

A change was made on October 25, 2006 to correct a typographical error in this Board Order as follows:

On page five (5), item two (2), the date was changed from January 28, 2007 to May 1, 2007.

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Osama El Sayed A. El-Silimy, M.D.)
Complaint Nos. CR 05-054/06-082) DECISION AND ORDER
Licensure Disciplinary Action)

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S.A. Sec. 3263, et seq., 5 M.R.S.A. Sec. 9051, et seq., and 10 M.R.S.A. Sec. 8001, et seq., the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine on September 12, 2006. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether to grant Dr. Osama El-Silimy's application for re-licensure and whether Dr. El-Silimy's Maine medical license was subject to discipline based on the allegations contained in the Notice of Hearing. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Edward David, M.D., J.D., Chairman, Sheridan Oldham, M.D., Bettsanne Holmes (public member), David Nyberg, Ph. D., (public member), Kimberly K. Gooch, M.D., Gary Hatfield, M.D., George Dreher, M.D., Daniel Onion, M.D., and Cheryl Clukey (public member). Dennis Smith, Ass't. Attorney General, represented the State. Dr. El-Silimy was present and represented by Jay P. McCloskey, Esq. and Thimi R. Mina, Esq. James E. Smith, Esq. served as Presiding Officer.

The exhibits consisted of the Board's statutes and Rules, and State's 1-25 and Respondent's A, B, and C1-25. The Presiding Officer and Board determined that there were no conflicts of interest to disqualify any Board member from hearing this matter. Following the parties' opening statements, admission of exhibits, testimony and closing arguments, the Board deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the allegations in the Notice of Hearing.

II.

FINDINGS OF FACT

Osama El-Silimy, M.D. is a 62-year-old Egyptian born physician who earned a medical degree in Egypt in 1969. In 1975, he immigrated to England and joined the College of Surgeons while becoming an English citizen. He was also awarded a fellowship in otolaryngology in 1985 from the College of Surgeons. Thereafter, he practiced his specialty in both the United Kingdom and the Middle East until 1998 when he immigrated to Fort Fairfield, Maine. Dr. El-Silimy was licensed by the Maine Board of Licensure in Medicine as a physician on May 13, 1998 and subsequently established his practice in Caribou, Maine the following year.

In approximately May of 2001, the United States Government initiated an investigation of Dr. El-Silimy which resulted in a multi-count indictment issued in August of 2004 alleging numerous violations of federal laws, including “Obstruction of Criminal Investigation of Health Care Fraud; False Statements Relating to Health Care Matters; and False Statements.” On April 15, 2005, Dr. El-Silimy entered into an “Agreement to Plead Guilty” with the United States Attorney’s Office. Pursuant to that plea agreement, Dr. El-Silimy agreed to plead guilty to “Obstruction of Criminal Investigation of Health Care Fraud and Making False Statements to Federal Investigators.” Additionally, Dr. El-Silimy’s clinic, the Aroostook E.N.T. Clinic, P.A.,¹ agreed to plea guilty to Obstruction of Criminal Investigation of Health Care Fraud and Making and Using False Writings in the Delivery of Health Care Services. On May 9, 2005, Dr. El-Silimy and his clinic formally pled guilty to the federal criminal charges above pursuant to the plea agreement. These charges are felonies, and are punishable by up to five years of incarceration. The specific verbiage of the felony charges to which the licensee and his clinic pled guilty is as follows:

(i) Obstruction of Criminal Investigation of Health Care Fraud Offenses: Dr. El-Silimy and his clinic “willfully prevented, obstructed, misled, and delayed, and attempted to prevent, obstruct, mislead, and delay, the communication of information and records relating to a violation of a Federal health care offense to a criminal investigator, namely the defendants failed to produce to criminal investigators all original treatment notes and reports required by a subpoena, and produced an altered note and report for Robin B.”

¹ Dr. El-Silimy was the sole corporate officer and director of this clinic.

(ii) False Statement: Dr. El-Silimy “falsified, concealed and covered up by trick, scheme, and devise material facts, and made materially false, fictitious and fraudulent material statements and representations; namely, [Dr. El-Silimy] participated in an interview with the FBI and the United States Attorney’s Office...during which he made the following false statement: chart reviews are done to ensure that the charts are completed properly and he does not add anything to their record after the fact.”

(iii) False Statements Relating to Health Care Matters: Dr. El-Silimy’s clinic “knowingly and willfully made materially false, fictitious and fraudulent statements and representations and made and used materially false writings and documents knowing the same to contain materially false, fictitious and fraudulent statements and entries, in the connection with the delivery of and payment of health care benefits, items, and services, namely, defendants created, maintained in Robin B’s patient file, and produced to investigators, a materially false and fraudulent treatment note and report...in which the following information was added: “She just finished four week’s course of Augmentin she said,” and continue with Augmentin until she is seen with the scan films.”

Although Dr. El-Silimy pled guilty to one count of altering patient records at the meeting with FBI agents on March 12, 2002, it appears as though he altered a total of approximately 28 records on March 16 and March 20-21, 2002.

