

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

In the Matter of:)	
)	Investigative Case Nos. 11157
M. Samy El-Toukhy, M.D.)	10815, 11037
Holder of License No. 15892)	
for the Practice of Medicine)	FINDINGS OF FACT, CONCLUSIONS
in the State of Arizona.)	OF LAW AND ORDER
_____)	

INTRODUCTION

This matter was considered by the Board of Medical Examiners at its public meeting on August 6, 1998, and the Respondent-M. Samy El-Toukhy, M.D., appeared with legal counsel for the purpose of the Board conducting an informal interview, pursuant to the authority vested in the Board by A.R.S. § 32-1451(G), as amended. After due consideration of the facts and law applicable to this matter, the Board voted to issue the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The Board of Medical Examiners of the State of Arizona (hereafter, "BOMEX") is the duly constituted authority for the regulation and control of the practice of medicine in the State of Arizona pursuant to A.R.S. § 32-1401 et seq.

2. MOHAMED SAMY EL-TOUKHY, M.D. is the holder of License No. 15892 for the practice of medicine in the State of Arizona.

3. Dr. El-Toukhy treated patient S.H. from the period of approximately August 28, 1995 through March 20, 1996. Patient S.H. was diagnosed as having a small pituitary microadenoma on an MRI scan of the brain on October 11, 1995. Patient S.H.'s medications included in the past, Darvocet, Decadron and Parlodel. Dr. El-Toukhy's notes of treatment for S.H. are all typed and in the SOAP format and revealed that the patient has been treated primarily for upper respiratory infections and her pituitary adenoma. While under the treatment of Dr. El-Toukhy, patient S.H. had one referral to M.A. Kazmi, M.D., for evaluation of headaches and cervical strain.

4. By correspondence dated May 6, 1996 the Board received correspondence from Burt Faibisoff, M.D. concerning the treatment of patient S.H. by Dr. El-Toukhy and the billing for services provided for by Dr. El-Toukhy. Patient S.H. was referred to Dr.

Faibisoff by Dr. El-Toukhy for a second opinion regarding a scar on the patient's right breast. Said correspondence formed the basis for opening Board investigative file No. 10815.

5. Patient S.H. reported to Dr. Faibisoff that she had undergone a breast biopsy and had developed a poor scar. S.H. reported being seen by Dr. El-Toukhy who performed a scar revision; and, the subsequent scarring was also unacceptable to the patient.

6. Upon examination of patient S.H., Dr. Faibisoff noted that the patient had various hypertrophic scars on her back and sternum. She reported that these scars were incurred when Dr. El-Toukhy cauterized various lesions of her back and excised two lesions of her sternum. All these lesions she assumed were benign. It was during the course of her treatment by Dr. Faibisoff that patient S.H. complained of her unpaid bills from Dr. El-Toukhy, stating that she had been charged \$12,000 by Dr. El-Toukhy for these surgeries and the scar revision.

7. Dr. Faibisoff reports that patient S.H. presented bills from Dr. El-Toukhy which lists CPT codes for numerous procedures including removal of 15 lesions both malignant and benign, radical resection of soft tissue tumor of the neck and breast reconstruction.

8. Dr. Faibisoff reports in his correspondence to the Board that on examination S.H. he found there was only a 1-centimeter hyperpigmented scar in the patient's neck. There were no scars or implants suggestive of breast reconstruction; and, the patient reports that she was not admitted to the hospital for surgeries.

9. By letter dated May 9, 1997, Dr. El-Toukhy responded to the Board's request for his explanation of billings for patient S.H. concerning the information provided to the Board by Dr. Faibisoff. Dr. El-Toukhy asserted that he had experienced several changes in his billing service and that the bills related to patient S.H. ". . . are not available to us at this time." He asserts that the billing service "Fremont Financial Services" that was providing billing services for him at the time period when patient S.H. was seen ". . . is being investigated by our lawyer, Michael Johnson who is reviewing this matter." Dr. El-Toukhy asserts that Fremont Financial Services may have mishandled the billing for services related to patient S.H. and therefore urges the Board staff to address correspondence to Mr. Johnson at Medeiros and Associates, 14350 Civic Drive, Suite 100, Victorville, CA regarding billings for S.H.

10. Dr. El-Toukhy in his May 9, 1997, response to the Board's investigator, asserts that the only available document that he can provide is a statement dated 5/1/97 provided by his current billing service in Fresno, California, "Advance Professional Services." He asserts that that statement was given to the patient S.H. on May 6, 1997 for her review. This computer generated account statement for patient S.H. (account no. 008925) shows an initial billing for services on 3/5/96 and continuing through 9/30/96.

