**STATE OF CONNECTICUT**
**CONNECTICUT MEDICAL EXAMINING BOARD**

Naimetulla Syed, M.D.
License No. 023478

Petition No. 2011-141

## MEMORANDUM OF DECISION

### *Procedural Background*

On April 13, 2012, the Connecticut Department of Public Health ("Department") presented a Statement of Charges ("Charges") to the Connecticut Medical Examining Board ("Board") against license number 023478 of Naimetulla Syed, M.D. ("Respondent"). Board ("Bd."). Ex. 2. The Charges allege that Respondent's license is subject to disciplinary action pursuant to §§ 19a-17 and/or 20-13c of the Connecticut General Statutes ("Statutes"). The Charges and the Notice of Hearing scheduling a hearing on December 14, 2012 were sent to Respondent by certified mail, return receipt requested, and first class mail. Bd. Ex. 1.

On October 17, 2012, Respondent filed a Motion for Continuance of the December 14, 2012 hearing, which was granted, and a hearing was scheduled for February 5, 2013. Bd. Ex. 3. On October 23, 2012, Respondent submitted an Answer to the Charges along with a Special Defense to Count Two of the Charges. Respondent ("Rt.") Ex. A. On November 20, 2012, Respondent filed an Amendment to the Answer to Statement of Charges to Add a Special Defense to Count One of the Charges. Rt. Ex. B.

On January 25, 2013, the Department filed a Request to Modify Time of Commencement of Hearing, which was granted. Bd. Ex. 4. On February 5, 2013, Respondent filed a Withdrawal of Special Defense to Count Two of the Charges. On February 5, 2013, the hearing was held before a duly authorized panel of the Board comprised of Raymond Andrews, Esq., Michael Lindberg, M.D., and Queenie Collins ("Panel"). Bd. Ex. 1.

The panel conducted the hearing in accordance with Chapter 54 of the Statutes and § 19a-9a-1 *et seq.* of the Regulations of Connecticut State Agencies ("Regulations"). Respondent was represented by his attorney, Elliot B. Pollack. Attorney Matthew Antonetti represented the Department. The Department and Respondent presented evidence, conducted cross-examination, and provided argument on all issues.

All Panel members involved in this Memorandum of Decision ("Decision") attest that they have heard the case or read the record in its entirety. The Board reviewed the Panel's

proposed final decision in accordance with the provisions of § 4-179 of the Statutes. The Board considered whether Respondent poses a threat, in the practice of medicine, to the health and safety of any person. This Decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

### *Allegations*

In paragraphs 1, 4, and 7 of the Charges, the Department alleges that Respondent of Glastonbury, Connecticut is the holder of Connecticut physician and surgeon license number 023478.

***Count One***

In paragraph 2 of the Charges, the Department alleges that on or about July 5, 2010, Respondent wrote a prescription for methylphenidate in patient L.V.'s name but provided the prescription to S.S., another patient.

In paragraph 3 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to § 20-13c, including, but not limited to § 20-13c (4) of the Statutes.

***Count Two***

In paragraph 5 of the Charges, the Department alleges that during the course of approximately January 2010 through September 2010, Respondent billed insurance for one or more patient visits by patient L.V. that are not recorded in his medical records for said patient and/or did not occur.

In paragraph 6 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to § 20-13c, including, but not limited to § 20-13c (4) of the Statutes.

***Count Three***

In paragraph 8 of the Charges, the Department alleges that upon renewal of Respondent's license effective February 1, 2011, Respondent had failed to comply with the continuing medical education requirements set forth in § 20-10b of the Statutes.

In paragraph 9 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to § 20-13c, including, but not limited to § 20-13c (13) of the Statutes.

## *Findings of Fact*

1. Respondent of Glastonbury, Connecticut is the holder of Connecticut physician and surgeon license number 023478. Rt. Ex. A; Department ("Dept.") Ex. 3, p. 1.

2. From February 2007 to the present, S.S. has been Respondent's patient. Dept. Ex. 1, pp. 5-6, 13 (under seal), 57-70, 95. S.S. suffers from attention hyperactivity disorder ("ADHD"), and requires monthly prescriptions of Methylphenidate ("Ritalin"). *Id.* at 57.

