

FILED

February 11, 2015

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

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

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

**FAROUK AL-SALIHI, M.D.
LICENSE NO. 25MA022618**

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL ORDER

This matter was re-opened to the New Jersey State Board of Medical Examiners (Board) at a plenary hearing held on December 10, 2014, regarding a Verified Complaint seeking the suspension or revocation of the license of Farouk Al-Salihi, M.D. (Respondent), to practice medicine and surgery in New Jersey, by John J. Hoffman, Acting Attorney General of New Jersey, Susan Brown-Peitz and Russell M. Smith, Jr., Deputy Attorneys General appearing. The Verified Complaint, containing one Count, alleges among other things, that Respondent is incapable of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare as he lacks medical knowledge and skill necessary to practice as demonstrated by his performance at a two day clinical competency evaluation and his failure of a basic competency examination known as SPEX (Special Purpose Examination).

An Interim Consent Order of temporary suspension of Respondent's license pending this plenary hearing had been entered on November 13, 2013, upon an application for the temporary suspension of Respondent's license which alleged his practice posed an imminent danger to the public. A plenary hearing on the merits of this Verified Complaint was initially scheduled for

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June 11, 2014. At that time and with Respondent represented by counsel, Peter R. Willis, Esq., the terms of a Final Consent Order were placed on the record. However, by letter dated July 4, 2014, Respondent requested that his agreement before the Board “be revoked.” Respondent’s letter claimed he was “unfairly unethically and unjustifiable [sic] I was intimidate [sic] to agree on something was forced on me illegally and without a merit.” Mr. Willis then withdrew as Respondent’s counsel, and Respondent has thereafter appeared pro se. A plenary hearing was scheduled and held on December 10, 2014.

The State’s Allegations

The Verified Complaint alleges in one Count that Respondent entered into a March 2011 Consent Order with the Board (P-5) including findings that Respondent failed to maintain his office in a safe and sanitary condition; submitted a falsified medical record for patient M.E.N.; and testified dishonestly before a Committee of the Board regarding writing a prescription in the name of one patient intended for another in violation of N.J.S.A. 45:1-21(b) and (e). The Consent Order included a two year suspension of license, six months active and eighteen months stayed as a period of probation. Respondent was also ordered to re-take and successfully complete a physicians’ ethics course among other courses, and pay a civil penalty and costs. Count 1 also includes allegations that on April 3, 2012, the Board granted Respondent a restricted license wherein among other restrictions, Respondent could not seek a Controlled Dangerous Substance (CDS) registration until further order of the Board. Simultaneously Respondent entered into a Private Letter Agreement (PLA) (P-7) acknowledging his restricted license was conditioned on his entering the PLA. Based on the Board’s concerns about his “disjointed” and “illogical” essay answer on the *PRIM-E* medical ethics exam, Respondent

agreed to take and pass the SPEX, a test that assesses basic knowledge for general, undifferentiated medical practice for physicians, within three months. On June 26, 2012, Respondent failed the exam with the grade of 67 (P-8). A passing SPEX score is 75.

Further, Count 1 alleges that as a result of Respondent failing the SPEX, on or about December 20, 2012, Respondent was requested to either surrender his license or voluntarily stop practicing medicine and immediately acquire an assessment of his medical knowledge and skills. (P-9) Thereafter, on or about January 3, 2013, Respondent agreed that he would “begin an active period of ...licensure suspension on 1/13/2013 and it will remain in effect until I successfully [sic] complete the assesement [sic] as requested by the Medical Board.” (P-10) On or about June 3 - 4, 2013, Respondent attended a Clinical Competency Evaluation at Albany Medical College (the Evaluation (P-11)). After observation of Respondent over two days, the Evaluation concluded that Respondent “has severe limitations in his history taking, physical examination skills, communication skills, and has failed to keep up with the basic clinical science underpinnings of primary care medicine, disease evaluation and treatment.” (P-11) The Complaint goes on to allege that the Evaluation found Respondent has “too many deficits in his skills and knowledge to practice safe medicine at this point in time.” A psychological exam performed as part of the competency evaluation concluded that Respondent presented with “signs of possible cognitive impairment.”

