

IN THE MATTER OF

*

BEFORE THE

ZACHARY T. LEVINE, M.D.

*

MARYLAND BOARD OF

Respondent

*

PHYSICIANS

License Number: D55620

*

Case Number: 2003-0692

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On April 28, 2004, the Maryland Board of Physicians (the "Board"), voted to charge Zachary T. Levine, M.D., (the "Respondent") (D.O.B. 07/30/67), License Number D55620, under the Md. Health Occ. Code Ann. ("H.O.") §§ 1-301 et seq.; and the Maryland Medical Practice Act (the "Act"), H.O. §§ 14-101 et seq.

The Board charged the Respondent with violating the following provisions of the Health Occupations Article:

§ 1-302 Prohibited referrals; exceptions; disclosures.

(a) *Prohibited referrals.* – Except as provided in subsection (d) of this section, a health care practitioner may not refer a patient, or direct an employee of or person under contract with the health care practitioner to refer a patient to a health care entity:

(1) In which the health care practitioner or the practitioner in combination with the practitioner's immediate family owns a beneficial interest; [or]

* * *

(3) With which the health care practitioner, the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family has a compensation arrangement.

- (b) *Payment prohibited.* – A health care entity or a referring health care practitioner may not present or cause to be presented to any individual, third party payor, or other person a claim, bill, or other demand for payment for health care services provided as a result of a referral prohibited by this subtitle.

§ 1-306 Disciplinary actions.

A health care practitioner who fails to comply with the provisions of this subtitle shall be subject to disciplinary action by the appropriate regulatory board.

The Respondent was notified of the charges through service by certified mail on October 26, 2004. A conference before the Board Case Resolution Conference was scheduled for January 5, 2005, and a hearing was scheduled for this matter before the Office of Administrative Hearings for May 3 and May 4, 2005. As a result of negotiations before the Board Case Resolution Conference, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law and Order, with the terms and conditions set forth below.

FINDINGS OF FACT

The Board makes the following findings of fact:

1. At all times relevant, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to practice medicine in Maryland on January 5, 2000, under License Number D55620. The Respondent currently maintains an active Maryland medical license.
2. The Respondent is Board-certified in neurological surgery.
3. The Board received a complaint regarding a physician group located in Montgomery County, Maryland (subsequently identified as the Washington Brain and

Spine Institute, P.C., hereinafter, "WBSI").

4. The complaint concerned WBSI's opening of a magnetic resonance imaging ("MRI") center in its private office with the intention of referring its own patients for MRI scans on its own machine. The complaint asserted that this practice was in violation of the Maryland self-referral laws under H.O. §§ 1-301 et seq.

5. WBSI subsequently acknowledged to the Board that: it had leased an MRI machine, placed it on the premises occupied by its Bethesda Office, and employed a staff to operate the machine; the physician members of WBSI referred their own patients for MRI scans taken on its machine; and WBSI had contracted with a radiology group to place one of its members at its Bethesda Office to interpret and report on the MRI scans ordered by its group members and taken on its MRI machine.

6. At all times relevant:

- a. WBSI was a professional corporation registered in the District of Columbia and authorized to do business in the State of Maryland.
- b. WBSI's principal office was located at 4927 Auburn Avenue, Bethesda, Maryland 20814 (hereinafter the "Bethesda Office").
- c. WBSI was a group practice consisting of several physicians, all of whom specialized in the practice of neurosurgical surgery.
- d. The Respondent had a beneficial interest in, and/or a compensation arrangement with WBSI.
- e. The Respondent practiced medicine and surgery and/or provided health care services at WBSI's Bethesda Office.
- f. The members of this group practice consisted of the following individuals: the Respondent; Edward F. Aulisi, M.D. (License # D43921); John W. Barrett, M.D. (License # D02781); F. Donald Cooney, M.D. (License # D09156); Alexandros D. Powers, M.D. (License # D43691); Jeff Jacobson, M.D. (License # D29422); and

Donald C. Wright, M.D. (License # D54327).

- g. None of the above physicians specialized in the practice of radiology, or held himself out to be a radiologist.
- h. In or about 2002, WBSI leased an MRI machine, placed it on the premises of its Bethesda Office, and employed a staff of technicians to operate the MRI machine.
- i. The physician members of WBSI referred their own patients for MRI scans, which were then taken on the MRI machine at its Bethesda Office.
- j. On or about July 1, 2002, WBSI entered into a contract with a private radiology group, Center Radiology, P.C. (hereinafter "Center Radiology"). Center Radiology is a professional corporation registered in the District of Columbia. Pursuant to the terms of the contract, Center Radiology agreed to provide one or more radiologists to read, interpret and evaluate MRI scans taken on the MRI machine that WBSI leased and maintained on the premises of its Bethesda Office.
- k. Center Radiology further agreed to read such scans on the premises of WBSI's Bethesda Office and agreed to accept compensation on a per-case basis at a negotiated, flat rate.
- l. According to the contract, WBSI acknowledged that Center Radiology would remain at all times an independent contractor of services to WBSI.
- m. The radiologists placed by Center Radiology at WBSI to read MRI scans were at all relevant times employees of Center Radiology. No one affiliated with WBSI discussed with Center Radiology, or the physicians from Center Radiology, allocation of overhead expenses of WBSI or the distribution of practice income of WBSI.
- n. No radiologist at Center Radiology was a member of WBSI. WBSI's payment for physician services by the radiologists supplied by Center Radiology was not determined by overhead expenses or practice income. WBSI had no financial relationship with Center Radiology other than to compensate it on a per-case, negotiated rate.
- o. After entering into this contract, Center Radiology placed one or