3. From October 27, 2008 to October 11, 2010, L.V. was Respondent's patient. Dept. Ex. 1, pp. 5-6, 73-80; Tr. pp. 57-58, 63-68. L.V. suffers from ADHD, and requires monthly prescriptions of Ritalin. *Id.* at 73.

4. During the time L.V. was treated by Respondent, L.V. orally authorized Respondent to give L.V.'s prescriptions to S.S. to bring the prescription to L.V. when L.V. was unable to keep her regularly scheduled appointments with Respondent. Tr. pp. 59-60, 83.

5. On July 4, 2010, L.V. missed a pre-scheduled medical appointment with Respondent. Dept. Ex. 1, pp. 79, 80, 97.

6. On or about July 5, 2010, Respondent wrote a prescription for Ritalin in patient L.V.'s name but provided the prescription to S.S. Rt. Ex. A; Dept. Ex. 1, pp. 5-6, 13 and 85 (under seal), 95-96; Tr. pp. 22 and 25-28 (under seal), 57-58.

7. Respondent billed for medical services provided to L.V. on January 4 and 29, February 6 and 13, May 21, and August 7 and 27, 2010. Dept. Ex. 1, pp. 13 and 17-19 (under seal), 78-80; Tr. pp. 51-54. However, L.V.'s medical chart does not indicate that Respondent provided services to L.V. on those dates. *Id.*

8. Respondent billed for medical services provided to L.V. on June 4, and September 11, 2010, but Respondent documented that L.V. did not appear for treatment on those days. Dept. Ex. 1, pp. 13 and 18-19 (under seal), 79-80; Tr. pp. 52-54.

9. The Connecticut Department of Social Services ("DSS") informs physicians that, in accordance with § 17b-262-531(h) of the Regulations, DSS does not pay for cancelled office visits and appointments that patients do not keep. Tr. pp. 54-55; § 17b-262-531(h) of the Regulations.

10. Upon the renewal of Respondent's license, effective February 1, 2011, Respondent failed to comply with the continuing medical education ("CME") requirements set forth in § 20-10b of the Statutes. Dept. Ex. 1, p. 42; Tr. p. 93.

11. The testimony of Department's witness, L.V., is not credible.

12. The testimony of Department's witness, Janet Bacon, is credible.

13. Respondent's testimony is credible.

***Discussion and Conclusions of Law***

Conn. Gen. Stat. § 20-13c provides, in pertinent part, that:

> The Board is authorized to restrict, suspend or revoke the license or limit the right to practice of a physician or take any other action in accordance with section 19a-17, for any of the following reasons: . . . (4) illegal, incompetent or negligent conduct in the practice of medicine; . . . In each case, the board shall consider whether the physician poses a threat, in the practice of medicine, to the health and safety of any person. If the board finds that the physician poses such a threat, the board shall include such finding in its final decision and act to suspend or revoke the license of said physician.

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Charles Ray Jones v. Connecticut Medical Examining Board, SC #18843 (2013); Goldstar Medical Services, Inc., v. Department of Social Services,* 288 Conn. 790, 821 (2008). The Panel relied on the training and experience of its members in making its findings of fact and conclusions of law. *Pet v. Department of Health Services,* 228 Conn. 651, 667 (1994).

The Department sustained its burden of proof with regard to paragraphs 1, 2, and 4-9 of the Charges. The Board finds that Respondent acted illegally, incompetently, and negligently in the practice of medicine. Accordingly, the Board concludes that there is adequate basis upon which to impose discipline on Respondent's license, pursuant to §§ 19a-17 and 20-13c (4) of the Statutes.

Respondent admitted the allegations contained in paragraphs 1, 2, 4, and 7 of the Charges. Findings of Fact ("F.F.") 1, 6. Therefore, these allegations are not in dispute. *See, Jones Destruction, Inc. v. Upjohn,* 161 Conn. 191, 199 (1971); *Commissioner of Public Works v. Middletown,* 53 Conn. App. 438, 444 (1999) cert. denied 250 Conn. 923 (1999).

***Count One***

The Department sustained its burden of proof with regard to the allegations contained in paragraph 2 of the Charges. Respondent admits that on June 5, 2010, he wrote a prescription for Ritalin in patient L.V.'s name but provided the prescription to S.S., another patient. F.F. 6.

