any stay may be conditioned upon the Respondent entering into a probationary agreement acceptable to the Board.

Because Patient D and her husband refused to testify, no evidence of their treatment with the Respondent was received. Therefore, all allegations pertaining to Patient D and his spouse are hereby dismissed.

The Respondent shall provide a complete copy of this Final Decision and Order with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery, to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-