Finally the Complaint concluded with allegations that Respondent has not surrendered his license or entered a remediation plan, and is presently incapable of discharging the functions of a

licensee in a manner consistent with the public health, safety and welfare pursuant to N.J.S.A. 45:1-21(i).¹

Susan Brown-Peitz, DAG, presented the Attorney General's case at the plenary hearing on December 10, 2014. She presented into evidence all of the Board's prior orders against Respondent along with the Evaluation from Albany Medical College dated July 16, 2013 and accompanying Exhibits (P-11). DAG Brown-Peitz, presented Henry Pohl, M.D., Co-Director of The Upstate Clinical Competency Center of Albany Medical College, as the State's expert witness in the fields of medicine and the assessment of physician competency. Respondent objected to Dr. Pohl testifying regarding his specific evaluation since "I never seen [sic] him, I never met him" and as Dr. Pohl's testimony depended upon a report that someone else wrote. (Transcript 38:24 to 39:1 December 10, 2014). The Board voted to accept Dr. Pohl as an expert.

Dr. Pohl's testimony was predominantly regarding Respondent's performance on a formal clinical skills examination consisting of six 15-20 minute interviews and physical examinations of six standardized patients and National Board of Medical Examination (NBME) testing. (P-11 Evaluation, p. 3) Dr. Pohl viewed tapes of the patient encounters, spoke with the examiners and reviewed their reports. He testified that Respondent was not organized during his history taking and physicals of the patients which is especially important for a physician to

¹ Respondent initially answered the Complaint in November of 2013 through his then counsel Peter Willis, Esq., indicating that he lacked sufficient facts to admit or deny most of the allegations of the Complaint, and leaving the State to its proofs; and denying the allegations that he was incapable of discharging the functions of a licensee and lacked medical skill and knowledge presenting an imminent danger to the public. On May 5, 2014 Respondent submitted another 8 page response to the Complaint in which he indicated "no commit" [sic] to the general allegations of the Complaint, and among other responses, claimed as to paragraph 6 that the DAG "falsely reported to the Medical Board that I submitted falsified medical records of patient M.E.N." and that the "false claim continues to appear on Consent Order[s].....", gave detail as to his position that many of the remaining allegations of the complaint were untrue, or gave explanations.

know who has been in practice a long time. (Transcript 50:9 – 50:14; 52:7-52:8) Dr. Pohl stated that Respondent failed to ask key historical information of his patients and did not perform a thorough or adequate physical exam for many of them. (Transcript 51:4 – 51:8) Further, “Respondent did not listen to the patients, or he forgot what they said during the exam, which is why Respondent did not have good communication skills with his patients.” (Transcript 52:20 – 52:22) In addition, Dr. Pohl testified that

according to the people who interviewed him and from my viewing of the tapes, he really had deficits in almost every case he saw where he wouldn’t know some very important kinds of questions he would need to ask. And that was mainly because he really was unaware of the relationship between those findings and their diagnostic necessity in making a diagnosis. (Transcript 55:7 – 55:14)

He also stated that Respondent was scheduled to be given three standardized multiple choice NBME tests: Assessing Medical Literature, Family Medicine Clinical Science Subject test and Ethics & Communication Knowledge. (P- 11 Evaluation p. 4) However, since Respondent was unable to complete the first two tests he was never given the third. Respondent failed both tests, placing in the bottom 10th percentile on Assessing Medical Literature and in the bottom 14th percentile on Family Medicine Clinical Science. (Id. at 4)

As to physical exam skills, Dr. Pohl testified that Respondent “doesn’t have the knowledge to know what exactly are the proper physical exam maneuvers to do to rule in and rule out things.” (Transcript 62:6 – 62:9) He has poor communication skills and poor to terrible note writing abilities. (Transcript 62:9 – 62:11) Dr. Pohl further stated that currently a patient of Respondent’s could not rely on the fact that he would adequately work up a differential diagnosis of their complaints nor be able to perform a proper examination of them in order to determine if there was a significant issue with the patient. (Transcript 62:21 – 63:1) Finally,

