

**OPEN MINUTES - NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - March 9, 2016**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, March 9, 2016 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 George J. Scott, D.O., D.P.M., Board Vice President.

PRESENT

Board Members Angrist, Stewart Berkowitz, Carniol, Haidri, Kubiel, Lopez, McGrath, Metzger, Miller, Parikh, Scott and Shah.

EXCUSED

Board Members Steven Berkowitz, DeLuca, Maffei, Rock and Rao.

ABSENT

ALSO PRESENT

Assistant Attorney General Joyce, Senior Deputy Attorneys General Dick, Flanzman and Gelber, Deputy Attorneys General Cordoma, Hafner, Levine and Brown-Pietz, William V. Roeder, Executive Director of the Medical Board and Sindy Paul, M.D., Medical Director.

RATIFICATION OF MINUTES

**THE MINUTES FROM THE JANUARY 13, 2016
BOARD, UPON MOTION MADE AND SECONDED,
WERE APPROVED BY THE BOARD.**

The Motion was made by Dr. Carniol and seconded by Dr. Shah. It carried unanimously.

HEARINGS, PLEAS AND APPEARANCE

10:00 AM **HESSEIN, Amgad A., M.D., 25MA0676500**

Complaint #73992

Amgad A. Hessein, *pro se*

Susan Brown-Peitz, DAG, Prosecuting

Debra Levine, DAG, Counseling

Megan Cordoma, DAG, Counseling

On or about December 17, 2015 ALJ Jesse H. Strauss issued his Initial decision in the above referenced matter. By way of background, on or about October 13, 2011, the Attorney General filed a Complaint with the Board with notice to Dr. Hessein to file an Answer. Hessein filed a timely Answer. At the same time of that filing, the Attorney General also filed an Order to Show Cause with the Board, seeking the temporary suspension of Dr. Hessein's license to practice medicine in New Jersey. On November 9, 2011, the Board temporarily suspended his license, which suspension was still in effect at the time of the hearing . Thereafter, the Board transmitted the matter to the Office of Administrative Law (OAL) for a plenary hearing and determination as a contested case.

The parties filed exceptions to the Initial Decision and the matter was scheduled before the Board for Hearing on those Exceptions and for acceptance, rejection or modification of the Initial Decision.

With permission of counsel, the Board moved into closed session without opening the hearing to preliminarily discuss the proceedings. All parties, except Administrative and Counseling

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Staff, left the room. The Board returned to open session, and began the hearing.

After putting their appearances on the record, Mr. Patrick Toscano, Esquire, representing Dr. Hessein, began his opening argument and noted that the transcripts contained a number of inaccuracies. This situation, according to the attorney, was remarkable insofar as a criminal matter was pending, along with a civil matter, and when there is something criminal pending, the other matters are placed on hold because of one's constitutional right in the criminal matter. He acknowledged that Dr. Hessein asked that the matter be heard, but this was due to his license suspension and his inability to make a living. There should have been a *voir dire* below on the record, he continued to argue, in which Dr. Hessein should have been questioned as to his awareness of what he was waiving in having the hearing move forward. He submitted that nothing should be finalized since the criminal matter remains pending and a number of exculpatory facts are being developed in that regard. The criminal matter has a 75 count indictment with two defendants. The attorney submitted that if it were such a strong case, he would not be being offered a two-count admission plea. Absent the *voir dire*, his client was not able to understand the complete ramifications if he continued at the OAL.

Additionally, Mr. Toscano took exception with the finding of the judge and his recommended penalty, that his license should be "revoked" prior to any criminal trial, in which potentially he could be cleared of all charges. From the discovery to date, according to Mr. Toscano, no witness will testify that services were not given or performed. He admitted that there might be instances of poor

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record keeping; there might be bad billing; or there may have been some extensive testing, but there will not be any testimony that services were not rendered. There were numerous statements entered below by the ALJ that were improper and the admissions of those statements do not comport with the rules of court. While the rules at the OAL are a bit relaxed, they are not so relaxed as to allow statements of hearsay and without any corroboration. One of the patients has died and now is no longer subject to cross-examination. The ALJ also admitted statements that had nothing to do with the care that Dr. Hessein offered. The ALJ admitted the statements and considered them in his decision making. Five hearsay statements, which were extremely damning to Dr. Hessein, did not appear to be corroborated and were not subject to any cross examination. It wasn't allowed because the witnesses were not called. This error alone makes the decision appealable. Finally, he argued that the fifteen records were false, and it was never determined that the records were improper. At best, it could be said that some treatment is rendered on a Sunday or Monday, but in actuality it was on Tuesday. Sloppy records do not rise to a level of revocation, in particular as the criminal matter remains pending.

The attorney also asked the Board to examine the penalty recommended because the ALJ did not consider any alternative punishment particularly in light of the doctor's long history of an unblemished practice. The ALJ opinion is devoid of any reference to the ability to impose progressive discipline. He suggested that the judge should have imposed a continued suspension until the finalization of the criminal proceeding. To allow this to stand, would be an error of seismic proportions.

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DAG Brown Pietz agreed with Mr. Toscano that this case is unusual. The original complaint was a ten-count complaint with allegations that included everything from sloppy records through indiscriminate prescribing. The complaint included the breadth of allegations that affected every aspect of Dr. Hessein's practice. The concurrent criminal matter has been pending since the onset and only at the request of Dr. Hessein did the matter come off the inactive list. Dr. Hessein cannot have it both ways. While his criminal attorney may have a different perspective on how or when the matters would be tried, Dr. Hessein had the representations of able counsel throughout and the deputy argued that the submissions made by the current counsel are a red herring.

