

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

In the Matter of:

VIKRAM KAJI, M.D.

ORDER DENYING MOTION
FOR SUMMARY DECISION

This matter was brought before the New Jersey State Board of Medical Examiners (the "Board") on November 4, 2015, upon the filing of a motion by Complainant John J. Hoffman, Acting Attorney General of New Jersey, seeking the entry of an Order granting summary decision upon all charges set forth in an Administrative Complaint filed on June 16, 2015 against Respondent Vikram Kaji, M.D. At its core, the Administrative Complaint is predicated on allegations that Dr. Kaji engaged in a fraudulent transaction with Steven Brigham, M.D. to acquire ownership of American Healthcare Services, P.C. ("AHS"), after Dr. Brigham's medical license was revoked by this Board and Dr. Brigham was required to divest his prior 100% ownership of AHS. The Attorney General alleges that Dr. Kaji is not in reality the "true" owner of AHS, as he has assumed none of the responsibilities of ownership. Rather, Dr. Kaji's participation in the sham transfer of corporate stock has enabled Dr. Brigham to continue to impermissibly and illegally continue to

function as the owner of AHS and to thereby continue to inappropriately profit from AHS' medical practice.¹

The Attorney General's motion for summary decision rests primarily upon testimony that Dr. Kaji offered, under oath, when appearing before a Preliminary Evaluation Committee of the Board on May 6, 2015. At that time, Dr. Kaji repeatedly testified that he was not the "owner" of AHS, and that Dr. Brigham continued to function as the "owner." Dr. Kaji additionally made a similar statement (not under oath) on April 22, 2015 to an Enforcement Bureau Investigator who was conducting an office inspection.

Dr. Kaji has submitted affidavits in opposition to the motion which facially seek to establish that the transfer of stock was a legitimate business transaction, that he fully understands that he is responsible for AHS' operations, that his responses to questions posed to him when he testified on May 6, 2015 were the product of confusion about what was being asked of him, and that the only involvement Dr. Brigham continues to have in day-to-day

¹ As will be discussed more fully below, Dr. Steven Brigham's license to practice medicine in New Jersey was revoked by the Board on October 8, 2014. Dr. Brigham was the owner of AHS from the date AHS was incorporated as a Professional Service Corporation through at or about the date his license was revoked. The Board's Revocation Order directed Dr. Brigham to divest himself of all financial interest in AHS within ninety (90) days, as required pursuant to N.J.S.A. 14A:17-13(c).

AHS is a New Jersey Professional Corporation doing business as American Women's Services at the following locations: Toms River, Voorhees, Phillipsburg, Woodbridge, Elizabeth, also known as Associates in Ob/Gyn, Hamilton also known as Princeton Women's Services, and Englewood, also known as Englewood Women's Services.

operations of AHS is in a legally permissible administrative capacity.

We conclude that the Attorney General has failed to meet the burden of establishing that there is no genuine issue as to any material fact and that he is entitled to prevail as a matter of law. While Dr. Kaji's PEC testimony, standing alone, does provide substantial support for entry of an Order granting the State's application, in deciding a motion for summary decision we are required to consider all of the evidence² presented by both parties and to view that evidence in the light most favorable to the non-moving party. Filtered through that prism, we conclude that there are issues of material fact which are genuinely disputed. Those factual disputes, in turn, will need to be further explored at a plenary hearing before we can ultimately determine whether or not Dr. Kaji is the "owner" of AHS, and/or whether Dr. Brigham has continued to function as the "owner" or otherwise continue to impermissibly derive profits from AHS' operations. Additionally, because there is nothing in the record before us which establishes the responsibilities that were attendant upon Dr. Kaji - either prior to acquiring the stock of AHS or after assuming ownership of

² We herein, for convenience, use the term "evidence" to refer to the certifications, and documents appended thereto, submitted by the parties in support and in opposition to the motion. We recognize that those certifications and documents have not been moved into "evidence" at this time, given that no evidentiary hearings have yet been held.

AHS -- we cannot presently conclude that the Attorney General has demonstrated that he is entitled to prevail as a matter of law.

We set forth below a more detailed summary of the procedural history of this matter, followed by our analysis of the facts that can be said to be established presently and those that are in dispute.