Dr. Pohl testified that since Respondent has consistently advised the Board that he has no deficiencies in his medical knowledge and/or clinical skills Dr. Pohl believes that Respondent would be incapable of complying with any remediation plan the Board may require of him. (Transcript 63:22 – 64:1)

Based upon the Evaluation including the interview, patient assessments, tests and psychological evaluation, Dr. Pohl opined that within a reasonable degree of medical certainty Respondent does not currently have the ability to discharge the functions of a medical doctor in a manner consistent with the public's health, safety and welfare, and that he would not be able to practice medicine with his current knowledge and clinical skills. (Transcript 60:18 - 61:25)

Respondent's Defenses and Board Analysis

Respondent failed to achieve a passing grade on the SPEX which is a cognitive examination to assist licensing entities in their assessment of current competence requisite for general, undifferentiated medical practice by physicians who hold or have held a medical license. Respondent claimed at hearing that SPEX is a very difficult exam for physicians, that he is not proficient in computers, that "the test is all about, because mathematics and the calculus... ." (Transcript 130:10 – 130:11) He went to Kaplan institute for help and Respondent claimed they could not help him and therefore "how could I go take test I don't know what the test is" and claimed that is why he failed the SPEX. (Transcript 130:20 – 130:21) The Board routinely requires physicians to take and successfully pass the SPEX, an exam we as physicians are familiar with and are aware is accepted nation-wide. It is used in order to prove whether a physician has the requisite basic fund of medical knowledge to practice. The claim that Respondent is not proficient in computers, is an issue Respondent should have remediated prior

to taking the SPEX. The Board notes that all physicians who are required to take the SPEX are clearly on notice by the NBME that SPEX is a computer-administered exam (See <http://www.nbme.org/clinicians/spex.html>). The Board finds that Respondent's failure of the SPEX is an objective finding that Respondent lacks the basic level of medical knowledge needed to practice medicine.

Respondent also failed NBME testing in the categories of Assessing Medical Literature, placing in the lowest 10th percentile compared to a random sample of physicians/examinees who had completed one to three years of residency training, and in Family Medicine Clinical Science scored in the lowest 14th percentile compared to approximately 6,000 first time examinees, that is medical students, from more than fifty-five schools who took the examination as a final clerkship exam. (P-11) These failing grades provide additional objective evidence that Respondent lacks basic medical knowledge in all of the areas tested. Respondent again argued at the plenary hearing and in his exhibits that the NBME tests were difficult for him to take because he was not proficient in computer skills, he was not given enough time to complete the exams and was not able to prepare for the exam properly. However, the Board considered that Respondent was given additional time to take the two exams while at Albany Medical College; and Respondent's position that he is not proficient in computers is again an issue that he should have remediated prior to going to the evaluation. Therefore, the Board finds that Respondent's arguments are not persuasive, and we accept the failing grades as objective evidence of deficits in Respondent's medical knowledge.

The Board further relied on Dr. Pohl's testimony and the findings of the Evaluation regarding Respondent's assessment of six standardized patients. First, Respondent scored a 0/9

on the Communication Skills Checklist in nearly all of the patient encounters. The Evaluation report as well as the testimony by Dr. Pohl of his viewing of the tapes of the encounters, indicated that Respondent failed to ask open-ended questions when he first met his patients, did not show empathy to the patients, mumbled to himself frequently without communicating his thoughts to the patients, was disorganized and appeared to be unsure as to what pertinent questions to ask the patients. (P-11 - Evaluation p. 4 paragraph 1 to p. 5) Further, during patient exams Respondent “failed to ask significant historical questions and failed to perform key physical exam points.” (P-11 p. 5 paragraph 2) His “physical examination skills were inadequate and below average for a primary care physician.” (P- 11 p. 5 paragraph 5)

