

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, January 7, 2015 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor Conference Center, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by Karen Criss, R.N., C.N.M. Board Vice President.

PRESENT

Board Members Angrist, Stewart Berkowitz, Cheema, Criss, DeGregorio, DeLuca, Kubiak, Lopez, McGrath, Miksad, Miller, Rao, Scott and Shah.

EXCUSED

Board Members Stephen Berkowitz, Maffei, Metzger, Rock and Parikh.

ABSENT

ALSO PRESENT

Kim Ringler, Deputy Director of Professional Boards, Sharon Joyce, Assistant Attorney General, Senior Deputy Attorneys General Dick, Flanzman and Gelber, Deputy Attorneys General Levine, Hafner, Levine, Puteska, William V. Roeder, Executive Director of the Medical Board and Sindy Paul, M.D., Medical Director.

II. **RATIFICATION OF MINUTES**
NONE

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

III. HEARINGS, PLEAS AND APPEARANCE

**10:00am MCMAHON, Thomas P., Jr., M.D.
 25MA02486400, 5050
 Robert J. Conroy, Esquire for Respondent
 Jeri Warhaftig, DAG for Prosecution
 Christopher Salloum, DAG, Prosecuting
 Steven Flanzman, SDAG, Counseling**

This matter was before the Board based upon the filing of a Verified Complaint and Order to Show cause in which the Attorney General was seeking the temporary suspension of Dr. McMahon's license to practice medicine and surgery in the State of New Jersey. The Verified Complaint alleged that Dr. McMahon was incapable for medical reasons of discharging his duties of a licensee in a manner consistent with the public's health, safety and welfare. The Board heard oral argument on the Application.

Attorneys put their appearance on the record.

Dr. Scott made a motion to move into Closed Session for advice of counsel, which was seconded by Dr. Angrist and the motion carried unanimously. All parties, except counseling attorneys and administrative staff, left the room. Returning to open session, the hearing began.

DAG Warhaftig addressed the Board and reminded the Board that they were convened to hear an Application on an Order to Show Cause seeking the temporary suspension of Dr. Thomas McMahon. About thirty years ago, the deputy reminded the Board, a prescribing case was completely different. At that time, it was basically a patient asking for a drug, paying a fee, and getting a prescription. Unfortunately, today, the indiscriminate prescribing cases have taken on a different shape. This case, in particular, deals with real patients, many with real pain, but not always treated within the standards of care. Since 2011, a new tool

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

known as the Prescription Monitoring Program has emerged which assists both practitioners and patients with prescribing issues. While the PMP may assist in identifying a prescribing pattern, it does not in-and-of itself translate into indiscriminate prescribing.

Looking back historically, Dr. McMahon's behavior has been scrutinized by the Board. The Board's intervention, however, has not helped. DAG Warhaftig informed the Board that the Attorney General would present an expert who has concluded that Dr. McMahon's prescribing patterns and care of his patients are not within the standards of care. The expert would further conclude that the doctor is actually hurting his patients, not helping them. The expert's focus would be squarely on the danger that he presents to the public in his prescribing practices.

According to the deputy, Dr. McMahon's medical records demonstrate a lack of documentation of a proper evaluation or monitoring of ongoing medical status. An example, the deputy cited, is how the doctor routinely prescribes methadone, but does not query the PMP to see if the patients are not obtaining medications for other prescribers. His records have a number of entries of patients losing prescriptions, sharing prescriptions, or needing refills early. Even when other sources have raised issues or questions, his records demonstrate his failure to heed, even further, acknowledge, any of their "suspected" warnings.

The prescribing of narcotics, DAG Warhaftig continued, is not correlated to any treatment plans or therapeutic goals. To the contrary, Dr. McMahon failed to give them what they need, but rather prescribed (and continued to prescribe) what they wanted.

While his records do demonstrate he appears to care for his patients, in reality, Dr. McMahon's practice is not in their best interest or good for their health. He is grossly practicing medicine, the DAG told the Board of Medical Examiners at the end of her closing, and a temporary suspension should be granted.

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

Ms. Gallagher, the attorney representing Dr. McMahon, began her opening statement by clarifying a few facts which she felt DAG Warhaftig was misleading the Board on. Ms. Gallagher agreed that the doctor has been under the Board's scrutiny since the 1980s, but also by Board representatives. Most recently Dr. Lessig, who she said Dr. McMahon believed was evaluating his CDS prescribing, released Dr. McMahon from monitoring in April 2013 and in fact, Dr. Lessig told him to "keep up the good work."