Regarding the allegation contained in paragraph 3 of the Charges, the Department failed to sustain its burden of proof that Respondent's conduct alleged and proven in paragraph 2 of the Charges warrants disciplinary action. In support of this allegation, the Department presented the testimony of L.V. L.V. testified that she was Respondent's patient from July 2009 to May 2010, and that, in the course of her treatment, Respondent prescribed Ritalin for her. Tr. pp. 20-21. L.V. also testified that S.S., who was already one of Respondent's patients, was the person who brought L.V. to Respondent's practice for medical care (Tr. p. 29), and L.V. and patient S.S. were in a relationship and lived together until May 14, 2010. *Id.* at 21 and 26.

L.V. further testified that sometime in June 2010, L.V. received a call from Rite Aid Pharmacy indicating that L.V. had a Ritalin prescription ready for pick up. *Id.* at 22 (under seal). But L.V. had not brought the prescription for Ritalin to Rite Aid Pharmacy to be filled. *Id.* L.V. assumed that S.S. had brought the prescription to the pharmacy because S.S. had done this before on a couple of occasions. *Id.* at 30 (under seal). L.V. testified that sometimes when L.V. and S.S. were together at Respondent's office, S.S. would pick up the script for L.V.'s prescription from Respondent's office, and then S.S. would take it to the pharmacy to be filled. *Id.* at 32-33 and 42-43 (under seal).

However, L.V. testified that she had not authorized Respondent to hand over to S.S. any of her prescriptions when she was not present. *Id.* at 22, 23, 25 and 27-28 (under seal). L.V. also testified that she never missed doctor's appointments. *Id.* at 27 and 34 (under seal).

The Department also presented patient S.S.'s sworn statement (Dept. Ex. 1, pp. 84-85 (under seal)), which states that: (1) prior to June 5, 2010, L.V. had authorized S.S. to obtain from Respondent S.S.'s monthly Ritalin prescription under L.V.'s name because S.S. could not afford to pay for his own prescription and lacked medical insurance; (2) on June 5, 2010, S.S. told Respondent that he did not have the money to pay for the Ritalin; (3) S.S. does not remember if S.S. asked Respondent to write the prescription script in S.S.'s name or L.V.'s name, or whether Respondent made any recommendation; (4) Respondent wrote the prescription script for S.S. in L.V.'s name; (5) S.S. brought the prescription script to the Rite Aid Pharmacy, and kept the Ritalin for his own use; (6) "this was the only time that this type of activity took place with [Respondent];" and (7) upon S.S.'s review of the June 5, 2010 prescription script, the prescription script had S.S.'s driver's license number written on it, indicating Respondent wrote the prescription for S.S.'s use. Dept. Ex. 1, pp. 84-85 (under seal).

Respondent denies that he should be disciplined for providing L.V.'s Ritalin prescription to S.S. Specifically, Respondent testified that L.V. and S.S. were a couple, and it was S.S. who brought L.V. to Respondent's practice. Tr. pp. 57, 59. Shortly after L.V. started seeing Respondent, L.V. orally authorized Respondent to provide S.S. with L.V.'s prescriptions when L.V. could not keep her doctor's appointments. Tr. pp. 59-61. Furthermore, L.V. and S.S. sometimes came to their doctor's visits together. *Id.* at 77. Consistent with previous practice, and in light of the fact that L.V. failed to keep her June 4, 2010 medical appointment with Respondent (F.F. 5), on June 5, 2010, Respondent gave S.S. a prescription for Ritalin that was written in L.V.'s name, and another Ritalin prescription written in S.S.'s name. Dept. Ex. 1, pp. 95-96; Tr. pp. 61, 70, 77, 85-86.

Respondent also denied S.S.'s statement included in Dept. Ex. 1, p. 85 (under seal) that S.S. told Respondent he lacked insurance, had financial difficulties, and needed the prescription to be filled in L.V.'s name instead of S.S.'s name. Dept. Ex. 1, pp. 97; Tr. pp. 77-78, 89-90. Respondent claims he was unaware of L.V.'s and S.S.'s breakup until months later after the breakup. Tr. p. 62. Respondent also testified that, on August 13, 2010, he learned, for the first time, that L.V. was giving her medications to S.S. Tr. pp. 69-70.

