

FILED

April 24, 2009

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

Nunc Pro Tunc: December 3, 2008

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

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :
FRANK MACHIAVERNA, M.D. :
License No. 25MA0391100 :
TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY :

Administrative Action
FINAL ORDER AND DECISION
ADOPTING DECISION OF
ADMINISTRATIVE LAW JUDGE

This matter was initially opened to the New Jersey State Board of Medical Examiners (the "Board") with the filing of a Complaint by the Attorney General of New Jersey by Michael Rubin, DAG against respondent Frank Machiaverna, M.D., on January 31, 2007.

The Attorney General charged respondent with gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare and safety of a person in violation of N.J.S.A. 45:1-21(c) and professional misconduct in violation of N.J.S.A. 45:1-21(e) by (1) failing to conduct a physical examination of D.W. on or about 9:00 p.m. on December 7, 2000, (2) failing to return to the hospital to conduct a physical examination of D.W. at or about 12:00 a.m. on December 8, 2000 after being notified twice as to his patient's considerable pain and (3) failing to conduct a thorough physical examination of D.W.

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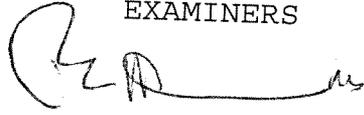
at or about 7:00 a.m. on December 8, 2000, upon encountering D.W. being brought to the hospital's Radiology Department. The Attorney General also charged Dr. Machiaverna with negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d) and professional misconduct in violation of N.J.S.A. 45:1-21(e) by failing to conduct a thorough physical examination, including a rectal examination of D.W. shortly after 5:15 p.m. on December 7, 2000.

Respondent filed an Answer on February 23, 2007. Dr. Machiaverna defended all of his actions with regard to his treatment of D.W. as being in accordance with accepted standards of medical care for physicians with similar training and background and that he used his best medical judgment at all times. The Board transmitted the contested case to the Office of Administrative Law and a hearing was conducted three days in April of 2008. The record closed June 3, 2008 and an Initial Decision effectively dismissing the Complaint was rendered on September 5, 2008. Exceptions were filed by the State on October 3, 2008, respondent replied on November 5, 2008 and the matter was scheduled for final disposition before the Board of Medical Examiners on December 3, 2008.

At the hearing before the Board, respondent appeared with counsel, Joseph Gorrell, Esq., and Deputy Attorney General Alan Neitz represented the complainant.

After due consideration of the administrative Law Judge's Initial Decision, transcripts, exhibits, exceptions and arguments of counsel regarding exceptions the Board adopts as its final decision, the Findings of Fact and Conclusion of Law of the Administrative Law Judge (hereinafter, ALJ). Thus, the Board finds that, despite the tragic patient outcome, respondent's conduct as alleged in the Complaint does not rise to the level of gross or repeated malpractice or professional misconduct and therefore dismisses the case in its entirety. In reaching this decision the Board finds Respondent's treatment of this patient did not constitute violations of Board Statutes, and affirms the ALJ's decision in toto. However, the Board also is of the opinion that best practices for a patient presenting with an abdominal issue constitute serial examinations which were not employed by respondent in the overall management of this case.

NEW JERSEY STATE BOARD OF MEDICAL
EXAMINERS

By: 

Paul C. Mendelowitz, M.D.
President