Ms. Gallagher continued by explaining to the Board that Dr. McMahon has a small practice with a group of patients who need care. Most of his patients are underinsured and cannot obtain care in any other fashion. Ms. Gallagher felt it was important the Board be made aware that Dr. McMahon hasn't taken on a new pain management patient within the last five years. His daughter, with whom he practices, does not prescribe pain medications as he has reiterated to her that prescribing pain medications puts a "target" on a physician. Ms. Gallagher continued that can explain his records and has answered them to the Board and its monitors. Most of his patients suffer from chronic, debilitating pain. Dr. McMahon believes that the family members all suffer from the same genetic issues that make them significantly less resistant to pain.

Ms. Gallagher ended her opening statement by maintaining that Dr. McMahon uses his experience and treats the patients in order to allow them to maintain a life with as little as pain as possible; that he adjusts the medications depending on the current situation of each patient; and that he is not a pill mill runner, but as a practitioner doing his best to address the pain of his patients.

DAG Warhaftig presented her case in chief and she handed out a list of the Attorney General's Evidence List. AG-1; AG-2; AG-3; AG-4 (objected to as to her ability to render an opinion as to liability); AG-5 (kept under seal and should be redacted within thirty days); AG-6; AG-7; and AG-8 (offered under seal because they are not re-dactable; Ms. Gallagher

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

objected to these inasmuch as they were just produced yesterday; it was also objected to any entries post application for the Temporary Suspension) were accepted into evidence without objection unless noted above.

The Attorney General first called Dr. Harry Lessig and he was sworn in. It was first established that he works as the Medical Consultant for the New Jersey State Board of Medical Examiners. He reviewed AG-7 and confirmed this was the total of correspondence between them as best as he could recall. Dr. Lessig met with Dr. McMahon based on a prior determination that his record keeping was not optimal. Dr. Lessig reviewed with him appropriate record keeping in August 2012. Dr. Lessig believes that he was directed by the Board's Screening Committee to review his record keeping. At his disposal, Dr. Lessig recalled that he had part of Dr. McMahon's file and it indicated that his record keeping was not appropriate and that if a patient was on opiates for more than 90 days, he should enter into a pain management contract. There was only the one meeting in September 2012 and, thereafter, he only corresponded with him via the written word. As best as he could recall, Dr. Lessig believed that he discussed with Dr. McMahon the SOAP method of record keeping. By April 2013, Dr. Lessig believed his record keeping had improved enough that he no longer needed to be reviewed. Dr. Lessig patently denied that he was monitoring him for his prescribing of CDS in spite of the assertions made by Ms. Gallagher in her opening remarks. When he was shown a copy of his letter, Dr. Lessig acknowledged that when he wrote "keep up the good work," he intended to congratulate the doctor on the progress he was making on his record keeping. He also clarified that the five records that he and Dr. McMahon reviewed are not the subject of the eleven records that are at issue in this case.

On cross examination, Ms. Gallagher questioned Dr. Lessig about his review. Dr. Lessig acknowledged that reviewing the medical records

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

would have included reviewing the medications that he was prescribing. Dr. Lessig then, again, denied that he was reviewing the levels of Dr. McMahon's CDS prescribing while acknowledging they had been monitored in the past; he could not specifically recall being informed why that had occurred. As best as he could call to mind, he only learned after the Temporary Suspension papers were filed that there were some issues with Dr. McMahon's CDS prescribing. No matter how much he was pushed, Dr. Lessig consistently and repeatedly affirmed that he was only looking at medical record keeping issues and was not focused on prescribing, and in particular CDS, habits. The two or three notations about patients receiving CDS medications raised by Dr. Lessig related to his medical record keeping and making notations consistent with the SOAP method.

DAG Warhaftig then called Dr. Laura Picciano, who after being sworn in, offered her background. Most recently, she has been working at Cooper working in outpatient medicine. The witness has had a great deal of experience in pain management which she detailed and noted that throughout her entire career while managing patients with chronic pain as part of her internal medicine practice. The State offered her as an expert in the practice of internal medicine with knowledge of prescribing and treating pain management patients.