Procedural History

As noted above, this matter was initially opened before the Board on June 16, 2015, upon the filing of a single Count Administrative Complaint by Acting Attorney General John Hoffman, by Deputy Attorney General Bindi Merchant, seeking, *inter alia*, the suspension or revocation of Respondent's medical license. The Attorney General alleges that Respondent's actions constitute the obtaining of a certificate or registration through fraud, deception, or misrepresentation in violation of N.J.S.A. 45:1-21(a), the use of employment of dishonesty, deception, misrepresentation, false promise or false pretense, in violation of N.J.S.A. 45:1-21(b), professional or occupation misconduct, in violation of N.J.S.A. 45:1-21 (e), the aiding and abetting of the unlicensed practice of medicine by allowing Dr. Brigham to maintain ownership of AHS in violation of N.J.S.A. 45:1-21(n) and a failure of the ongoing requirement of good moral character in violation of N.J.S.A. 45:9-6.

Respondent filed an Answer to the Complaint on July 24, 2015, through his counsel, Joseph M. Gorrell, Esq. Therein, he admitted many of the general allegations pled in the Complaint, but denied critical allegations made that his assumption of ownership of AHS had been part and parcel of a sham transaction with Dr. Brigham. Respondent also denied all violations of the Uniform Enforcement Act set forth in the Complaint.

Deputy Attorney General Merchant filed a motion for summary decision on November 4, 2015. That motion was supported by a letter brief, a certification of Enforcement Bureau Investigator Nisha Nicoletti dated June 15, 2015, and a certification of Deputy Attorney General Merchant, to which the following exhibits were attached:

- Exhibit A: Transcript of Respondent's January 23, 2013 appearance before a Preliminary Evaluation Committee of the Board.
- Exhibit B: Transcript of Respondent's May 6, 2015, testimony before a Preliminary Evaluation Committee of the Board.
- Exhibit C: Temporary Suspension Order I/M/O Steven Brigham M.D. filed November 4, 2010, nunc pro tunc October 12, 2010.
- Exhibit D: Final Revocation Order I/M/O Steven Brigham, M.D. filed November 12, 2014.
- Exhibit E: Directives Applicable to Any Medical Board Licensee Who is Disciplined or Whose Surrender of Licensure Has Been Accepted dated May 10, 2000.

- Exhibit F: Respondent's Medical Director Agreement dated May 1, 2013.
- Exhibit G: Respondent's Medical Director Agreement dated October 20, 2010.
- Exhibit H: Letter from Harry Lessig, M.D., Consultant Medical Director of the Board, to Joseph Gorrell, Esq. dated February 10, 2015.
- Exhibit I: Email from Joseph M. Gorrell, Esq., to Dr. Lessig, dated March 27, 2015, with attached stock certificate.
- Exhibit J: Letter dated March 31, 2015 from Steven Brigham, M.D. and Vikram Kaji, M.D., to Department of Health and Senior Services, re: "Transfer of Ownership of American HealthCare Services, P.C. facility located at 1345 Kuser Road, Suite #1, Hamilton, NJ."
- Exhibit K: Certificate of Incorporation for American Healthcare Services, P.C. filed October 26, 2000
- Exhibit L: 2014 Annual Report for American Healthcare Services, P.C., dated August 19, 2014

The submitted exhibits include transcripts of sworn testimony that Dr. Kaji offered before Preliminary Evaluation Committees of the Board both before and after Dr. Brigham's license to practice was revoked. Dr. Kaji's practice at AHS was the subject of questioning at both appearances, and the evidence includes copies of two "Medical Director Agreements" that Dr. Kaji entered into with AHS at times that Dr. Brigham was the President and sole owner of AHS. Dr. Kaji was questioned extensively, at his May 6, 2015 appearance, about the functions that he performed at AHS - both as Medical Director and as a practicing physician - both

before and after Dr. Brigham's license was revoked. At times, Dr. Kaji testified that Dr. Brigham continued to be the "owner" of AHS, and Dr. Kaji repeatedly denied that he was the "owner" of the facility. Dr. Kaji only conceded that he was the "owner" of AHS after he was shown a copy of the stock transfer certificate which his counsel had previously provided to the Board to demonstrate that Dr. Brigham had in fact divested his interests in AHS.

