

FILED

July 27, 1992

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :
ROBERT A. FOGARI, M.D. :
TO PRACTICE MEDICINE IN THE :
STATE OF NEW JERSEY :

Administrative Action

**PROVISIONAL ORDER
DENYING RECONSIDERATION**

This matter was initially opened to the New Jersey State Board of Medical Examiners by the filing of an Administrative Complaint of Robert J. Del Tufo, Attorney General of New Jersey, James F. LaFargue, Deputy Attorney General, appearing, seeking license suspension or revocation based upon Dr. Fogari's guilty plea to 21 counts of a criminal indictment involving fabrication of drug research studies. In March 1989, the Board found that respondent engaged in massive fraud, dishonesty and deceit, and an utter mockery of established drug testing procedures and revoked his license. Following a petition for reinstatement and Dr. Fogari's appearance before a Board Committee on March 4, 1992, the Board by Order of April 28, 1992 denied reinstatement and granted Dr. Fogari the ability to apply for a residency permit to allow him to begin to reenter the practice of medicine.*

By motion filed June 5, 1992, respondent sought

* The Board's reasons for this action are detailed in its Order signed by Board President Lewis on April 27, 1992.

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reconsideration of the April 28, 1992 Order. Counsel's affidavit as well as copies of correspondence accompanied that motion. Therein, counsel for respondent asserts that based on information supplied to him by his client, it is impossible to comply with the Board's Order. Counsel asserts that all hospitals he has contacted have filled their residency positions, and states the doctor is of the opinion that his applications for a residency program would not be favorably considered because he is fifty years old. Counsel also asserts that the requirement for a residency program differs from any condition of relicensure heretofore imposed by the Board.

This matter was scheduled to be considered by the Board on the papers as an agenda item at the Board's meeting of June 10, 1992. At that time respondent appeared represented by Alan R. Hoffman, Jr. of the Pennsylvania bar.* Mr. Hoffman requested that he be permitted oral argument on the motion, and that his client be permitted to testify. DAG LaFargue objected, noting that he had received less than one day's notice of respondent's intention to appear, that this was insufficient to prepare cross-examination, in light of the history of this matter which involves deceit and fraud, and because preparation would necessarily involve consideration of all of respondent's previous

* DAG James LaFargue objected to the appearance of Mr. Hoffman, unaccompanied by New Jersey counsel, as he had not submitted an application to appear Pro Hac Vice before the Board. Mr. Hoffman's appearance was permitted on the understanding that such an application would be filed within five (5) days of the Board's meeting. Application was subsequently received and approved by the Board.

statements regarding the matter in order to test for inconsistencies. Additionally, he pointed out that the Board only had before it the affidavit of Mr. Hoffman, not of Dr. Fogari, which exacerbated the problem as he could not anticipate the broad range of topics and facts about which Dr. Fogari might testify, to prepare a proper cross-examination. Finally DAG LaFargue pointed out that an uninvited appearance without notice before the Board was inappropriate.

Following deliberations, the Board unanimously passed a motion to deny oral argument and the doctor's appearance for testimony, as there was insufficient notice of the request for an appearance both in terms of the reasonability of time to prepare for cross-examination, and in terms of precedent. The Board does not in the usual course permit persons to merely apply on one day's notice and appear. To permit such a short notice appearance would seriously disrupt Board business. There was found to be an insufficient showing on the papers in this matter to take such an action.

The Board then considered the motion on the papers and found nothing persuasive in the application to cause it to reconsider its prior Order and thus determined to provisionally deny the motion. (The parties were orally advised that counsel had thirty (30) days to submit anything additional in writing for Board consideration at its next meeting, that determination is now embodied in the within Order).

As to the issues raised by Dr. Fogari, the Board found

that no documentation had been submitted to it that his application had been denied or that he had been denied consideration by 21 residency programs in New Jersey; however, even if that were the case, the Board is aware of a significantly greater number of residency programs in a variety of fields both in New Jersey and elsewhere. In many specialties, less than 50% of residency slots are filled by "matching." To warrant a further reconsideration, Dr. Fogari must demonstrate that he has made a good faith effort to apply to a greater number of residency programs in a wide variety of fields.

As indicated in our previous Order, our concern is that if he is to reenter the practice of medicine, Dr. Fogari needs a concentrated, intensive period of training which we believe is available only in a residency program. Dr. Fogari needs retraining both professionally and attitudinally. As more fully detailed in the Board's prior Order in this matter, the Board found significant patient harm unrecognized by Dr. Fogari in the facts underlying Dr. Fogari's conviction on which the revocation of his license was based. This harm stemmed from his testing of unknown steroid drugs without appropriate studies and in a fraudulent manner, actions which could have an adverse impact not only on Dr. Fogari's patients, but on thousands of patients who could potentially receive drugs approved based on fraudulent studies. Additionally the Board had found it inappropriate, given the nature of the crimes committed, to permit Dr. Fogari to return to private practice at this time where a profit motive may

be present, given his history of fraudulent activity while engaged in private practice.

As to Dr. Fogari's contention that Board members may not have had access to his April 4, 1992 submissions regarding reconsideration, and may have had access to DAG LaFargue's submissions at a significantly earlier date, a survey of Board members indicated that many recalled receiving the submissions and reading them prior to initial consideration of this matter. All Board members also received those items again for consideration today, and find nothing to alter the Board's prior determination.

ACCORDINGLY, IT IS on this 23rd day of July, 1992,
Nunc Pro Tunc June 10, 1992,

ORDERED:

1. Respondent's motion seeking reconsideration of its Order of April 28, 1992, shall be and hereby is denied provisionally. If respondent wishes to submit any additional factual information to the Board to persuade it to reconsider, he should submit any such material within 30 days of the oral announcement of this Order on the record, and the Board will consider such information on the papers. If no significant information is received within that period, this Order shall become final.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By Sanford Lewis, M.D.
Sanford Lewis, M.D.