The witness addressed the types of drugs and benefits generally used in internal medicine. She is familiar with methadone patients and has written orders for inpatient treatment with it. Dr. Picciano also addressed some of the negative effects of the various pain management drugs used in internal medicine as well. When she is prescribing long-acting opioids, she notes the severity and the progression of the disease in her assessment of the patient, including any psychological implications, the rate of dependence, the interaction with other medications, and assessment of a pain pattern. For those who continue to experience pain, it may be most prudent to add some short term

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

medication to the mix. Generally, in her experience, it is not best to continue to add another long term opioid under those given conditions. Dr. Picciano also testified to the advantages of a pain management contract, drug screening tests, as well as the various excuses used by patients that are drug seeking.

Dr. Picciano turned her attention to G-1, in which she summarized the Dr. McMahon's patient's conditions and treatment. Dr. Picciano also identified the medications being prescribed. She raised concerns about the urine screen identifying cocaine as it indicated he may have a problem with an addiction. Even if this were an isolated incident, there should have been a reevaluation for the physician patient relationship and perhaps a referral to an addiction services. It would be a violation of an addiction contract and the relationship of CDS prescribing should have ceased, perhaps even the end of the doctor-patient relationship. In this case, there was no contract, but Dr. Picciano believed that similar protocols should be followed. At a minimum, she maintained, a reassessment of the patient needed to be performed. This patient was diagnosed with migraines and general anxiety, and, according to the witness, the patient was over prescribed medications, that were, in fact, the wrong medications to begin with. Ms. Gallagher did clarify and pointed out that there was a pain management contract for this particular patient. Another reason, as explained by Dr. Picciano, for not using opioids for the treatment of headaches is because the withdrawal from the opiates may actually cause headaches. She acknowledged that the patient record shows that the urine screen showed cocaine and was negative for the Xanax being prescribed and the witness explained that this was significant because it demonstrated that the patient was not taking the medication prescribed. Normally, this would raise a number of concerns, the least of which is perhaps the patient did not need the medication. The PMP report seemed to indicate that the prescribing levels stayed relatively steady, according to the witness, although there is some variation, which, Dr. Picciano testified, was significant because

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

there did not appear to be a reevaluation of the patient and the effectiveness of the medications. She further commented that the standard of care would have been to order some additional testing, such as neurological examinations, to determine the cause of her severe headaches.

Moving to patient L-1, Dr. Picciano noted that there was a medication sheet included within the patient record and identified its significance in that it noted a number of entries about lost prescriptions. Generally, according to the witness, this is a red flag, in particular when it occurs a number of times. It can mean the patient is over using his/her medications and/or diverting his/her medications. It appears the patient was diagnosed in 2006 with fibromyalgia. She took issue with the lack of additional testing, in particular the lack of blood work, in the chart. Dr. Picciano also was surprised that this patient's fibromyalgia was diagnosed, then six months later, not diagnosed and then six months later, re-diagnosed. This did not fit the pattern of fibromyalgia, which she was not aware could go into "remission" as the records seem to indicate. There are also a number of tests that should be done prior to the amount of medications that were being prescribed and the record failed to indicate that there were other non-medication therapies attempted. She also noted that it was significant that as indicated in the record that the urine screen was negative for the medications that were being prescribed. In this chart, she also noted that it included a Drug Utilization Review which showed that the patient was obtaining medications from other practitioners. At a minimum, Dr. Picciano believed, because of this red flag, the practitioner should have a discussion with the patient about his/her drug use. Additionally, there was a notation in the record about the patient's follow up with a pain management clinic.

Ms. Criss informed the parties that Exhibit 8 should be redacted.

The witness then addressed patient O-1. The diagnosis according to the

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

record was fibromyalgia, congenital, since age 5, which is not a diagnosis she is familiar with. She has never heard of that type of fibromyalgia. She also noted a letter from another practitioner in 2000 that the patient was on too many long acting narcotics and at most should be on one long acting. Additionally, there was a letter from a physician at UMDNJ, who performed a neurological consultation that indicated that her range of complaints are out of proportion. The letter from the UMDNJ physician also noted that her fibromyalgia diagnosis was debatable and given this information, the witness questioned why she was being prescribed so much by Dr. McMahon. Looking further in the chart, Dr. Picciano noted that in 2006 similar concerns were noted in the chart that patient O-1 told another practitioner that she had drug addiction issues. The witness believed that the treating physician would be required to talk to the patient, reevaluate the patient and begin to wean the patient off the opioids. The standard of care, according to the witness, would have required evaluation at the first notice of an issue, about ten years prior. There also seemed to be some questions about the other conditions for which this patient was being treated almost to the point where it appeared to be self-diagnosed by the patient.