The Evaluation indicated that “Dr. Al-Salihi demonstrated adequate clinical reasoning but this was limited by his very broad differential diagnoses, with no clear delineation of priority, as well as his aggressive diagnostic and treatment plans which seemed to be a “blanket” approach, leading to excessive testing/intervention with no explicit connections between the diagnoses and the recommended work ups.” (P-11 p. 5 paragraph 6 to p. 6) One physician evaluator noted, “patients presenting with more complex problems would pose a real diagnostic dilemma for him and he would very likely simplify their situation which would be detrimental.” (P- 11 p. 6 paragraph 8) The Board further relied upon Dr. Pohl’s testimony that according to physicians who interviewed him and as observed on the tapes, during Respondent’s patient assessments Respondent was deficient in almost every case since he didn’t know very important questions to ask to elicit the proper answers that were necessary in making a diagnosis. (Transcript 55:7 – 55:14)

Respondent argued at the plenary hearing and in his exhibits, that his communication

skills were fine and that the patients were “ACTORS” and not real patients. (Transcript 73:1 – 73:2; R- Exhibit 16 p. 1)² He further claimed the Evaluation’s findings were flawed as he did not have enough time to evaluate each patient, that fifteen minutes is not a sufficient time period to assess a patient, and that his broad differential diagnoses were correct on the standardized patients. (R- Exhibit 16 p. 1 to p. 2) The Board considered Respondent’s positions and noted in our expertise as physicians that it is standard practice for an entity conducting a medical competency evaluation to use individuals who are not actually ill to reveal a clinical presentation to the doctor so that the practitioner’s ability to assess a patient can be evaluated. The concept that Albany Medical College would utilize only truly ill patients to assess a doctor’s diagnostic skills is unrealistic. As physicians we also recognize in our expertise that fifteen minutes provided by the Evaluation is an adequate amount of time to take a history and physical of a new patient. (Transcript 54:2 – 54:10)

The Board finds that Respondent’s clinical reasoning during the standardized patient assessments was limited by his broad differential diagnoses and he was in fact incapable of determining the patients’ true diagnoses since he failed to ask the patients appropriate questions that would have led him down the path of adequate clinical reasoning to form proper diagnoses with appropriate testing and treatment plans. Therefore, the Board determined that Respondent’s positions disputing Dr. Pohl’s testimony and the findings of the Evaluation discussed above lack merit after the Board weighed all of the evidence and testimony presented by both parties.

The Board also considered the psychological examination conducted by Robert O.

² Respondent’s exhibits were marked only as Exhibits 1 through 20 at the hearing. They are referred to with the letter “R” throughout this Order to distinguish them from the exhibits of the State.

Hubbell, Jr., Psy.D. at Albany Medical College as part of the competency evaluation wherein Dr. Hubbell stated that based upon the limited scope of his exam Respondent may have potential cognitive impairment across domains of memory and executive functioning but does not appear to be suffering from any other significant difficulties or any major psychiatric disorder. Respondent argued at the hearing that Dr. Hubbell did not perform any micro-cognitive testing or any psychological evaluation and “his report is false and not true.” (Transcript 119:11 -119:13) However, Dr. Pohl testified regarding the psychological exam and Dr. Hubbell’s report that Respondent was unable to “do the micro-cog which is a computerized test” and although Respondent claimed he did not take the MMPI, Dr. Pohl saw the results of the MMPI and written evidence that Respondent took the test. (Transcript 60:6 to 60:17)

During his presentation on the liability phase of the hearing, Respondent requested to present two witnesses, a letter from Damon D. Delston, M.D. and a report from Thomas D’Amato, M.D., both as to his cognitive functioning. Although the testimony was relevant to the mitigation phase of the hearing, the Board gave Respondent the flexibility to present his witnesses out of order.³ As to the letters from Drs. Delston and D’Amato, after considering objections that these documents had not been provided in discovery, that the former gives no basis at all for the opinion provided as to Respondent’s cognitive functioning, the latter doesn’t relate to medical competency, and gives no information of to what facts were available to the writer, and that the author was not available for cross-examination, the chair ruled that the documents could be considered if the hearing went on to a mitigation phase, but did not enter the documents in evidence during the liability phase of the hearing.