The Board finds that L.V. was not a credible witness, and her testimony was inconsistent with other evidence presented during the hearing. Tr. p. 62. For example, L.V.'s testimony that she terminated her relationship with S.S. on or before May 15, 2010 (Tr. pp. 26 and 32 (under seal)) is contradicted by Respondent's annotations in L.V.'s chart that on August 13, 2010, during an appointment session with Respondent, L.V. indicated that she and S.S. were having trouble in their relationship. Dept. Ex. 1, p. 80. Respondent also documented that he started seeing L.V. as a patient almost a year prior to the time about which L.V. testified, and until November 2010, several months after the time about which L.V. testified. Dept. Ex. 1, pp. 73-75, 63-69; Tr. pp. 30 (under seal), 63-64.

L.V.'s claim that Respondent did not see her after May 2010 is also inconsistent with Respondent's documentation of his encounters with L.V. Respondent documented that he saw L.V. three additional times on July 23, August 13, and November 11, 2010. Dept. Ex. 1, p. 80. Additionally, L.V. was not credible in that she testified that she never missed doctor's appointments with Respondent (*id.* at 27 and 34 (under seal)), yet Respondent had documented

in L.V.'s chart that she had not kept her appointments on several occasions. *Id.* at 28-29 and 34 (under seal); 75, Dept. Ex. 1, pp. 77-80.

Given the conflicting evidence about whether L.V. had authorized Respondent to give L.V.'s prescriptions for Ritalin to S.S, and considering the totality of the evidence, the Board finds that it was not unreasonable for Respondent to have assumed that L.V. had authorized Respondent to give L.V.'s prescriptions to S.S. F.F. 4. Therefore, the Board finds that no disciplinary action is warranted for the conduct that Department alleged and proved in paragraph 2 of the Charges.

***Count Two***

The Department sustained its burden of proof with regard to the allegations contained in paragraphs 5 and 6 of the Charges that Respondent merits disciplinary action for illegally billing DSS from approximately January 2010 to September 2010, for one or more medical visits by patient L.V., when the visits did not occur. F.F. 7-8. Janet Bacon, DSS Forensic Fraud Examiner, credibly testified that Respondent billed for medical services provided to L.V. on January 4 and 29, February 6 and 13, May 21, and August 7 and 21, 2010, when the medical services did not occur. F.F. 7. Ms. Bacon's testimony is corroborated by L.V.'s medical chart, which does not indicate that Respondent provided services on those dates. *Id.*

Ms. Bacon also testified that Respondent billed for medical services provided to L.V. on June 4, and September 11, 2010, when Respondent documented in L.V.'s chart that L.V. missed her medical appointments on those days. F.F. 8. Significantly, DSS informs physicians that DSS will not pay for cancelled office visits and appointments that the patients do not keep. F.F. 9.

Respondent claims to be surprised about his office staff billing DSS for medical visits for L.V. that he did not provide. Tr. p. 92. Respondent testified that while the secretaries at his office perform the billing services, he takes full responsibility for billing for cancelled services. Respondent also acknowledges that it is inappropriate to bill DSS for cancelled appointments. Tr. p. 80. Therefore, the Department sustained its burden of proof with regard to the allegations contained in the Second Count of the Charges.

*Count Three*

The Department sustained its burden of proof with regard to the allegations contained in paragraphs 8 and 9 of the Charges. Pursuant to § 20-10b(b) of the Statutes, Respondent was required to earn a minimum of 50 contact hours of CME credits within the preceding twenty-four-month period before renewing his license. Respondent admits that upon renewal of Respondent's license, effective February 1, 2011, he failed to comply with the CME requirements set forth in § 20-10b of the Statutes. Tr. p. 93.

Respondent testified that he was unable to fulfill the required CME credits because (1) Connecticut did not have any such requirements until November 2007, and (2) due to family and personal reasons, Respondent failed to attend the American Psychological Association Annual Convention from 2008 to 2010, where he normally receives approximately 40 to 50 CME credits. Tr. p. 81. Respondent further testified that he has now earned the necessary CME credits, and presented a copy of several certificates to document that he had completed the CME requirements. *Id.*; Dept. Ex. 1, pp. 43-46.