In opposition to the motion, respondent submitted a Certification of Vikram Kaji, M.D., with one attached exhibit (Exhibit A: Annual Report filed by American Healthcare Services, P.C. dated November 21, 2015); a certification of Steven Brigham, M.D., to which three exhibits were appended (Exhibit A: Transfer of Stock Certificate; Exhibit B: Bill of Sale; and Exhibit C: Management Service and License Agreement); and a letter brief dated December 7, 2015.

In his certification, Respondent asserted that the questions he was asked at the PEC were at times "confusing." He stated that he testified that he was "not the owner of anything" because the Corporation does not own any "property," and that he "fully understood that the stock of the Corporation had been transferred to him." Respondent also noted that, although he had not filed any annual reports as owner of AHS at the time he appeared before the PEC in May 2015, AHS did in fact file an annual report with the Department of Treasury on November 15, 2015, and

that he alone was listed as President and agent of AHS on that report.

Dr. Brigham, in his certification, asserted that when he transferred his stock in AHS to Dr. Kaji, he did not request any payment from Dr. Kaji because the "corporation had no value as a business." The Bill of Sale is offered presumably to buttress that statement, as it includes recitals that AHS "possessed no physical assets of any significant value" and that "the medical practice in New Jersey is not generating any operating profit." A copy of a "Management Service and License Agreement" entered on January 31, 2015 between AHS and "Fidelity Venture Services" is also attached to Dr. Brigham's certification, to support Dr. Brigham's statement that AHS contracted with Fidelity to "manage 'all non-medical aspects'" of AHS' practice. Dr. Brigham also asserted that he "fully understand[s]" that he cannot "earn income or derive profits from the medical practice of the Corporation," and that his "sole role related to the Corporation since my license was revoked . . . has been in an administrative capacity."

Oral argument on the motion was heard on January 13, 2016, before the Board.³ Deputy Attorney General Bindi Merchant

³ Respondent initially argued that the motion for summary decision should be dismissed on procedural grounds because the State failed to comply with the requirements of R. 4:46-2. That Court Rule requires a litigant seeking summary judgment to provide the Court with a "statement of material facts" which is to "set forth in separately numbered paragraphs a concise statement of each material fact as to which the movant contends there is no genuine issue . . ."

appeared for the complainant Attorney General. Respondent appeared and was represented by Joseph Gorrell, Esq. Senior Deputy Attorney General Steven Flanzman and Deputy Attorney General Meaghan Goulding served as counsel. The Board, in rendering its decision, considered all documents filed in support and opposition to the motion (affidavits and attachments), along with the arguments advanced by the parties both in their respective legal briefs and at oral argument.⁴

Deputy Attorney General Merchant argued that pursuant to N.J.A.C. 1:1-12.5(b) the State as the moving party was entitled to summary decision if it could show that there was no genuine issue as to any material fact challenged and thus prevail as a matter of law. She argued that there were no material facts in dispute as Respondent had admitted under oath when appearing before the PEC that he was not the true owner of AHS and that Dr. Brigham was the owner. In addition, Deputy Attorney General Merchant pointed to Dr. Kaji's statement to Investigator Nicoletti wherein he also

We denied respondent's request, finding that the procedural requirement of R. 4:46-2 does not apply in an administrative proceeding. While the Board may look to the New Jersey Court Rules for guidance where there are no controlling rules in the New Jersey Uniform Administrative Procedure Rules, the standards for summary decision motions in administrative proceedings are fully established within N.J.A.C. 1:1-12.5, and those standards do not include any requirement that a moving party file a statement of material facts akin to that required in the Court Rules.

⁴ During oral argument, the Complainant made a "power point" presentation which included information that a Demand for Statement Under Oath and four subpoenas had been served upon Dr. Kaji in June 2015, and that Dr. Kaji had failed to respond to any of those investigative demands. That information was outside the record, and we cautioned the parties that all argument on the motion for summary decision needed to be limited to the record.

eschewed ownership of AHS and identified Dr. Brigham as the owner. She also argued that while Dr. Kaji eventually testified that he was the owner of AHS, he did so only after he was shown the stock certificate purporting to establish that he was the owner of AHS. Deputy Attorney General Merchant argued that notwithstanding Respondent's eventual admission of ownership, his testimony and answers to questions posed to him demonstrate that he has truly not assumed ownership of AHS, and that Dr. Brigham has continued to fulfill the obligations of the owner of the practice. Finally, she suggested that the Board should properly disregard or discount the statements made in Dr. Kaji's certification as self-serving statements made after the fact (i.e., after testifying before the PEC).