³ The substance of the testimony of the witnesses is set forth below in the section of the Order regarding the Mitigation Hearing.

At the conclusion of the presentations, the Board went into executive session for deliberations and advice of counsel. Returning to open session, the Board voted that it found a basis for disciplinary action. Based on the Board's review of the record including the exhibits of the State and Respondent, along with the oral testimony, including particularly Respondent's failure to pass the SPEX coupled with the testimony of the observations of Dr. Pohl and the findings in the report of the Evaluation, which cited numerous deficiencies in Respondent's fund of medical knowledge and clinical skills, the Board found that the State had met its burden of proof by a preponderance of the evidence.

The Board's findings of fact and conclusions of law are as indicated below.

Findings of Facts

1. Respondent took the SPEX on or around June 26, 2012, and failed the exam with a score of 67 when a score of 75 is needed to pass.

2. On June 3-4, 2013, Respondent attended a Clinical Competency Evaluation at Albany Medical College. After having observed the Respondent's practice over two days, the Evaluation concluded that Respondent "has severe limitations in his history taking, physical examination skills, communications skills, and has failed to keep up with the basic clinical science underpinning of primary care medicine, disease evaluation and treatment." The Evaluation further stated that Respondent has "too many deficits in his skills and knowledge to practice safe medicine at this point in time" and recommended that Respondent not be allowed to practice independently.
3. We find in accord with the summary of the Evaluation's findings as follows:
 - a. Respondent scored a 0/9 on the Communication Skills Checklist in nearly all of

six patient encounters.

b. On nearly every case, Respondent failed to ask significant historical questions and failed to perform key physical exam points.

c. In most cases, Respondent was unable to give cogent justification and explanation of the laboratory tests he suggested to order.

d. Respondent's written notes followed a non-standard and incomplete format.

His physical exam documentation is poor and is presented in non-standard order.

e. Respondent routinely left out key components of the physical exams he performed.

f. Respondent gave very broad differential diagnoses, with no clear delineation of priority, and aggressive diagnostic and treatment plans, leading to excessive treating/intervention with no explicit connections between the diagnoses and the recommended workup.

g. Respondent's fund of knowledge regarding primary care is weak.

h. A psychological exam performed by Robert O. Hubbell, Jr., Psy.D., reached the conclusion that Respondent presented with "signs of possible cognitive impairment."

Conclusions of Law

Respondent is presently incapable of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare pursuant to N.J.S.A. 45:1-21(i).

Mitigation Hearing

After the Board voted that there was a basis for disciplinary action against Respondent, a hearing regarding mitigating circumstances for a determination on penalty was immediately convened. Respondent presented a proposal that the Board consider giving him the opportunity to return to work under the supervision of another physician. He presented a letter and curriculum vitae from Veronica Pineda, D.O., proposing that she would supervise and evaluate Respondent for three hours per day over a three month period with bi-weekly reporting to the Board regarding his medical competence. (R – Exhibit 20) Respondent then discussed letters he submitted authored by two psychiatrists, Drs. Delston and D'Amato. A letter dated November 21, 2014, from Damon D. Delston, M.D. indicated that in his professional opinion, Respondent's cognitive functioning seems grossly unimpaired. (R – Exhibit 20) DAG Brown-Pietz objected to the admission of Dr. Delston's letter as it is a net opinion and gives no information at all as to any basis for a professional opinion with regard to Respondent's cognitive functioning. Respondent also submitted an evaluation dated November 24, 2014, authored by Thomas D'Amato, M.D., concluding that Respondent has no cognitive dysfunctions, no cognitive delays and no psychiatric issues. (R – Exhibit 20) DAG Brown-Pietz objected to Dr. D'Amato's report as she had never seen the report before, could not cross-examine him as a witness at the hearing and argued the report does not address Respondent's medical competency. The Board admitted the letters into evidence subject to giving them appropriate weight.