The total account receivable as of 5/1/97 was \$279.75. The activity summary shows charges in the amount of:

Charges: \$1,825.00
Adjustments: - 292.70
Payments: - 1,252.55

11. Dr. El-Toukhy concluded his letter of response to the Board by asserting that the patient filed for bankruptcy on 8/23/96 and according to his records no payments were received from the patient (before or after her filing). Dr. El-Toukhy further asserts that the 1995 patient records are kept in his California office. Additionally, he asserts that the California office maintained by him has been closed since March of 1997. Dr. El-Toukhy further asserted that he would need to receive an authorized release of records from patient S.H. before he would start seeking those records for the Board.

12. The Board's medical investigator, Michael Zakrzewski, addressed correspondence dated August 7 and September 25, 1997 to Michael Johnson, attorney, of Medeiros & Associates as suggested by Dr. El-Toukhy in order to obtain further information on the alleged investigation authorized by Dr. El-Toukhy into the accounting and billing services provided by "Fremont Financial Services". The aforementioned correspondence was sent certified mail return receipt requested but no response was received by the Board's medical investigator.

13. The Board is in receipt of the patient records for S.H. which were produced by Dr. El-Toukhy in response to Board subpoenas.

14. The Board's investigative staff were able to confirm billings to patient S.H. by Dr. El-Toukhy, which are described in the investigative staff report. The medical records provided by Dr. El-Toukhy disclose that he saw patient S.H. in his office on 11/17/95 for which there was no correlating charge. He also saw the patient on 2/29/96, 3/4/96 and 3/20/96 for which there were no charges noted. Missing from Dr. El-Toukhy's records is any evidence that this patient received the large number of nerve block injections and any surgical procedures necessitating surgical trays or absorptive dressings. The surgical charges alone for the date 9/6/95, when there were allegedly multiple nerve blocks performed came to a total of \$3,699.

15. Based upon the Board's investigative staff report it is found that from the total charges of \$6,585, only \$1,070.50 can be justified on the basis of the doctor's records for S.H. The patient's insurance company, Accordia Benefit Services, paid a total of \$4,412.87 to Dr. El-Toukhy. The Board finds that the discrepancy between the doctor's patient records for actual services to S.H., as opposed to the services billed, establishes excessive and unjustified fees for services.

16. In regard to Board investigative file No. 11037, the Board initiated an investigation based upon correspondence received from Stephen R. Stein, M.D., Medical Director, State Fund, Workers' Compensation Insurance, dated June 17, 1997. Dr. Stein

reports that he is bringing to the Board's attention Dr. El-Toukhy's treatment of a patient ("M.B.") who then had a claim with the State Compensation Fund. Dr. Stein reports that Dr. El-Toukhy provided care to this patient since 1995. During the course of treatment, the patient has received multiple injections during monthly visits to the greater occipital nerve, spinal accessory nerve, cervical plexus, suprascapular nerve, bilateral intercostal nerves, multiple paravertebral nerves, multiple level facet joints, L-1, L-2 and L-3.

17. Dr. Stein reports that in reviewing patient records it is noted that Dr. El-Toukhy has supplied preprinted forms in which he notes that he uses corticosteriods analog in his injection as well as a local anesthetic.

18. Dr. Stein reports the following concerns regarding treatment by Dr. El-Toukhy of patient M.B. which are:

A. That the physician's treatment plan consists almost entirely on a multiple corticosteriod injections at multiple unrelated sites on a very frequent basis.

B. The medical records do not reflect the amount of corticosteriod given. Based on Dr. El-Toukhy's forms, this patient may have received volumes of corticosteriods at each individual session far greater than any reasonable physician might utilize. In addition, the repetitive use of corticosteriods in high doses at monthly intervals could have an adverse effect on his endogenous adrenal cortical function.

C. The billings that have been submitted seem to be exorbitant and beyond the scope of what a reasonable physician might charge.

19. The Board and investigative staff are in receipt of the medical records for patient M.B. from the State Compensation Fund.

20. By letter dated July 18, 1997, the Board's medical investigator Michael Zakrzewski requested that Dr. El-Toukhy respond to the June 17, 1997 correspondence submitted by Dr. Stein to the Board regarding Dr. El-Toukhy's professional care and treatment of patient M.B. and other related allegations. By letter dated July 24, 1997 Dr. El-Toukhy responded to the allegations made in Dr. Stein's letter. He asserts initially that Dr. Stein is in "no position to judge his 'treatment on paper' since they fought him all the way not to get benefits." Additionally he states that:

A. "Dr. Stein does not seem to understand the treatment rendered or the amount plus extent of pain M.B. used to be in."

B. "We used small doses of cortisone equivalence to treat this patient, with no side effects whatsoever (we would never subject a patient to side effects of large doses of cortisone)."

