

# LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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**IN THE MATTER OF:  
Mark Allen Zweig, M.D.  
(Certificate No. 09971R)**

## **OPINION AND RULING 99-A-011**

This matter comes before the Louisiana State Board of Medical Examiners (the "Board") pursuant to an Administrative Complaint, charging Mark Allen Zweig, M.D., with a number of violations of the Louisiana Medical Practice Act, R.S. 37:1261, et seq. This matter was heard by a panel of the Board consisting of Drs. Elmo J. Laborde, and Trenton L. James, II, and Mary Lou Applewhite, constituting a quorum of the Board.

Dr. Zweig is charged with a number of offenses, which will be treated separately.

First, he is charged with violations of R.S. 37:1285A(1) and (2), for entering a plea of guilty to a felony and to a charge arising out of the practice of medicine. The record shows that Dr. Zweig was charged by bill of information in the matter of State of Louisiana v. Mark Allen Zweig, No. 697902, on the docket of the 19<sup>th</sup> Judicial District Court, with five counts of Medicaid Fraud, all felonies under the laws of this State.

On August 19, 1997, Dr. Zweig appeared in court, and entered a plea of guilty to the above charges. Pursuant to Article 893 of the Louisiana Code of Criminal Procedure, sentencing was deferred for three years, and Dr. Zweig was placed on probation for that period and ordered to pay restitution in the amount of \$50,900.00. Dr. Zweig admits all of the above circumstances.

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(Zweig, November, 1999)

He is further charged with violations of other subsections of the Medical Practice Act arising out of the same circumstances. He is charged with violating R.S. 37:1285A(11) for making false, deceptive, or unfounded claims, reports, or opinions as to any patients, insurance company, or indemnity association, company, individual, or governmental authority for the purpose of obtaining anything of economic value. He is charged with violating R.S. 37:1285A(16) for gross, willful, and continued overcharging for professional services.

Four employees, who worked for Dr. Zweig from 1994 through the closing of his office in June, 1997, testified about his billing practices. They testified that he would bill short interviews, administration of shots, and other minor procedures as high level office visits, which should take from 30 to 45 minutes. They testified that he would bill Kidmed patients, both for Kidmed visit and as a high level office visit. If payment was refused on the latter charge, he would instruct his employees to change the date and re-bill the charge. They also testified that Dr. Zweig would sometimes make a patient pay cash, and then bill Medicaid for the same visit. They were not aware if Dr. Zweig ever made a refund to either party who paid, but any refund did not come from them. In some cases, which were referred to Dr. Zweig by an attorney, he would collect from Medicaid, an insurance company, and from the lawyer.

Dr. Zweig does not deny any of this conduct, but testified that it was due to his inexperience in matters of business, rather than to any intent to cheat or deceive.

Considering the egregious nature of the offenses, the fact that he continued them despite warnings from his staff, and considering that he would re-bill certain procedures on a false date, after payment had been refused, we cannot accept Dr. Zweig's explanation. We believe he was guilty of deliberately falsifying and double billing his charges, as is evidenced by the fact of his guilty pleas to those felonies.

Next, Dr. Zweig is charged with a violation of R.S. 37:1285A(3), for fraud, deceit, or perjury in obtaining the renewal of his license. This charge is based on the fact that in his 1998 renewal application he circled "*nolo contendere*" instead of "guilty", in answering the question "Were you charged with, convicted of, or did you plead guilty or *nolo contendere* to, violation of any municipal, county/parish, state or federal statute?" It is clear that Dr. Zweig entered a plea of guilty, and not *nolo contendere* to the charges against him. However, he testified that he was confused about the terminology, and that he did not intend to deceive the Board with his answer.

Since he did answer "yes" to the question, we are inclined to accept his explanation. We therefore find him not guilty of this charge.

Next, Dr. Zweig is charged with violation of R.S. 37:1285A(7), for solicitation of patients or self promotion through advertising or communication, public or private, which is fraudulent, false, deceptive, or misleading. He is further charged with violation of R.S. 37:1285A(10), efforts to deceive or defraud the public.

These charges grow out of testimony that Dr. Zweig, who is Board Certified in Internal Medicine, also held himself out to be a pediatrician and a specialist in weight control, and heart and lung disease. He is alleged to have done this both verbally and through pamphlets. He had business cards that referred to him as a pediatrician. There is also in evidence a copy of a newspaper article, with the headline "Pediatrician Now in Marksville". A photograph accompanying the article shows a sign reading "Now Open Pediatric Clinic". The body of the article refers to Dr. Zweig as a "Board Certified Internal Medicine Specialist", and states that he has been practicing pediatrics and adult medicine in Bunkie.