On January 17, 2006, the Maine Federal District Court imposed the following sentences regarding the plea agreement. Dr. El-Silimy was ordered to serve the minimum mandatory sentence that the Federal District Court Judge could order which was five months incarceration in a federal prison camp followed by five months home confinement. He was also ordered to pay a \$30,000 fine. Following his confinement, he was placed on probation for three years. The Aroostook E.N.T. Clinic, P.A. was fined \$100,000 and placed on five year’s probation.

It is important to note that the alterations in the patients’ records had no impact on those individuals’ treatment or surgeries. In fact, the changes were alterations of fact which already existed elsewhere in the patients’ records and, in all likelihood, may have survived scrutiny if the changes had been initialed and dated by Dr. El-Silimy.

By all accounts, Dr. El-Silimy is an excellent surgeon and provider of medical services who received wide-ranging support regarding his competency and value to the community during this proceeding. Additionally, a peer review was conducted regarding dozens of Dr. El-Silimy's surgeries which resulted in the conclusion that he is an excellent surgeon. The peer review committee also found that the alterations were insignificant and that the licensee is capable of "fine" surgery. Additionally, the co-chairman of the peer review committee testified that he was "certain that Dr. El-Silimy could have the public trust."

The Board also heard from a former United States probation officer who testified that he had interviewed 30 individuals who had endoscopic surgery from Dr. El-Silimy. Some of these individuals were named as having their records altered. None of these patients viewed themselves as victims and many stated that they would continue to seek treatment in the future from Dr. El-Silimy. His testimony added to the general statements by other witnesses that Dr. El-Silimy possessed competent surgical knowledge with the ability to perform difficult surgeries and be available to confer with other Aroostook County physicians.

At the Board hearing, Dr. El-Silimy testified, among other things, that he was very happy to reside and practice in Caribou, Maine and serve Aroostook County's approximately 60,000 citizens² who had been deprived of some ENT surgeries prior to his arrival. Moreover, the licensee has provided numerous medical services at no cost to his patients. Dr. El-Silimy testified that he "feels terrible with remorse" due to his patients' lack of appropriate medical care during his incarceration. He expressed humiliation and was ashamed of his actions but explained that he panicked after being interviewed by the FBI and felt that if he augmented certain patients' medical records, he might escape sanctions. He reiterated that all of the information that he added to the records was already available and that his actions were prompted by a fear of deportation and deep depression following the FBI interview.³

² During his incarceration, many of Dr. Silimy's patients were referred to ENT physicians in Portland, Maine due to the lack of available ENT surgeons elsewhere in the state.

³ During the licensee's sentencing, the Federal District Court Judge stated that the patient records were altered to "presumably attempt to conform those records with the standardized protocol that ENT's throughout the country had adopted prior to surgery." The Judge also commented that he believed missing CT scans from Cary and Northern Maine Medical Center were missing because of Dr. El-Silimy's removal of said records which were then apparently permanently lost to both the patients and providers. Dr. Silimy admitted that he had removed approximately 25-26 scans and did not believe that he was required to sign them out from the hospital record room at the time. He viewed the scans in his office and placed them next to his computer and that was the last he stated that he saw of them.

Dr. El-Silimy also testified that it was common for him to routinely add information to medical records. For example, some medical transcriptionists were not adequately trained in medical terminology and would transcribe Dr. El-Silimy's comments using incorrect terminology. In other instances, Dr. El-Silimy's accent would cause some confusion and result in an inaccurate transcription. Dr. El-Silimy further testified that he has obtained new computer software which protects original patient records from being altered.

III. CONCLUSIONS OF LAW AND SANCTIONS

The Board, by a vote of 9-0, concluded that Dr. Osama El-Sayed A. El-Silimy, M.D., violated the provisions of 32 M.R.S.A. Section 3282-A(2)(F), "Unprofessional Conduct" and 32 M.R.S.A. Section 3282-A(2)(G) by being convicted of a crime that involves dishonesty or false statement and which relates directly to the practice of medicine or for which incarceration for one year or more may be imposed. These violations are more specifically based upon Dr. El-Silimy's admission to obstructing the criminal investigation of health care fraud and making false statements to federal investigators.

The Board, by the same vote, ordered:

1. Dr. El-Silimy to utilize a system which would prevent patient records from being altered.
2. Dr. El-Silimy, by May 1, 2007, to complete a pre-approved Board course regarding medical recordkeeping which would include legal and ethical components.
3. That Dr. Silimy receive a Letter of Reprimand. A more serious sanction was not issued due to the fact that the licensee has already served his prison sentence and will have served his house arrest by December 31, 2006, and has paid a substantial fine. Additionally, there was no violation found regarding patient care.
4. Dr. El-Silimy's appeal from the preliminary denial of his application to renew his medical license is hereby granted. Dr. El-Silimy's medical license is renewed as of whatever date he institutes the unalterable recordkeeping system.

SO ORDERED.

Dated: October 10, 2006



Edward David, J.D., M.D. Chairman
Maine Board of Licensure in Medicine

IV.

RIGHTS OF APPEAL

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3 and 10 M.R.S.A. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.