Mr. Gorrell argued that summary decision should be denied because when the record was viewed in the light most favorable to Respondent, the Attorney General had failed to demonstrate that there were no genuine issues of material fact. Mr. Gorrell argued that the statements made in Dr. Kaji's certification and in Dr. Brigham's certification were more than adequate to defeat a motion for summary decision. He additionally argued that it would be inappropriate to grant summary decision because the ultimate determinations of fact that will need to be made are likely to be dependent upon credibility determinations, which can be made only after witness testimony is received at a plenary hearing. Finally,

Mr. Gorrell suggested that the Attorney General had failed to establish the legal responsibilities that are placed on an owner of a Professional Service Corporation and to then specify what legal responsibilities Dr. Kaji failed to perform. Mr. Gorrell thus urged the Board to deny the motion for summary decision and to instead refer the case to the Office of Administrative Law for an evidentiary hearing as a contested case.

Analysis

In analyzing the application for summary decision, we begin by identifying material facts which are "without substantial controversy." N.J.A.C. 1:1-12.5(d).⁵ Generally, those "facts" can be broken down into facts related to Dr. Kaji's practice of medicine at AHS, facts related to Dr. Steven Brigham, M.D., and facts concerning the AHS corporate entity.

⁵ N.J.A.C. 1:1-12.5(d) contemplates that, on a motion for summary decision, the trier of fact should attempt to identify and specify facts which exist without material controversy and enter an Order establishing those facts, presumptively to shape and limit the plenary proceedings to only those matters in need of further development. Specifically, the Rule provides:

If, on motion under this section, a decision is not rendered upon all the substantive issues in the contested case and a hearing is necessary, the judge at the time of ruling on the motion, by examining the papers on file in this case as well as the motion papers, and by interrogating counsel, if necessary, shall, if practicable, ascertain what material facts exist without substantial controversy and shall thereupon enter an order specifying those facts and directing such further proceedings in the contested case as are appropriate. At the hearing in the contested case, the facts so specified shall be deemed established.

Facts Established on the Record

Facts regarding Dr. Kaji's practice of medicine:

1a) Dr. Kaji practices obstetrics and gynecology. His general medical practice, which has been conducted only at AHS offices at all relevant times material to the pending Complaint, includes the performance of routine gynecological checkups, pap smears, breast examinations and termination of pregnancies in the first trimester. Prior to October 6, 2014, Dr. Kaji was paid as an independent contractor for medical services he provided to his patients.

1b) On October 20, 2010 (at or about the time Dr. Brigham's medical license was temporarily suspended), Dr. Kaji executed a contract to serve as the Medical Director of AHS. The contract provided that Dr. Kaji's responsibilities were to include applying for DEA and CDS numbers for AHS offices, accepting emergency telephone calls from patients and overseeing the quality of medical care in the offices. In or about February or March 2013, an updated Medical Director contract was executed between Dr. Kaji and AHS, pursuant to which Dr. Kaji assumed additional responsibilities and received an increase in salary. Dr. Kaji's responsibilities as Medical Director were separate and apart from, and in addition to, his general medical practice at AHS locations.

1c) Dr. Kaji's duties and functions at AHS, either as Medical Director or as a practicing physician, did not change

subsequent to October 6, 2014. Dr. Kaji repeatedly testified at his May 6, 2015 PEC appearance that there had been no change in the scope of his medical practice since that date, and he conceded, in his certification filed in opposition to the motion for summary decision, that his "day to day responsibilities with respect to the Corporation have not changed since I became the owner of the Corporation." (Kaji Certification, ¶4, see also testimony before PEC).

Facts regarding Steven Brigham, M.D.

2) Dr. Steven Brigham was the holder of an unrestricted license to practice medicine and surgery in the State of New Jersey from the date AHS was incorporated (October 26, 2000) through October 13, 2010. On October 13, 2010, the Board temporarily suspended Dr. Brigham's medical license. On October 8, 2014, Dr. Brigham's medical license was revoked.

Facts regarding American Health Care Services, P.C.