Attention was then focused on Patient J-1. This patient received hydrocodone homatriphine syrup, which is a medication used for short term illness, such as a sever cough. It is rarely used for chronic conditions. When reviewing the PMP report, the witness noted that the volume prescribed was very high and was, admittedly, at a loss to conclude a basis for such a high dose. The medical record, Dr. Picciano continued, indicated a report from a physician in 2007 in which he concluded that the patient had no significant lung compromise. It was also surprising to the witness that in addition she was routinely receiving codeine cough syrup.

Dr. Picciano then offered her opinion on Patient M-1. This patient advised Dr. McMahon that he was having pain from a dental abscess; Dr.

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

Picciano thought it was a bit odd that the physician to treat this kind of pain. This patient, however, returned a number of times with the same symptoms and that would set a red flag about the unlikely legitimacy of the pain. It would, according to the witness, raise some issues about addictions and/or diversion. As in her prior testimony, she raised the need for reevaluation and discussion with the patient about the patient's potential addictive behavior. She was also concerned with the patient, given the reoccurring loss of prescriptions and the requests for prescriptions without appointments.

Finally, Dr. Picciano testified about patient Q-1. In this chart, the insurance carrier questioned the amount of scripts that were being issued. Additionally, some red flags in the chart also included the testing positive for marijuana. In spite of these, he continued to prescribe narcotics in large quantities. She was also concerned that all six members of his family were receiving the same medications and that it was most unlikely that all six would have the same pain management protocol.

In conclusion, Dr. Piccaino opined within a reasonable degree of medical certainty that the 11 patients at issue in the complaint were all being treated improperly and inappropriately as pain management patients. Additionally, according to the patient records reviewed, there are a number of other conventional treatments, short of the amounts of narcotics, Dr. McMahon is prescribing.

On cross examination, Dr. Picciano talked about serving as an expert in other cases, but this is the first time she has rendered an opinion for the Board and/or Attorney General. Upon questioning by Ms. Gallagher, the witness told the Board that she has received about \$5,000 for her preliminary review and expects to receive an additional \$2,000 to \$4,000 for her testimony. Dr. Picciano clarified that she only met Dr. Lessig for the first time earlier in the day.

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

The witness told the Board that the report entered into evidence for this meeting is the only report that she wrote and submitted for the Attorney General. She spoke of all the items which were considered and reviewed in the report, but, while Dr. Picciano did look at the updated urine screens from December and an updated report of one patient record, they are not included in the submission.

Addressing fibromyalgia patients, Dr. Picciano clarified that she would always start out with a low dose and if that were to fail, she would start to do some localized injections and/or other treatment options. She also believed that some consults with rheumatology and/or pain management specialists. She stressed that increased dosages of narcotics should be the last resort and only, if at all, documented attempts of everything else.

Although she could not recall which patients in particular, Dr. Picciano testified that there were some of the side effects of the opioids within the patient records, such as inability to stay awake, inability to focus, an accident, erectile dysfunction. She also noted that there were some modifications to the prescriptions after learning of some of these side effect. The witness believed that if a patient violated a Pain Management Contract the patient should be dismissed because that should be part of the agreement between the patient and physician. She also acknowledged that there should be contemporaneous discussions about the patient's use of prescribed medications, and in the case of suspected addicted, illicit drug use.

DAG Warhaftig opted for an opportunity to redirect the witness at which point Dr. Picciano acknowledged awareness that after the adjournment last month, Dr. McMahan was to do drug screens on patients that returned to him during the interim. Ms. Criss questioned why the screening reports were being used in questioning when they were not entered into evidence. A motion that was made by Dr. Berkowitz and seconded by Dr. Scott to move into executive session for advice of counsel was carried unanimously. All parties, except for administrative and

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

counseling staff, left the room.

The Board returned to open session and announced its decision that the urine monitoring screens performed during the interim, should be entered into evidence under seal and redacted within thirty days.