The Board also considered the testimony of two community members who had testified earlier. Mr. Saif Titi, a pharmacist, testified that Respondent has been a highly regarded doctor in the community for many years and helps patients of all cultures. (Transcript 95 - 97)

Respondent helped build one of the best neo-natal units in Jersey City Medical Center. (Transcript 96:3 – 96-5) Mr. Emad Attalla, the Postmaster of Union City, New Jersey, and Deacon of Public Relations at a church in Jersey City, New Jersey, testified that Respondent has been a wonderful physician to the entire community over many years and Respondent has been helpful to the sick and poor of his community. Mr. Attalla claimed that he spoke on behalf of over fifteen thousand families in the community and asked the Board to allow Respondent to practice medicine again in Jersey City. (Transcript 103:22 – 104:25)

In closing remarks Respondent stated that he has been practicing for forty years and he has never had a patient complain to the Board and he repeatedly asked for “justice.” Among other statements he asked the Board for the chance to confirm he is not the doctor which “Albany report me to be,” and asked for the opportunity to go back to work. The State then presented its closing argument. Bringing the Board’s attention to several prior orders of the Board which were based on concerns regarding competency, an unsanitary office or falsification of records, the DAG urged that Respondent has a history of non-compliance with the Board’s serious concerns regarding his behavior and his practice. She asserted that even during the hearing he did not seem to have the ability to understand the serious nature of the deficiencies shown, and that without that capacity, there is little likelihood he would be able to engage in remediation. The State asked the Board to consider revocation of license as the appropriate resolution of this matter. (Transcript 141:11 – 142:24)

Discussion on Penalty

The Board moved into executive session to discuss the mitigating submissions provided by Respondent and the arguments of the parties, and to deliberate. The Board considered the

witnesses Mr. Titi and Mr. Attalla and concluded that the witnesses' testimony was descriptive as to how Respondent was a generous practitioner who may have been revered by his community in the past but in no way addressed his current ability to practice medicine competently. As to the submissions from Drs. Delston, D'Amato and Pineda, Dr. Delston's five line letter was given very little weight by the Board as to Respondent's cognitive functioning, as it gave no description as to the types of testing or evaluation performed on Respondent and no information as to any basis relied upon to come to the opinion that his "cognitive functioning seems grossly unimpaired." (R -Exhibit 20) Dr. D'Amato's letter was similarly given little weight by the Board as it does not indicate the information provided and relied upon, other than that provided by Respondent himself. Balanced against these letters were findings included in the Albany evaluation of a psychological exam performed including testing as indicated by Dr. Pohl and in the report. This exam reached a conclusion that Respondent presented with "signs of possible cognitive impairment." Most importantly, neither of Respondent's letters addresses Respondent's ability to practice medicine, nor any of the findings in the Evaluation.

This is not the first time Dr. Salihi has appeared before this Board regarding issues of competency. As early as 1999 Respondent was ordered to undergo evaluation, attend a six week residency have hi practice monitored due to concerns regarding his pediatric practice. (P-1) Additionally, Respondent has twice previously been disciplined regarding falsification of records – the first Board action as a result of a guilty plea to a crime involving falsification in 2007 resulting in a one year stayed suspension of his license, and the second in 2011 when he entered a Consent Order acknowledging falsification of records regarding an undercover agent's visit to his office and false testimony to the Board. Despite his signing of a Consent Order with advice of

counsel, incredibly he repeatedly claimed to the Board at the hearing that he was before due to falsification of records by three Deputy Attorneys General, ignoring that he has acknowledged his dishonesty in the past, as found by the Board and memorialized in prior Orders.