3a) AHS was incorporated on October 26, 2000 as a Professional Service Corporation. Annual reports for AHS were filed with the Division of Revenue every year from 2001 through 2014. Steven Brigham, M.D. alone was identified as the agent for service of process, and as either the "CEO" or "President" of the Corporation, on all of those annual reports. AHS' 2014 annual report was filed on August 19, 2014.

3b) On February 10, 2015, Dr. Harry Lessig, Consultant Medical Director of the Board, wrote to Joseph Gorrell, Esq. (in his capacity as counsel for Dr. Brigham) and requested proof that Dr. Brigham had divested his interests in AHS (Exhibit H, Merchant Certification). In a responsive e-mail dated March 27, 2015, Mr. Gorrell provided a copy of a stock certificate representing 100 shares of common stock in American Healthcare Services, P.C., which was issued to Steven C. Brigham on October 27, 2000 and a stock transfer certificate dated October 6, 2014. The stock transfer certificate is signed by Steven Brigham and states that 100 shares of stock had been sold, assigned and transferred to Vikram Kaji, M.D.

3c) The transfer of stock from Dr. Brigham to Dr. Kaji was made for either no or nominal (at most \$1.00) consideration.

3d) By letter dated March 31, 2015, Dr. Kaji and Dr. Brigham wrote to the New Jersey Department of Health and Senior Services. Within the letter, Drs. Kaji and Brigham stated that: "until October 6, 2014, the ownership of [AHS] was owned 100% by Steven C. Brigham, M.D. On October 6, 2014, Dr. Brigham transferred his shares . . . to Vikram Kaji, M.D., F.A.C.O.G. Consequently, Dr. Kaji is now the 100% owner of American." Copies

of the stock certificate and stock transfer certificate provided to the Board [see ¶3(b) above] were enclosed with the letter.⁶

3e) AHS filed an annual report with the Department of Treasury on November 15, 2015. Vikram Kaji, M.D. is listed as agent for service of process and as President of the Corporation on that annual report.

Disputed Issues of Fact

While the above established facts are all material to the ultimate adjudication of the Complaint, these facts alone do not form a sufficient predicate to support entry of judgment against Dr. Kaji. The lynchpin of the filed Complaint, and the predicate for all of the alleged violations of the Uniform Enforcement Act charged therein, is the assertion that Dr. Kaji is not the "true" owner of AHS, and the related assertion that Dr. Brigham "continues to fulfill the 'obligations as owner' of all [AHS] locations" (Complaint, ¶21). In order to grant summary decision, we would need to find that there is no genuine issue of material fact regarding those fundamental factual assertions within the complaint.

⁶ In ¶26 of the Complaint, the Attorney General alleges that Dr. Kaji's filing of the Surgical Practice Application for Transfer of Ownership with the Department of Health, "using the sham transfer documents, represents obtaining a certificate or registration through fraud, deception or misrepresentation, in violation of N.J.S.A. 45:1-21(a)." We note that the record before us does not include any proof that any certificate or registration was in fact obtained from the DOH.

While Dr. Kaji's testimony before the PEC in May 2015 and his statements to Investigator Nicoletti lend support for the pending motion, those facts are disputed in the certifications submitted in opposition to the motion. Read in the light most favorable to Respondent, the opposition papers demonstrate that Dr. Brigham transferred his ownership of AHS stock to Dr. Kaji without asking Dr. Kaji to pay for the stock because AHS had no business value. While we have concluded that there is no genuine dispute that Dr. Kaji's daily functions at AHS did not change after he assumed ownership, Dr. Kaji has, through the opposition papers, posited an explanation why that is so. Specifically, Dr. Kaji asserts that he has contracted with Fidelity Venture Services, LLC (a corporation presumably owned by Dr. Brigham, given that Dr. Brigham is identified as "President" of Fidelity) to perform all of AHS' administrative tasks. That assertion is supported, in turn, by Dr. Brigham's statements, and the copy of the "Management Service and License Agreement" appended to Dr. Brigham's certification. Dr. Kaji has further asserted, in his Certification offered in opposition to the motion, that he "understand[s] . . . that [he is] ultimately responsible for ensuring that [the administrative functions delegated to Fidelity] are provided to ensure that patient care services are not adversely affected." (Kaji Certification, ¶5). Additionally, he has submitted evidence that demonstrates that AHS filed a required annual report in 2015

(albeit subsequent to the date of filing of the Administrative Complaint), and that Dr. Kaji alone was listed thereon as President and Agent for AHS.