Dr. Picciano testified that she reviewed all of the urine screens, which amounted to five patients. She did find some irregularities. For example, C.B. showed that it was positive for cocaine. Another patient, L.V. tested positive amphetamines (indicating Adderal prescription), Fentanyl and Oxycodone which were not being prescribed by Dr. McMahon, who was prescribing methadone; M.V. tested positive for Valium which was not being prescribed. Finally, patient A.B. tested positive for Xanax. For Dr. Picciano, these results are significant because if Dr. McMahon was not prescribing, then they were getting the drugs from another practitioner and would definitely fall within a red flag discussed earlier.

The Board asked for a proffer of the Respondent's witnesses. Many are patients whose care was being questioned in this case. Those that are not part of the 11 are patients that can testify as to his care and treatment of them. DAG Warhaftig objected to the testimony any patients testifying other than the 11 at issue in the complaint. Additionally, the State argued, the patients that are not at issue do not have any relevance. Ms. Gallagher argued that the testimony was relevant as it goes to the issue of his ability to treat pain management patients.

In presenting Dr. McMahon's case, Ms. Gallagher proffered into evidence a December 8, 2014 letter from Dr. Burke, Esquire and a letter on behalf of Sister Sharon Wise, SSJ. DAG Warhaftig asked to review the letters inasmuch as they were not exchanged. After her review, the deputy did not object to either letter and they were admitted into evidence as R-1 and R-2, respectively.

William Atkins was called as his first witness. He testified that he understood that Dr. McMahon's prescribing practices were being

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

questioned. He has been a patient of Dr. McMahon's for seventeen years. Mr. Atkins described the doctor as a family doctor who spends as much time with his patients as possible. In the past, he has had hepatitis C and is a recovering alcoholic. For the last six or seven years, he has had chronic pain and has been diagnosed as bi polar. The pain Mr. Atkins suffers from is constantly in his liver in particular when he is wearing a suit or dress pants. He does not abuse his medications and he finds it difficult to believe that Dr. McMahon has done anything wrong. Since Dr. McMahon has not been able to prescribe CDS, he is trying to be part of the medical marijuana program and is concerned about his own ability to continue to live a normal life as he has been able to do under the care of Dr. McMahon.

William Burke, M.D., Esquire was then called. He testified that he has known Dr. McMahon for about fifteen years. He works in the same office building as Dr. McMahon. He believes that time is needed to properly evaluate a patient whether or not they are in pain and generally, believes it takes about 45 minutes. Dr. Burke wanted to bring to the Board's attention that the Diocese of Camden on a yearly basis will convey an award to a healthcare worker and the selection of the nominees is done by the Physician's Catholic Association. The Chair questioned the relevancy of this line of questioning and requested that counsel move on. Dr. McMahon, according to the witness, is a good practitioner that is caring and interested in his patients. In particular, there is a segment of patients in the Camden County area that need and deserve a practitioner such as Dr. McMahon. Without him, Dr. Burke opined that the patients will become marginalized quickly and destroy their lives.

Patient Keith Miller, a chronic pain patient of almost 21 years, was called as a witness. Mr. Miller believes he is on the higher end of the patients receiving CDS from Dr. McMahon based on the large amount of pills he is taking. Since Dr. McMahon has not been able to prescribe, as a result of last month's adjournment deal, he is cutting back on the amount of

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

medication he is taking to make them last. He has gone to some of the ERs in the area and he received a few pills to carry him over. Mr. Miller has had over fourteen surgeries in his neck. When asked, witness was at a loss about what he would do if Dr. McMahan were not able to prescribe and he admitted he might resort taking some of the medications his wife uses.

Patient D.U. was called next and Ms. Gallagher informed the Board that her daughter may need to testify for her because of a disability she is currently suffering from. DAG Warhaftig objected to the daughter's testimony. Ms. Criss ruled that she should be brought forth and patient D.U. was sworn in. Though she was not sure, patient D.U. has been a patient of his for the last ten years and she has been treated for pain since she was hit by a car at age five. She has two bad knees and just had laparoscopic surgery. As she kept working, she needed more and more medications. The witness questioned why he was being questioned when he was simply treating a patient; D.U. recalled that one time he questioned how much medication she was on. She had hoped to start weaning off until she had the stomach surgery. Since Dr. McMahan can't prescribe, she has found a doctor that will prescribe for thirty days. Additionally, she is seeing a pain management doctor, but he won't prescribe narcotics.