more radiologists on WBSI's premises from time to time. The physician members of WBSI referred patients to undergo MRI scans on the MRI machine located in its Bethesda Office. The radiologists assigned by Center Radiology then interpreted those scans and provided test reports to those referring physicians.

- p. The Respondent referred patients for MRI scans that were taken on the MRI machine that was leased by WBSI and located on the premises of WBSI's Bethesda Office. The radiologists supplied by Center Radiology then interpreted those scans, and provided reports to the Respondent. WBSI then billed patients, either directly or through third party providers, for the MRI scans. As a member of WBSI, the Respondent had a financial interest in these referrals.
- q. The Respondent entered into an arrangement with members of his group practice to refer patients for MRI scans under the circumstances described above.
- r. The Respondent, through WBSI, presented or caused to be presented to individuals or third party payors claims, bills, or other demands for payment for MRI scans performed as a result of the referrals described above.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated: H.O. § 1-302(a), in that the Respondent referred a patient to a health care entity in which he owns a beneficial interest [or] had a compensation arrangement; H.O. § 1-302(b), in that the Respondent presented or caused to be presented to any individual, third party payor, or other person a claim, bill, or other demand for payment for health care services provided as a result of a referral prohibited by this subtitle; and H.O. § 1-306, in that the Respondent failed to comply with the provisions of this subtitle.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 23rd day of Feb, 2005, by a majority of the full and authorized membership of the Board considering this case:

ORDERED that the Respondent:

- a. on or before July 1, 2005, shall cease and desist from referring patients for MRI/CT scans to any health care entity in which the Respondent has a beneficial interest and/or compensation arrangement, or to any health care entities in violation of the Maryland Self-Referral laws;
- b. on or before July 1, 2005, shall divest himself from any health care entity offering MRI/CT scanning services in which he has a beneficial interest and/or compensation arrangement;
- c. on or before July 10, 2005, the Respondent shall provide written documentation to the Board which provides confirmation and proof that the Respondent has fully complied with the terms and conditions as set forth in (a.) and (b.) above and that the full compliance occurred on or before July 1, 2005; and be it further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and be it further

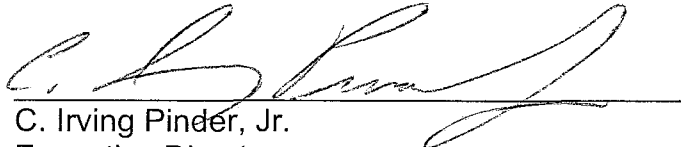
ORDERED that should the Respondent violate any of the terms and/or conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for a hearing, may impose any additional sanctions, including a reprimand, probation, suspension, revocation and/or a monetary fine authorized under the Maryland Medical Practice Act or authority of the Board; and be it further

ORDERED that Respondent shall comply and practice within all statutes and regulations governing the practice of medicine in the State of Maryland; and be it further

ORDERED that this Consent Order is a public document pursuant to Md. State Gov't Code Ann. § 10-611 et seq.

2/25/05

Date



C. Irving Pinder, Jr.
Executive Director
Maryland Board of Physicians

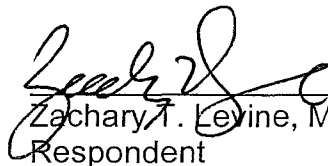
CONSENT

I, Zachary T. Levine, M.D., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I admit that the foregoing Findings of Fact constitute sufficient evidence to support the Board's findings and Conclusions of Law that I violated Md. Health Occupations Code Ann. § 1-302(a)(1) and (3); § 1-302(b); and § 1-306. I agree and accept to be bound by the foregoing Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law in this proceeding.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce the Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

2/15/05
Date


Zachary T. Levine, M.D.
Respondent

STATE OF MARYLAND
CITY/COUNTY OF:

I HEREBY CERTIFY that on this 15 day of February, 2005,
before me, a Notary Public of the State and County aforesaid, personally appeared
Zachary T. Levine, M.D., and gave oath in due form of law that the foregoing Consent
Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Asia Greaherger
Notary Public

My commission expires: 2/1/06