Finally, addressing the testimony he offered before the PEC, Dr. Kaji maintains that he was "confused" by some of the questioning, that his statements that he was not the "owner" were made because AHS did not own any property, and that his statements suggesting that Dr. Brigham continued to own AHS were made because Dr. Brigham was handling the "non-clinical" aspects of the practice. Whether those explanations are ultimately found to be credible is an open question, but when viewed in the light most favorable to Dr. Kaji, they fairly raise issues regarding the manner in which his testimony before the PEC should be interpreted.

Taken in the aggregate, Dr. Kaji's submissions must be read to place central issues of fact in dispute. Most significantly, it is clear that the issue whether Dr. Kaji did or did not accept responsibility for ownership of AHS is genuinely disputed. Similarly, the party's dispute whether the transfer of stock which occurred between Drs. Kaji and Brigham was a legitimate, commercially reasonable transaction, or whether it was instead a subterfuge to enable Dr. Brigham to continue to profit from AHS' operations even after his medical license was revoked and he was legally required to divest all ownership interest in AHS. The extent of Dr. Brigham's involvement in AHS' daily operations is

also in dispute - the Attorney General maintains that it is to a degree that would constitute continued ownership of the Corporation and/or the continued practice of medicine, while Respondent maintains that it is solely in a legally appropriate "administrative" capacity.⁷ We fully anticipate that these issues

⁷ We fully recognize that the documents attached to Dr. Brigham's certification - namely, the "Bill of Sale" and the "Management Service and License Agreement," in no way establish the truth of any statements therein. Rather, if the Attorney General is ultimately successful in demonstrating that the transfer of stock between Dr. Kaji and Dr. Brigham was a sham transaction, it is conceivable, if not likely, that those documents may also be identified as additional subterfuges to hide Dr. Brigham's continuing ownership of AHS and/or his continued profiteering from the activities of AHS.

At a minimum, the documents raise additional questions which we anticipate may need to be developed when the hearing in this matter is held. For example, there is nothing in the record which establishes the truth of recitations in the "Bill of Sale" that AHS had no physical assets, no operating profit and no significant financial value. The veracity of those recitations, however, would appear to be a particularly significant issue in need of development, to allow the trier of fact to determine whether the stock transfer was a legitimate "arms length" transaction.

Similarly, focusing on the "Management and Licensing Agreement," questions that would appear to be appropriate for further development and exploration include the legality of Dr. Brigham's ownership of Fidelity and the legality of certain terms of the agreement itself. A related legal question is whether Dr. Brigham is or is not engaged in the practice of medicine where he continues to be the President of a Corporation that leases a medical practice its offices, equipment, fixtures, trade names and even "business styles." Additionally, given that the agreement appears to have been entered almost four months after the stock transfer occurred, we anticipate that there may be a need to explore how the functions contracted for in the Agreement were performed between October 6, 2014 and January 31, 2015.

Just as significantly, the commercial reasonableness of the thus far undeveloped and undisclosed financial terms of that Agreement would appear to require further exploration. While Exhibit E to the Agreement apparently sets forth the financial terms of the Agreement, neither the Exhibit nor the terms of compensation were presented within Dr. Brigham's certification, and indeed are conspicuous in their absence. If the terms are not commercially reasonable, then the trier of fact may well conclude that the Agreement is an additional document that was prepared as part and parcel of an even more elaborate scheme to effect a sham or fraudulent transfer of AHS, as alleged in the Complaint. Additionally, we note that the financial terms of the agreement could well shape the issue whether Dr. Kaji, as owner of AHS, is or is not acting in a manner consistent with any fiduciary obligations he may have.

will need to be further explored when this matter is heard, but their existence precludes entry of summary decision and instead requires that any resolution await further development at a hearing.

Entitlement to Judgment as a Matter of Law

Even had we relied solely on Dr. Kaji's statements and concluded that there were no genuine issues of material fact, we point out that entry of summary decision would still not have been appropriate at this time. N.J.A.C. 1:1-12.5(b) requires not only that a moving party show that there is no genuine issue of material fact, but also that the moving party demonstrate that he is entitled to prevail as a matter of law. The Attorney General has broadly alleged that Dr. Kaji has performed none of the legal obligations and responsibilities of a true "owner" of a Professional Service Corporation. Specifically, Dr. Kaji is charged with having "conducted no evaluation or due diligence of the business he was purportedly acquiring" (Complaint ¶23) and with "not understand[ing] . . . [or] assum[ing] those legal responsibilities associated with his obtaining ownership of the stock."