The next witness, M.V., has been a patient for the last twenty years, and has been treated for fibromyalgia, arthritis, bi polar disorder. M.V. is in constant pain and other members of her family are also patients of Dr. McMahan. The witness has always followed his instructions, although from time to time, depending on her activities or the weather, she may need more or less on any given day. When she goes in for the next visit, she informs the doctor of what she has done since her last visit. M.V. insisted she does not give her medication to other family members and told the Board that for the last month, she has attempted to find another physician to prescribe her pain medications and did get a 30 day supply

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

from Kennedy Hospital. On cross examination, the witness acknowledged that she trusted Dr. McMahon implicitly. She also clarified that she has had fibromyalgia since she was four. Dr. McMahon diagnosed her as a bi polar and chronic pain patient, as well as ADD. She also acknowledged that Dr. McMahon gave her prescriptions for her son who was in prison from time to time for the past five years; this was patient AV.

Ms. Gallagher called R.B. as the next witness, who was sworn in. According to the witness, he has been a patient of Dr. McMahon's for the past fifteen years. He has been treated for back pain, legs pain and chronic shoulder (rotator cuff) pain. He did make an appointment with Dr. McMahon for a sinus infection and he did have a urine screen performed. He has not contacted any other pain management doctor since Dr. McMahon has not been able to prescribe; the witness believes that the majority of his condition was brought on from when he was a kid boxing. As the other witnesses, he was at a loss as to what he will do if Dr. McMahon lost his ability to prescribe. In the past, there have been attempts to wean him down. He has a girlfriend who assists him with taking his medications appropriately.

Robert Cervini was called. He has been a patient since about 1988 after a severe accident in which he suffered serious back injuries. For the past month, Mr. Cervini has had a hard time in finding another practitioner. Fortunately, as a roofer, his work is seasonal and he has been able to adjust his medications so that he has sufficient to carry him over. He always discusses his drug usage with Dr. McMahon and has discussed with him, other options. Without the medications, however, he is not able to go to work. If Dr. McMahon is not able to practice, the witness doesn't know what he will be able to do and it will affect his entire family. It would take away his livelihood as he put it.

Patient Barbara Sosbee was sworn in. Ms. Sosbee began by first telling the Board that she has been a patient of Dr. McMahon for the past twenty

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

years for the management of chronic pain. The witness was diagnosed with fibromyalgia and arthritis and she has also had three hip replacements, and a knee replacements. Within the past month, she has gone to see Dr. McMahon and it has been difficult for her since he has not been able to prescribe. She has contacted other physicians and only recently found a doctor who will prescribe for her. Ms. Sosbee was not sure what she would do without Dr. McMahon as she depends on him for every aspect of her life. It permits her, as she described, “to have a normal life.” She has been urine screened and understood the reasons. As far as she knew, she passed all urine screens and she had no reason to think otherwise because she takes her medications as she has been instructed. Her son also is a patient of Dr. McMahon. Both receive Fentanyl patches, as well as oxycodone.

Dr. McMahon was called to testify on his own behalf. His practice consists of about 20% pain management practice and he estimated that he has about forty five pain management patients. The other 80% have serious health issues such as diabetes and high blood pressure. Of the 11 patients in this case, Dr. McMahon testified that about half are fibromyalgia. The others are basically chronic pain patients due to severe injuries. He believes that pain management is integral to practicing medicine and explained to the Board that he has not taken on any pain management patients for the past five or six years and believes he has a “target on his back.” Dr. McMahon has previously instituted a “three strikes and you are out policy.” Dr. McMahon testified that he has been following this policy for a number of years and it applies to any negative screens. He also noted that there are valid reasons for why medications prescribed are not found in a urine screen. In response to a negative screen such as the cocaine, he waits until the next office visit. He did confront him in the hallway during the hearing and the patient has denied taking it. Another factor he asked the Board to consider is his use of a Pain Management Contract, which he has updated to keep as current as possible.

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

“Three strikes and you’re out policy” basically means that three clearly and explicitly defined violations of the pain management contract and he no longer will prescribe any CDS. He does not discharge the patient, Dr. McMahon told the Board, he simply will not continue to prescribe CDS. He also explains to his patients that he is prescribing the medications only so that his patients can live their lives “normally” as possible.