C. "Billing was solely based on CPT codes, "Physician Fee Guide" being used as a reference. Furthermore, to the best of our knowledge, State Fund has not paid a

significant amount of the bills. For all we know, State Fund might be using this approach to delay or avoid paying their portion. (Please read letter from attorney Eric W. Slavin)."

21. Dr. El-Toukhy asserts that the patient has seen other specialists and that those other physicians agree with his treatment. Specifically, he references Dr. Harrington's neurosurgery consult.

22. The Board is in receipt of correspondence addressed to the Board's investigator dated July 23, 1997 written by Eric W. Slavin, attorney on behalf of patient M.B. Mr. Slavin asserts (presumably on behalf of his client) that he has no complaint about the care and treatment provided. Mr. Slavin asserts that he suspects that the State Compensation Fund may have been motivated in submitting the aforementioned statements in an attempt to limit liability for M.B.'s injuries and had been attempting to discontinue his benefits. Mr. Slavin further asserts that on behalf of his client he is currently litigating with the State Compensation Fund on the matter of continuing medical care for M.B. Additionally, Mr. Slavin speculates that Dr. El-Toukhy's sworn testimony concerning M.B.'s medical condition may have precipitated the complaints by the State Compensation Fund medical director.

23. The Board finds that in regard to the treatment of patient M.B. that Dr. El-Toukhy administered multiple corticosteroid injections at multiple unrelated sites on frequent occasions that may have been detrimental to the patient's health.

24. The Board also finds in regard to Dr. El-Toukhy's treatment of patient M.B. that his medical records frequently did not reflect the amount of corticosteroid given or the location of the injections; and, therefore said patient records were inadequate.

CONCLUSIONS OF LAW

1. The Board of Medical Examiners of the State of Arizona possesses jurisdiction over the subject matter hereof and over Mohamed S. El-Toukhy, M.D.

2. The Board has received substantial evidence supporting the Findings of Fact described above and that said facts constitute unprofessional conduct pursuant to:

(A) A.R.S. § 32-1401(25)(e), i.e., failing or refusing to maintain adequate records on a patient.

(B) A.R.S. § 32-1401(25)(w), i.e., charging or collecting a clearly excessive fee.

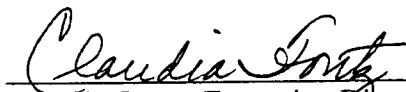
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered as follows:

1. Board investigative file No. 11157 is dismissed.
2. The above stated findings of fact and conclusions of law shall constitute a "letter of reprimand" to Mohamed S. El-Toukhy, M.D., and reported accordingly.
3. Mohamed S. El-Toukhy, M.D., shall in addition to satisfying the statutorily mandated minimum hours of continuing education, complete ten (10) hours of category I continuing medical education ("CME") in the subject of CPT coding and medical billing procedures; and, he shall provide proof of completing said CME within twelve (12) months of the effective date of this order, by sending documentation establishing completion of the required CME to the attention of: Compliance Officer, Board of Medical Examiners, 1651 E. Morten, Suite 210, Phoenix, AZ 85020.
4. Mohamed S. El-Toukhy is hereby notified that he may file a motion for rehearing in this matter requesting reconsideration of the Board's decision. Said motion for rehearing must be filed with the Board's executive director within thirty (30) days after service of this order or the right to submit said motion and the right to seek judicial review of this agency's order is waived; and, service of this order is effective upon date of mailing. To obtain an order from the Board granting the motion for rehearing and reconsideration, Dr. El-Toukhy must comply with the requirements of Board Administrative Rule, A.A.C. R4-16-102(C), and establish good cause for granting said motion.

Issued and effective this 27th day of August, 1998.

ARIZONA BOARD OF MEDICAL EXAMINERS



Claudia Foutz, Executive Director
1651 E. Morten, Suite 210
Phoenix, AZ 85020
(602) 255-3751

Copy sent this 27 day of August,
1998, by U.S. Certified Mail (return receipt
requested), to:

M. S. El-Toukhy, M.D.
3130 Baudry Terrace
Glendale, California 91208
(Last known address of record)

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Copy of the foregoing mailed this 27 day
of August, 1998, by U.S. Mail, to:

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Phoenix, AZ 85068-7250
Attorney for Dr. El-Toukhy