The Attorney General has not, however, cited any specific statutory, regulatory or other established law that defines what Dr. Kaji was obligated to do before or upon becoming the owner of AHS, nor has any other evidence been offered (i.e., such as expert

testimony) to establish the standard of care that may be relevant to that analysis. In the absence of any established standards, even if we ultimately find that Dr. Kaji in fact did not conduct any sort of "evaluation" or "due diligence" prior to becoming the owner of AHS, that failure alone may not prove that the stock transfer was fraudulent. Similarly, absent evidence or legal citations establishing the obligations and requirements placed upon an owner of a Professional Service Corporation, Dr. Kaji's failure to change any of his day to day activities subsequent to assuming ownership of AHS may or may not prove any of the alleged violations of law.⁸

Nor is it at all clear that Dr. Kaji could be found to have violated any legal requirements or responsibilities attendant on an owner of a Professional Service Corporation if he legitimately entered into a contract with a third party to perform non-medical, administrative functions. Indeed, our collective experience suggests that such arrangements are common, commercial agreements, and that there is nothing that would render such an

⁸ While Dr. Kaji's explanation of his testimony - viewed in the light most favorable to him - might explain certain of the responses that he offered at the PEC, that explanation would not appear to explain why Dr. Kaji was unable to provide information that one would intuate that an owner of a Professional Services Corporation would know, such as information regarding how physicians in the practice were paid or even the business names for AHS' various practice locations. Again, though, even assuming his failure to know that basic information might ultimately form a basis for finding him not to be a credible witness, it still remains the case that to prevail, the Attorney General will need to demonstrate that Dr. Kaji failed to perform functions required of him or that Dr. Brigham performed functions that could only be performed by a licensed physician.

agreement per se illegal. Obviously, the fact that Dr. Brigham is the President of the entity that AHS contracted with raises many "red flags," but "red flags" alone are not sufficient to support entry of summary decision. We fully anticipate, however, that the questions raised herein will be further developed when this matter is heard.⁹

Conclusion and Order

While we decline to grant the State's motion for summary decision for the reasons set forth, we point out that there is a compelling public interest in accelerating the hearing and adjudication of this matter. When we revoked the medical license of Dr. Brigham, we did so with the full understanding and expectation that, once revoked, Dr. Brigham could no longer continue to engage in any medical practice in New Jersey, continue to own any medical practice in New Jersey or continue to derive any profit from the provision of medical services through ownership of any practice entity. If Dr. Kaji is found to be acting as a conduit to allow Dr. Brigham to engage in any of those practices, he would be in essence be subjugating the intent of the Order we entered and compromising the broader public interest. We will

⁹ A related legal question that may need to be explored at trial is whether dissolution of AHS was in fact required pursuant to N.J.S.A. 14A:47-1(b) when Dr. Brigham license was temporarily suspended or revoked, given that Dr. Brigham was the sole shareholder of AHS. If so, the transfer of stock that occurred between Dr. Brigham and Dr. Kaji may be found to have violated the requirements of the Professional Service Corporation Act, regardless whether or not it was commercially or otherwise reasonable.

therefore request that, upon transfer of this contested case to the Office of Administrative Law, the OAL schedule the case for hearing on an accelerated basis. In the event that the OAL is unable to accommodate that request, the Board fully reserves the right to request that the case be returned to the Board for a hearing before the Board.

WHEREFORE it is on this 1st day of FEB , 2016

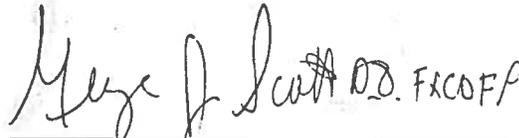
ORDERED:

1. The Attorney General's Motion for an Order Granting Summary Decision is denied.

2. This matter shall be immediately transferred to the Office of Administrative Law for an accelerated hearing.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By:

 D.D. FRCOFF

George J. Scott, D.O, D.P.M.
Board Secretary

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.