The AG urged the Board to continue with this hearing and review the record that has been completed after days of testimony. Nothing in the criminal matter will affect the findings of fact made, the conclusions of law reached and the credibility of the witnesses determined. Dr. Hessein's *pro se* submission needs to be reviewed with caution as there are no citations made to the record and many of the facts asserted by him are inaccurate. Dr. Hessein chose not to testify and now attempts to bring his version of the facts to the Board. They have not been tested at the OAL and no credibility or ability to challenge has occurred.

She asked the Board to recognize and accept the well-reasoned decision of the ALJ. She did, however, raise some issues that she posited did not go far enough. In the area of accepted injections/procedures, where the Judge found that since there was not specific guidance on such as to indicate the dosage or frequency, Dr. Hessein cannot be held accountable. To the

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contrary, the deputy argued that one should look to the reasonable doctor and what the reasonable doctor would have done under the circumstances. His pain management practice was not acceptable, she proffered, as the judge's decision seems to imply. For example, when he had the patient return year after year, without any indication that the procedures were not working, the finding should be that these were excessive. Another example was how every office visit took 40 minutes so he could bill for an extensive examination appointment, when the medical record demonstrates the examination took at best 20 minutes. And this occurred month after month, week after week, for a year or more and well beyond what a reasonable doctor would have ordered. Finally, she asked the Board to concentrate on the lack of informed consent on the part of the patient, in particular due to the nature of risks associated with these procedures. While she believed that the judge made the correct findings, he did not go far enough in the application of those facts.

In response, Mr. Toscano, again urged the Board to consider that the criminal matter is still pending and no attorney should have advised Dr. Hessein that it would not have an effect to continue at the OAL. What is found in the criminal matter ultimately could impact the findings in this case. He submitted that if the Board cannot reject the recommendation of revocation, the Board should stay the penalty and simply keep the suspension in place until the finalization of the criminal proceeding.

DAG Brown Pietz responded that licensee agreed to move forward and whatever advice he was given, he made an affirmative decision to move forward. The matter has been concluded on the merits of the evidence presented.

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THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MOVE INTO CLOSED SESSION FOR ADVICE OF COUNSEL AND DELIBERATIONS.

The Motion made by Ms. Lopez and seconded by Dr. Shah carried unanimously. All parties, except Administrative and Counseling staff, left the room.

Returning to Open Session, the Board announced its decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ADOPT THE WELL-REASONED DECISION IN THIS MATTER EXCEPT FOR CERTAIN MODIFICATIONS TO BE MORE FULLY EXPLAINED IN THE WRITTEN ORDER. THE MODIFICATIONS WERE BASED ON THE BOARD'S EXPERTISE INASMUCH AS MANY INCLUDED A FINDING OF GROSS NEGLIGENCE.

The Motion, made by Dr. Shah and seconded by Dr. Metzger, carried unanimously.

Dr. Maffei left the hearing and did not participate further.

The Board immediately moved into the Mitigation Hearing.

Mr. Toscano asked the Board to hold off on a penalty decision, but in its place to allow the suspension to continue indefinitely until such time as the criminal proceedings concluded.

Dr. Hessein addressed the Board. He understood that the decision was based on legal grounds, but he wanted the Board to understand some other factors. In particular, the patients that he treated were getting better and found relief for the treatments that he performed on them, and this included the witnesses the State

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called witnesses. He assured the Board that he was making decisions about his patients based on what he believed to be the best care for them.

Dr. Hessein also asked the Board to take into consideration that he was overextended and this accounted for some of the sloppiness of his practice. He was trying to do his best. He has been board certified and has kept up with his CMEs. He agreed with some of the conclusions, as it related to the sloppiness of the administrative aspects of his practice, but he wanted the Board to be aware of how much he helped his patients. There have not been any complaints from his patients. Regardless of how he went about administratively, he maintained that he never over-prescribed and knew his patients well. He asked for leniency.

DAG Brown Pietz wanted the Board to focus on its findings and to recognize the multiple infractions he committed over the two years at issue. While he maintains the patients were satisfied, weighed against the lack of informed consent, it had to be questioned if they had enough information to determine how effective the procedures were or were not and being able to appropriately decide whether they were satisfied. She asked the Board to consider the fact that there were patients who he believed were satisfied, and to put the overall aspects of his practice into context.

The Attorney General argued that in light of the number of violations found by the Board during the liability phase and the breadth of the improper medical practice, that only the remedy of a revocation seemed appropriate. She took issue, however, with the recommended \$50,000 penalty. In light of the Board's findings, the Attorney General maintained that there were at least

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seven violations and the penalty should be increased with that in mind.

Turning her attention to the cost application, she requested the Board award full costs in the amount of \$308,749.53. Mr. Toscano addressed the cost application issue and asked the Board to take into consideration that the doctor has not been in practice since at least 2011. Additionally, he pointed out that all of his assets have been seized by the criminal authorities. He believed that he has been punished enough. He acknowledged that Respondent did not produce any documentation on the inability to pay.

**THE BOARD, UPON MOTION MADE AND
SECONDED, VOTED TO MOVE INTO CLOSED
SESSION FOR ADVICE OF COUNSEL AND
DELIBERATIONS ON PENALTY AND COSTS.**

The Motion was made by Dr. Shah and seconded by Dr. Carniol. It carried unanimously.

All parties, except Administrative and Counseling staff, left the room. Returning to open session, it announced its decision.

**THE BOARD, UPON MOTION MADE AND
SECONDED, VOTED TO REVOKE HIS LICENSE
AND IMPOSED A PENALTY OF \$130,000 AND
COSTS IN THE AMOUNT OF \$308,749.53.**

The Motion, which carried unanimously, was made by Dr. Shah and seconded by Ms. Lopez.

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OLD BUSINESS

There was no new business presented.

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Respectfully submitted,

George J. Scott, D.O., D.P.M.,
Board Vice President

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