Turning to specific patients, L.Z. was prescribed hydrocodone cough syrup because after attempting to treat her chronic cough with different medications, this seemed to be the only treatment that yielded any form of result. She was a high functioning patient who did well on the medicine over a number of years. After a while, she had an allergic reaction and developed bromocide. She was hospitalized and stopped taking the syrup, although she continues to take hydrocodone for her back pain.

Dr. McMahon explained that he believes he has been under the Board’s scrutiny for a number of years, mostly over prescribing issues. He has been the subject of both public and private disciplinary actions and he also has been monitored by the Board over the last seven years. As far as he knew, he was being monitored for his prescribing habits. He selected the patients and purposefully selected two patients which he believed might have been somewhat controversial. These were selected because he wanted to cooperate with the Board and make sure that he was doing it appropriately.

Dr. McMahon recalled that he met with Dr. Lessig on one occasion and he recalled that his CDS prescribing was discussed. Additionally, as he recalled, he addressed CDS issues within written correspondence. When he was released, Dr. McMahon understood that to mean that he was providing good care and that his practice no longer needed to be monitored.

When he received the Application for a Temporary Suspension, Dr. McMahon testified that he felt horrible for his patients. He recalled two

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

patients that actually believed that suicide would be the only option if they had to go back to living with the pain that was being alleviated through his prescribing. Dr. McMahon has been giving his patients a list of potential sources, but the patients have been informing him that they are not meeting with much success in obtaining new prescribers.

As it related to letters from other practitioners which addressed addiction or over prescribing issues, Dr. McMahon testified that he did respond to the letters and did in fact address the issues with the patients.

When he received the subpoena for his patient records, he presented them personally at the AG's office in Newark. He left the originals with the office and they were returned to him via Federal express. He provided a certification as to their completeness after someone from the AG's office presented him with an electronic copy. While he admitted that he reviewed them, he also admitted he did not go through it page by page.

He also opined that family members come to see him because of his style of practice and the amount of time he takes with them. An observation that Dr. McMahon has made over the years in treating chronic pain patients within the same family is that they all share the same gene which pre-depotes them to a chronic pain condition. He believes that there is a gene that is passed on from generation to generation that causes their chronic pain condition.

Dr. McMahon estimated that approximately 50% or greater are either underinsured or uninsured. This complicates the treatment protocols, according to Dr. McMahon, because often times the patients are not able to afford the treatment which might be appropriate or necessary at that time. The insurance issues not only impact the testing prescribed, but also the types of medications to be prescribed. His partner is his daughter and she does not see any patients. If his license is suspended, he is unsure what will happen to his pain management patients as his daughter will have to discharge them. His daughter, he explained, might

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

not be able to take over his practice completely because of her other obligations.

Dr. McMahon acknowledged that he would subject himself to any restrictions placed on his license. He would not be pleased with it, but would accept it.

In conclusion during direct, Dr. McMahon informed the Board that he believed he was a good, caring doctor and has helped his chronic pain management patients continue to live a “normal” life given the restrictions that their pain has placed on them.

On cross examination, he admitted that during the 90 day that he was required to have a pain management consult it was helpful. He could not explain why he has not continued to do that other than to say that it was “impossible” to obtain.

Dr. McMahon clarified that his “three strike rule” applies to those patients receiving Schedule II drugs. Strikes would include, according to the witness, an inappropriate urine, use of illicit drugs, and misuse of the medications or any issue of diversion. As best as he recalled, only one of his patients have violated the three strike rule.

Dr. McMahon did acknowledge that large doses of methadone can cause arrhythmia but he does not do routine EKGs. He also informed the Board that he uses a Pain Management Contract with all his chronic pain management. He was not able to explain why not all of the records produced for the 11 patients subject to the subpoena contained one. His attorney questioned whether or not the Attorney General properly copied all of the documents submitted.

Dr. McMahon believed he has seen literature which supports his opinion of family members having a predisposition to chronic pain, however, he could not recall any specific article on the issue.