Respondent failed to comply with the CME credit requirements upon renewal of Respondent's license, effective February 1, 2011, as mandated by § 20-10b of the Statutes. Therefore, the Department sustained its burden of proof with regard to the allegations contained in paragraphs 8 and 9 of the Charges.

Accordingly, the Board concludes that there is an adequate basis upon which to impose discipline on Respondent's license pursuant to §§ 19a-17 and 20-13c (4) of the Statutes.

***Order***

Based upon the record in this case, the above findings of fact and the conclusions of law, and pursuant to the authority vested in it by §§ 19a-17 and 20-13c (4) of the Statutes, the Board finds that the misconduct alleged and proven, warrants the disciplinary action imposed by this order.

The Board orders the following in Petition No. 2011-141:

1. Respondent's license number 023478 to practice as a physician and surgeon in the State of Connecticut is hereby assessed a civil penalty of three thousand dollars ($3,000.00) for the conduct alleged and proven in paragraphs 5 and 6 of the Charges.

2. Respondent's license number 023478 to practice as a physician and surgeon in the State of Connecticut is hereby reprimanded for the conduct alleged and proven in paragraphs 5 and 6 of the Charges.

3. Respondent's license shall be placed on probation for the conduct alleged and proven in paragraphs 5 and 6 of the Charges for a period of one year under the following terms and conditions:

   a. No later than six months from the effective date of this MOD, Respondent shall submit to the Department for its pre-approval, the name of a physician licensed in Connecticut ("monitor") who, at Respondent's expense, will conduct monthly random reviews of 10% percent or ten (10) of Respondent's patient records, whichever is less, created or updated from the beginning of the probationary period. In the event Respondent has ten (10) or fewer patients, the monitor shall review all of Respondent's patient records. Within 15 days of the Department's approval, Respondent shall provide the monitor with a copy of this Decision. Respondent shall cause the monitor to confirm receipt of this Decision within 15 days after she/he has received the Decision.

      (1) Respondent's monitor shall meet with Respondent not less than once every other month during the last six months of the probationary period.
      (2) The monitor shall have the right to monitor Respondent's practice by any reasonable means which he or she deems appropriate. Respondent shall fully cooperate with the supervisor in providing such monitoring.
      (3) Respondent shall be responsible for providing monthly written monitor reports directly to the Department for the first six months of the probationary period and every other month for the last six months of the probationary period. Such monitor reports shall include documentation of dates and durations of meetings with Respondent, number and a general description of the patient records and patient medication orders and prescriptions reviewed, additional monitoring techniques utilized, and statement that Respondent is practicing with reasonable skill and safety.

b. Within one month of the commencement of the probationary period, Respondent shall attend and successfully complete a course in chart documentation, pre-approved by the Department. Within one month of the completion of such coursework, Respondent shall provide the Department with proof, to the Department's satisfaction, of the successful completion of such course.

4. Respondent's license number 023478 to practice as a physician and surgeon in the State of Connecticut is hereby assessed a civil penalty of five hundred dollars ($500.00) for the conduct alleged and proven in paragraphs 8 and 9 of the Charges.
5. Respondent shall pay the civil penalties assessed pursuant to paragraphs 1 and 4 of this Order by certified or cashier's check(s) payable to "Treasurer, State of Connecticut." The check(s) shall reference the Petition Number on the face of the check, and shall be payable within 30 days of the effective date of this Decision.
6. Respondent shall be responsible for all costs associated with the satisfaction of the terms of this Decision.

7. All correspondence related to this Decision and payment of the civil penalty must be mailed to:

Bonnie Pinkerton, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS #12HSR
P.O. Box 340308
Hartford, CT 06134-0308

8. This Decision is effective on the first day of the month after it is signed by the Board.

Connecticut Medical Examining Board

September 17, 2013

Kathryn Emmett, Esq.
Chairperson

**CERTIFICATION**

I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 4th day of September 2013, by certified mail, return receipt requested to:

Elliott B. Pollack, Esq.
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103-3702

Certified Mail RRR #91-7199-9991-7033-0326-2723

and via email to:

Matthew Antonetti, Principal Attorney
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Jeffrey A. Kardys
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Department of Public Health
Public Health Hearing Office