Given the thorough and cogent Evaluation by Albany, and the failure of the SPEX, the Board has determined that Respondent is currently is currently incapable of practicing medicine in accord with public health, safety and welfare. Respondent has been found to be a physician who has severe limitations in history taking, physical examination skills, communication skills, a poor and disorganized bedside manner; has failed to keep up with the basic and clinical science underpinnings of primary care medicine, disease evaluation and treatment; and that he exhibited weakness in most aspects of healthcare maintenance and preventive care, both of which are the backbone of primary care medicine. Given our findings that Respondent is currently incapable of practicing medicine in accord with public health, safety and welfare, coupled with the several disciplinary actions in the past, including suspension of license, we find the appropriate resolution of this matter is a revocation of license, unless and until Respondent can demonstrate fitness and ability to practice medicine and surgery.⁴

⁴ Respondent submitted correspondence to the Board office dated December 11, 2014, requesting that the Board “Declare a non-valid and Mistrial of my case” and outlining several issues. This letter was considered as a request for reconsideration of the Board’s final determination at the Board’s Priority Review Committee (PRC) meeting on December 18, 2014. The PRC recommended that the full Board deny Respondent’s request for reconsideration as there were no new facts or a basis to modify the Board’s determination, considering the following. First, contrary to Respondent’s claim he was given the opportunity to suspend the hearing to provide time to subpoena Dr. Kilby to testify, however, he chose to continue the hearing. (Transcript 105:5 – 106:1) Second, even though Dr. Pohl testified that he had a limited time period to appear via, Respondent had the opportunity to ask all of the questions he had for Dr. Pohl. Respondent specifically stated he had no additional questions for Dr. Pohl. (Transcript 77:6 – 77:22) Third, Respondent argues that Dr. Pohl’s testimony presented live via video conferencing was an “inferior method,” however, the PRC recommended, as permitted by the Board previously, live video conferencing is an appropriate method for presenting a witness. Fourth, Respondent claimed that Dr. Pohl answered a Board member’s question incorrectly regarding Respondent’s assessment of the six standardized patients, as he claimed he correctly diagnosed at least one patient. The PRC disagreed as the differential diagnosis by Respondent was overly broad and as Respondent’s diagnostic approach, processing, testing and follow-up regarding all six standardized patients was elementary at best, Respondent currently lacks the competency to properly assess a patient. Finally,

IT IS THEREFORE ON THIS 11th day of February , 2015,

ORDERED that:

1. The license of Respondent to practice medicine and surgery in the State of New Jersey is revoked effective thirty days following the December 10, 2014 oral announcement of this Order on the record, that is, revocation was effective January 9, 2015.

2. Prior to any application for the reinstatement of license being considered by the Board Respondent shall:

a. Undergo a neurocognitive evaluation with a mental health professional pre-approved by the Board who makes a finding that he is psychologically and cognitively fit to practice medicine. The cost of this evaluation shall be borne by Respondent.

b. Upon satisfaction of paragraph 3(a) above, Respondent shall take at his own expense, successfully pass, and supply proof to the Board of passing the SPEX.

c. Upon satisfaction of paragraph 3(a) above, Respondent shall successfully complete a minimum of a six (6) month residency program in General Medicine and/or Pediatrics pre-approved by the Board and under supervision of a Board approved M.D./D.O. for the purposes of

the PRC recommended that the examining psychologist had no obligation to respond to Respondent's requests for written notes of his psychological examination as demanded by Respondent. The full Board on January 7, 2015, fully ratified the PRC's recommendations and upheld the Board's basis and determination for its action in this matter.

remediating the deficiencies outlined in the Albany Medical College Evaluation. The cost of the residency program shall be borne by Respondent.

3. Upon the satisfaction of each of the conditions enumerated in paragraph 2 above, and upon re-application to the Board for licensure, Respondent shall present evidence to and shall appear before the Board, or a committee thereof, to discuss his fitness, competency and readiness to re-enter the practice of medicine as a physician. Respondent must also submit a detailed description of his future practice plans in the State of New Jersey.

4. If Respondent's license is reinstated, the Board retains the right to condition Respondent's re-entry to practice on such restrictions that it determines in its sole discretion are reasonably necessary to protect the health, safety and welfare of the public.

5. Respondent shall immediately return his original New Jersey medical license, current biennial registration and CDS registration to the New Jersey State Board of Medical Examiners, P.O. Box 183, Trenton, New Jersey, 08625-0183 if he has not already done so in connection with the Order of Temporary Suspension of his license.