In closing, Ms. Gallagher thanked the Board for the opportunity to

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

present its case. She reminded the Board that this was an Application for Temporary Suspension and posited that after consideration of all the evidence, both documentary and testimony, this case did not warrant such a sanction. He is not a clear and imminent danger to the public. This is a practitioner, she argued, that loves practicing medicine and only wants to treat his patients so that they can live as normal of a life as their pain will permit them. She continued to argue that he treats the patient as a whole and takes the time to listen and make the appropriate treatment plan. At best, she asked that the Board, if it were inclined to temporarily suspend him, to initiate a detailed monitoring plan for his pain management patients.

DAG Warhaftig, in closing, argued that this may not be pill mill case, but rather a poor quality of care case which has been demonstrated in the prescribing. The cases before the Board deal with the 20% of his care and the evidence demonstrated that it has been inappropriate at every turn.

In the past two decades, the Board has been concerned about his prescribing and afforded him a number of opportunities to continue to practice, including an attempt of reeducation. All along the way, she continued, it appeared that Dr. McMahon was well intentioned in his attempt to meet the needs of his patients. But now, it appears the scales have tipped and now in order to protect the public, nothing short of a temporary suspension of his license. His testimony seems to indicate that he believes he is charged with alleviating the pain without any overarching treatment plan. The evidence has demonstrated, she argued, that he has ignored every red flag and continues to prescribe based on what the patient needs, which has been occasioned by Dr. McMahon's own treatment plan. DAG Warhaftig outlined all the remedial measures already attempted and while he can talk the talk, he has failed to implement any of the measures covered in those attempts.

DAG Warhaftig also challenged Dr. McMahon's testimony about his "three strike policy" by pointing out in the record the inconsistencies in

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

the urine screens and patient records. Looking at the records, it appeared that after questioning the patient, the irregularity was converted from being a strike and therefore, it was rarely applied. In fact, she noted, Dr. McMahon testified that he only discharged one patient based on this “three strike policy” rule.

She also asked the Board to consider the similar prescribing for family members. As the expert indicated, this is a red flag, which was and has been ignored by Dr. McMahon. Additionally, he continued to ignore alerts from insurance carriers and other practitioners; more flags ignored.

In light of the evidence and testimony presented, DAG Warhaftig urged the Board to grant the Attorney General’s Application for a Temporary Suspension in order to protect the public from the imminent danger created by this physician’s practice of medicine.

The Board, upon motion made and seconded, voted to move into closed session for deliberations and advice of counsel. The motion, made by Dr. Angrist and seconded by Dr. Cheema, carried unanimously. All parties, except counseling and administrative staff, left the room. Returning to open session, it announced its decision.

THE BOARD CONSIDERED THE RECORD BEFORE THEM AND CONCLUDED THAT THE AG MET STATUTORY BURDEN PALPABLE DEMONSTRATION THAT THE CONTINUED PRACTICE OF DR. MCMAHON IS CLEAR AND IMMINENT DANGER TO THE GENERAL PUBLIC AND THEREFORE ORDERS TEMPORARY SUSPENSION PENDING PLENARY HEARING IMMEDIATE ARRANGEMENTS FOR THE TRANSFER OF HIS PATIENTS.

The decision carried with one abstention after a motion by Ms. Lopez and second by Dr. Angrist. The Board denied the stay requested by Ms. Gallagher.

**OPEN MINUTES- NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - January 7, 2015**

ON THE PAPERS:

AL-SALIHI, Farouk L., M.D., No. 25MA02261800

Pro Se

Susan Brown-Peitz, DAG, Prosecuting

Tobey Palan, DAG, Counseling

The Board will recall that at last month's Board meeting, the Board conducted a hearing on the merits of the Verified Complaint filed by the Attorney General and entered decision against Dr. Al-Salihi. He has submitted the attached request for reconsideration of the Board's decision. Attached also is a copy of the Attorney General's response. The Executive Committee has reviewed these submissions and recommends that Dr. Al-Salihi's request be denied.

**THE BOARD, AFTER A MOTION BY DR. BERKOWITZ AND SECOND
BY DR. ANGRIST, UNANIMOUSLY VOTED TO DENY THE REQUEST
FOR RECONSIDERATION.**

IV. OLD BUSINESS

Nothing Scheduled.

V. NEW BUSINESS

Nothing Scheduled.

Respectfully submitted,

Karen Criss, R.N., C.N.M
Vice- President
Chair, Disciplinary Proceedings
Pending Conclusion

WVR/br