

FILED

APRIL 1, 2010

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

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EFFECTIVE

Nunc Pro Tunc March 15, 2010
NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: Kathy Stroh Mendoza
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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
OAL Docket No. BDS 07431-2009N

_____	:	
IN THE MATTER OF THE SUSPENSION :	:	
OR REVOCATION OF THE LICENSE OF :	:	Administrative Action
	:	
NABIL EL RAFEI, M.D. :	:	CONSENT ORDER
LICENSE NO. MA02628400 :	:	
	:	
TO PRACTICE MEDICINE AND :	:	
SURGERY IN THE STATE OF NEW :	:	
JERSEY :	:	
	:	
_____	:	

This matter was opened to the State Board of Medical Examiners (the "Board") upon the filing of an Administrative Complaint on May 12, 2009, by the Attorney General of New Jersey against the Respondent Nabil El Rafei, M.D., alleging, inter alia, that Respondent permitted an unlicensed person to perform

an act for which a license is required, failed to supervise that employee during the period she was an Associate Counselor, and maintained records and issued bills that failed to accurately reflect the treatment or services rendered.

The Respondent, through his counsel, Kern Augustine Conroy and Schoppmann, P.C., filed his Answer to the Complaint on June 12, 2009, and said Answer denied the substantive allegations of the Complaint and asserted affirmative defenses.

The matter was transferred to the Office of Administrative Law as a contested case and assigned for hearing to the Honorable Jeffrey Gerson, Administrative Law Judge. The hearing in this case was scheduled to commence on March 1, 2010. At the hearing the parties reached an agreement as set forth below.

Inasmuch as the parties now desire to resolve this matter without recourse to formal proceedings, and the Respondent having agreed to the below listed terms, and the Board finding the provisions of the within Order sufficiently protective of public health, safety and welfare, and for good cause shown,

IT IS on this 15th day of March, 2010

ORDERED AND AGREED THAT

1. Respondent, Nabil El Rafei, M.D., shall retire from the practice of medicine and psychiatry in the State of New Jersey, to be deemed a voluntary surrender of his license upon

retirement, and Respondent shall not seek reinstatement of his license or relicensure in the State of New Jersey.

2. Respondent shall have a sixty (60) day "wind down" period of his practice of psychiatry. During this "wind down" period, Respondent shall accept no new patients. Respondent shall comply with N.J.A.C. 13:35-6.22(c), and the notification required by this regulation shall be made no later than April 15, 2010, that as of May 15, 2010 Respondent will be retired. Further, Respondent shall provide all necessary care or services, including the provision of necessary prescriptions, until the date on which services are to be terminated. Respondent shall comply with all requirements set forth in N.J.A.C. 13:35-6.5 for access to and transfer of patient records, and pursuant to N.J.A.C. 13:35-6.22(f), when requested by the patient, Respondent shall make reasonable efforts to assist the patient in obtaining medical services from another licensee qualified to meet the patient's medical needs. These efforts may include, but are not limited to, providing referrals to the patient.

3. Respondent admits to repeated acts of negligence, in violation of N.J.S.A. 45:1-21(d), for and including failure to ensure that an employee of his practice was properly licensed as an associate counselor for approximately three years.

4. Respondent is assessed a civil penalty in the amount of \$27,500 for the violation of N.J.S.A. 45:1-21(d), repeated acts of negligence, pursuant to N.J.S.A. 45:1-25.

5. Respondent is assessed costs in the amount of \$7,500 including the Board's investigative costs, expert fees, costs of appearance before the Board and attorney fees incurred by the State, as provided by N.J.S.A. 45:1-25(d).

6. Payment of said penalty and costs (total \$35,000) shall be paid as follows: \$17,500 on or about March 15, 2010 upon the filing of this Consent Order; \$17,500 within six (6) months from the filing of this Consent Order, or September 15, 2010. Said penalty shall be submitted by certified check or money order made payable to the State of New Jersey and forwarded to the Board of Medical Examiners c/o William V. Roeder, Executive Director, State Board of Medical Examiners, 140 East Front Street, P.O. Box 183, Trenton, New Jersey 08625-0183.

7. The Board shall file a Certificate of Debt for the entire amount due and owing upon entry of this Consent Order. Upon satisfaction of the full amount of costs and penalty, the Board will file a Warrant of Satisfaction.

8. The Respondent Nabil El Rafei, M.D. shall fully comply with the Directives for Disciplined Licensees, a copy of which is attached as Exhibit A and is made a part of this Order.

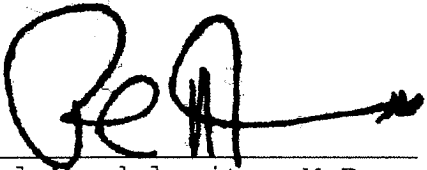
9. This Order shall be a full, complete and final resolution of the matter now pending before the Office of Administrative Law entitled In re Nabil El Rafei, M.D. (Docket No. BDS 07431-2009N), and the parties hereby consent to the Office of Administrative Law closing the matter and returning the matter to the Board, as a settlement of a contested matter.

10. The Board reserves the right to bring further disciplinary action upon receipt of any reliable information indicating that Respondent has violated any term of this Order.

11. The Board shall retain jurisdiction to enforce the terms of this Order.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By: _____


Paul Mendelowitz, M.D.
President

I have read and I understand the terms
Of this Order and I agree
to be bound by it. I hereby consent to
the entry of this Order.

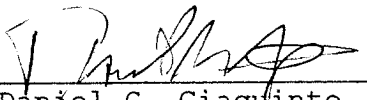


Nabil El Rafei, M.D.

Date: 3-19-2010

We hereby consent to the form and entry
of this Order.

KERN, AUGUSTINE, CONROY & SCHOPPMANN, P.C.
Attorneys for Nabil El Rafei, M.D.

By: 

Daniel G. Giaquinto, Esq.
Attorney for Nabil El Rafei, M.D.

Date: 3/23/2010

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. 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 license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation 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. 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 or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee 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 suspended 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, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must 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 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. 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 action.

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 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 licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the 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 Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

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 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. 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.

**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.