6. The Attorney General shall submit any application for costs no later than fifteen (15) days after the oral announcement of this Order on December 10, 2015. Following service of the State's submission, Respondent shall have thirty (30) days to submit any response, as well as a certified statement of assets and copies of the last three years of tax returns, should he wish to support a claim of inability to pay costs. Costs are to be assessed as determined by the Board after considering the submissions of the parties at the Board's meeting of February 11, 2015. A supplemental and separate order will follow.

10. Respondent shall comply with the "Directives Applicable to any Medical Board licensee who is Suspended, Revoked or Whose Surrender of Licensure has been Accepted," whether or not attached hereto and made a part hereof.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

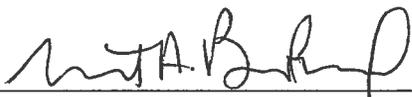
By: 
Stewart Berkowitz, M.D., President

EXHIBIT LIST

STATE'S EXHIBITS

- P-1 Consent Order, 2/9/99
- P-2 Order Removing Restrictions on Practice, 5/17/00
- P-3 Consent Order, 12/28/07
- P-4 Order Granting Unrestricted Licensure, 3/24/09
- P-5 Consent Order, 3/10/11
- P-6 Order Granting Restricted Licensure, 4/3/12
- P-7 Private Letter Agreement, 3/3/12
- P-8 Certified Transcript of Scores, SPEX
- P-9 Letter from Kay Ehrenkrantz, DAG, 12/20/12
- P-10 E-mail from Farouk Al-Salihi, M.D. to William Roeder, 1/3/13
- P-11 Clinical Competency Evaluation, 7/16/13
- P-12 Curriculum Vitae of Henry Pohl, M.D.

RESPONDENT'S EXHIBITS

- 1- Jersey City Police Report, 9/25/87
- 2- Policy of Office Housekeeping
- 3- 17 Photographs of Respondent's Office
- 4- Unsigned 2010 Consent Order I/M/O Al-Salihi, M.D.
- 5- Progress notes M.E.N. 4/21/09
- 6- Subpoena, to Dr. Al-Salihi 5/13/09
- 7- Letter from Susan Berger, DAG to Richard West, Esq, offering Consent Order 6/23/10
- 8- Duplicate of Exhibit 7
- 9- Fax from Richard West, Esq. to Susan Berger, DAG, with counterproposal 7/13/10
- 10- First page of Private Letter Agreement 3/3/12, with attached 9/22/11 Final Assessment Report and evaluation of participation in PRIME-E course; letters of 1/14/14 and 3/20/14 Dr. Salihi to Dr. McIntyre of PRIME-E program
- 11- Letter from DAG Ehrenkrantz to Dr. Al-Salihi regarding private letter agreement 12/20/12
- 12- Letter from Federation of State Medical Boards to Farouk Al-Salihi, M.D., 2/25/14
- 13- Duplicate copy of Exhibit 11 with language underlined
- 14- Letter from Franklin Desposito, M.D. to David Puteska, DAG, 3/4/11 professional reference for Dr. Al-Salihi
- 15- Questions for Dr. Kilby
- 16- Undated response of Dr. Al-Salihi to Albany Report
- 17- Letter from Charles Alvarez, Esq. to Robert Hubbell, Psy.D., 3/11/14 requesting notes
- 18- Duplicate of Exhibit 15
- 19- Duplicate copy of Exhibit 14 and letter from Elliot Steigman, M.D. to Susan Berger, Esq., 3/18/10 – reference in behalf of Dr. Al-Salihi
- 20- Proposal from Farouk Al-Salihi, M.D., 12/4/14 with attached 11/21/14 letter of Damon Delston, M.D.; 11/22/14 psychiatric evaluation of Dr. Al-Salihi; of Thomas D'Amato, M.D.; 9/8/14 letter of Veronica Pineda, D.O. offering supervision and evaluation of Dr. Al-Salihi and C.V.

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

~~A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.~~

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

**NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.