Dr. Zweig testified that he checked with the board, and was told that he could hang out any shingle he wanted to as long as he didn't say he was Board Certified. He is correct in his understanding. A fully licensed physician may practice in any field, but he cannot misrepresent his credentials. Referring to oneself as a pediatrician, or to one's clinic as a pediatric clinic is not a violation of the Medical Practice Act. There is no showing that Dr. Zweig ever represented himself to be anything other than a Board Certified Internist. We find him not guilty of this charge.

Next, Dr. Zweig is charged with violation of R.S. 37:1285A(15) for immoral conduct in exercising the privileges provided for by license issued under the Medical Practice Act. These charges are based on testimony by all of his employees who testified, that he would continuously touch, fondle, and stand too close to them, despite being asked not to do so. They also testified the he did the same to female drug salesman who came to his office.

Dr. Zweig admits this conduct. He was evaluated in 1994 and sought treatment, but continued the conduct through 1997. The Board recommended that he be evaluated by someone acceptable to it, but Dr. Zweig preferred to see the person who had evaluated him in 1994. He did this without seeking Board approval. He has also sought "pastoral counseling", which, he states, has enabled him to control his behavior in that respect. It appears, however, that the pastoral counseling is with a person with no known qualifications for this sort of treatment.

It is very apparent that Dr. Zweig has a serious problem, which he claims to have recognized, and, to some extent, overcome. We find Dr. Zweig to be in denial. He has failed to follow the suggestions of the Board for evaluation, and sought no professional

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treatment until the day before this hearing. We do not believe he has made a good faith effort to understand or overcome this problem.

In addition, Dr. Zweig admits that he was personally slovenly in his habits. He often appeared at his office in his duty clothes and unshaven. He would not wash his hands<sup>1</sup> between patients, or wear gloves when performing examinations or drawing blood. He testified that he has learned and now washes his hands between patients.<sup>2</sup>

Next, Dr. Zweig is charged with violation of R.S. 37:1285A(12), for professional or medical incompetency, and of R.S. 37:1285A(14), for continuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state. No evidence was offered bearing on Dr. Zweig's technical competence as a physician. We therefore find him not guilty of this charge.

Next, Dr. Zweig is charged with violation of R. S. 37:1285A(18), for knowingly performing any act which is any way assists an unlicensed person to practice medicine, or having professional connection with or lending one's name to an illegal practitioner. The only evidence offered in connection with this charge is the testimony of Dr. Zweig's employees that his wife would sometimes administer shots or call in prescriptions at times when Dr. Zweig was not in the office. Dr. Zweig testified that his wife is a registered nurse, and did not act improperly. Since there is no other evidence offered on the point, we cannot find this allegation proven by clear and convincing evidence. We therefore find Dr. Zweig not guilty of this charge.

Finally, Dr. Zweig is charged with violation of R.S. 37:1285A(19), for soliciting, accepting, or receiving anything of economic value in return for and based on referral of patients to another person, firm or corporation or in return for the prescription of medications or medical devices. We heard no evidence which would implicate Dr Zweig in this sort of activity, and he was, therefore, not guilty.

To summarize, we have found Dr. Zweig guilty of violations of the Medical Practice Act in a number of respects. Not only has he pled guilty to five felonies arising out of the practice of medicine, but the evidence shows that these violations were purposive and deliberate, and continued despite repeated warnings from members of his staff. We have

found him guilty of unprofessional conduct and immoral conduct for making uninvited sexual overtures to his employees, to visiting female sales people, and to patients, despite repeated warnings. He had been aware of this proclivity for a number of years, having sought evaluation in 1994, but failed to seek appropriate treatment until just before the hearing in this matter. He is slovenly in his personal habits, often coming to work in dirty clothes, unshaven, and with bad breath and body odor. He failed to wash his hands before seeing patients.

Dr. Zweig has exhibited character defects, over an extended period of time, of which he was aware and which he deliberately failed to remedy. He shrugs off his felonious conduct as being due to inexperience in business, but the record is clear that he deliberately falsified his records in order to obtain payment.

He now portrays himself as remorseful and as a changed man, but his conduct belies those statements. We find that Dr. Zweig is not the kind of man we want practicing medicine in Louisiana, and that the various offenses of which he is guilty form ample justification for the revocation of his license.

The licensure of Mark Allen Zweig, M.D., to practice medicine in the State of Louisiana, No. 09971 R, is hereby revoked and cancelled, effective as of this date. Respondent shall pay a fine of \$5,000.00, and all costs of this proceeding.

NEW ORLEANS, LOUISIANA, this 2<sup>nd</sup> day of November, 1999.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

Mary Lou Applewhite MD

By: MARY LOU APPLEWHITE, M.D., PRESIDENT

(Zweig, November, 1999)