

FILED

DECEMBER 11, 2009

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
DOCKET NO. BDSME 13105-2008

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :
:
MARC C. FRIEDMAN, M.D. :
License No. 25MA063899 :
:
TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY :
:

Administrative Action

FINAL DECISION AND ORDER

This matter commenced with the filing of a February 6, 2008 Complaint by the Attorney General of New Jersey against the respondent, Marc C. Friedman, M.D. The Complaint alleged that Dr. Friedman's failure in 2002 to perform a skin graft on R.B., an 88 year-old diabetic, immediately following or shortly after a Mohs procedure constituted gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare and safety of his patient in violation of N.J.S.A. 45:1-21(c). The conduct is also alleged to be professional misconduct in violation of N.J.S.A. 45:1-21(d). The respondent submitted an Answer on March 20, 2008 denying any wrongdoing.

The matter was referred to the Office of Administrative Law and a hearing took place on April 17, 21 and 27, 2009. The record closed on July 10, 2009 after the parties submitted post-hearing legal memoranda. A twenty page Initial Decision was rendered by Administrative Law Judge ("ALJ") J. Howard Solomon on August 7, 2009

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dismissing the Complaint. Final disposition by the Board of Medical Examiners was scheduled for September 9, 2009. The Attorney General filed exceptions to the Initial Decision on August 24, 2009, and the respondent submitted a reply, both of which were considered by the Board. At the hearing before the Board, the respondent appeared with counsel, Joseph M. Gorrell, Esq., David M. Puteska, Deputy Attorney General, represented the complainant.

Based upon the record in this case and the arguments of counsel, the Board adopted as its Final Decision the Findings of Fact and Conclusions of Law of ALJ Solomon. In particular, the Board found the State did not establish, by a preponderance of the competent and credible evidence, that respondent's delay in performing a post Mohs skin graft on R.B. constituted gross negligence, gross malpractice, gross incompetence, or professional misconduct. The Board concurred with the ALJ who cited In re Polk 90 N.J. 550, 565(1982), that a showing of "gross" malpractice requires misconduct so "egregious" or "flagrant" as to implicate a much higher magnitude of wrongdoing which the Attorney General failed to establish.

The Board found that respondent's decision to exercise his medical judgment and not perform a skin graft immediately or shortly after the Mohs, did not rise to the level of "gross malpractice" or a per se violation of standard of care. The Board relying on its medical expertise concurred with the ALJ's finding that the medical experts presented by both parties were equally compelling and

therefore concluded that the State's substantive burden of proof had not been satisfied. The Board further found that "it is not enough to show a simple deviation from accepted medical standards, even if it produced a significant untoward result." (citing In re Kerlin License Suspension or Revocation, 151 N.J. Super., 179 (App. Div. 1977)).

THEREFORE, it is on this 11TH day of DECEMBER, 2009,

ORDERED that:

1. The Initial Decision of Administrative Law Judge Solomon is adopted in its entirety and all Counts of the February 2008 Complaint filed by the Attorney General against Respondent are hereby dismissed.

A handwritten signature in black ink, appearing to read 'P. C. Mendelowitz', with a long horizontal stroke extending to the right.

PAUL C. MENDELOWITZ, M.D.
President
Board of Medical Examiners