

**OPEN MINUTES - NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - May 13, 2015**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, May 13, 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 Stewart Berkowitz, Cheema, Criss, DeLuca, Kubiel, Lopez, Maffei, McGrath, Metzger, Miksad, Parikh, Rao, Rock, Scott and Shah.

EXCUSED

Board Members Angrist, Steven Berkowitz, and Miller.

ALSO PRESENT

Assistant Attorney General Joyce, Senior Deputy Attorneys General Dick and Gelber, Deputy Attorneys General Hafner and Puteska, William V. Roeder, Executive Director of the Medical Board, Sindy Paul, M.D., Medical Director and Harry Lessig, M.D., Consultant Medical Director

II. RATIFICATION OF MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE APRIL 8, 2015 MINUTES. The Motion was made by Dr. Cheema and seconded by Ms. Lopez. It carried unanimously.

III. HEARINGS, PLEAS AND APPEARANCE

**10:00 AM JOACHIM, Leonard, 25MA0452700
Complaint #41750
Joseph Gorrell, Esquire for Dr. Joachim
DAG Doreen Hafner, for Prosecution**

On or about February 6, 2015, the Attorney General filed a Notice of Motion for Summary Decision on Counts I through IV of the Amended Complaint in this matter. In his responsive papers, Dr. Joachim noted that he does not contest the Attorney General's right to seek summary decision. The matter was scheduled before the Board to determine the appropriate sanction to impose in the case.

Drs. Berkowitz and Metzger were recused and pushing away from the table, they did not participate in the discussion or vote in the matter.

The parties placed their appearances on the record. A motion was made and seconded to move into closed session for advice of counsel, at which time all parties, except counseling and administrative staff, left the room. Returning to open session, Ms. Criss opened the hearing.

DAG Hafner addressed the Board, moving for summary decision on all Counts of the Verified Complaint as there were no genuine issues of material facts. Dr. Joachim admitted that he engaged in sexual contact with a patient that he had been treating. He further admitted that he scheduled an appointment at night to continue her treatment, knowing that no one else would be in the office and in violation of his Order that required him to have a chaperone present whenever he treated female patients. Furthermore, he

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admitted that he violated the Order requiring him to have a Chaperone present at all times that he treated a female patient. While Dr. Joachim took the required boundary course, he took a patient to lunch, discussing personal issues, within two months of completing that course. It was noted that he invited the patient to lunch while he was still on probation with the Board. Finally, it was undisputed that he was convicted of unwanted sexual contact, as well as he failed to produce medical records and to create medical records for these patients. This all demonstrated his lack of good moral character that is a requisite as a licensee of the Board.

Mr. Gorrell informed the Board that Dr. Joachim did not contest the allegations or the motion for summary decision. It was confirmed that he agreed to the factual allegations that led to the legal conclusions asserted in the Complaint.

DAG Hafner sought to admit into evidence the following: S-1 Verified Amended Complaint; S-2 Answer to the Amended Complaint; S-3 Sept 1, 2012 transcript; S-4 transcript and entry of plea; S-5 Transcript of sentencing; S-6 August 2010 Consent Order; S-7 PEC testimony; S-8 Patient SR medical records; S-9 statement of DS; S-10 MU statement; and S-11 2011 and 2012 letters to Joachim. Not hearing any objection raised by Mr. Gorrell. The documents were admitted into evidence.

A Motion, made by Dr. Cheema, seconded by Ms. Lopez, to move into closed session for advice of counsel and deliberations, which carried unanimously. All parties, except counseling and administrative staff, left the room. Returning to open session, the Board announced its decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ATTORNEY GENERAL'S MOTION FOR SUMMARY DECISION ON ALL COUNTS AND ALLEGATIONS OF THE VERIFIED AMENDED COMPLAINT. BASED ON THE DOCUMENTS ADMITTED INTO EVIDENCE AND THE ADMISSIONS OF DR. JOACHIM, THERE ARE NO GENUINE ISSUES OF MATERIAL FACT AND THE ATTORNEY GENERAL HAS SUSTAINED HIS BURDEN AS A MATTER OF LAW. IN ADDITION, THE ATTORNEY GENERAL HAS PRESENTED EVIDENCE THAT SUPPORTS THE ALLEGATIONS IN THE AMENDED VERIFIED COMPLAINT AND THE BOARD HAS FOUND AMONG OTHER THINGS THAT DESPITE A 2010 CONSENT ORDER, DR. JOACHIM FAILED TO ABIDE BY THE TERMS OF THAT ORDER BY AMONG OTHER THINGS ENGAGING IN SEXUAL MISCONDUCT, ADMITTED CRIMINAL SEXUAL CONTACT AND HE FAILED TO SEE PATIENTS WITH THE CHAPERONE PRESENT AMONG OTHER NUMEROUS BOUNDARY VIOLATIONS. HE FAILED TO COOPERATE BY FAILING TO RESPOND TO A DEMAND FOR STATEMENT UNDER OATH REGARDING TREATMENT TO A PATIENT AND HIS FAILURE TO PRODUCE BILLING RECORDS AND PATIENT RECORDS.

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

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As the parties previously had been advised, the Board moved directly into the mitigation phase of the hearing.

Dr. Joachim, after being sworn in, addressed the Board. He read a statement to the Board informing it that he appreciated the opportunity to address the Board and acknowledged that what he has done was wrong, legally and morally. According to Dr. Joachim, he recognized that his behavior violated the trust that his patients had placed in him. He acknowledged the Board's primary purpose is to protect the public and understood that his actions did not further that purpose. In the past four years, he has tried to understand why he has exercised such poor judgment, in particular since he has been brought up on similar charges in the past. He has not been able to answer that questions, but he assured the Board that he is committed to continue to try to resolve the unanswered questions. Dr. Joachim continued by explaining further that he has once again embraced his faith and is continuing to undergo therapy. He begged the Board to return him to medical practice and suggested that he be restricted to only seeing male patients.

DAG Hafner turned her attention to the plea sentencing transcript and Dr. Joachim admitted that he was aware that when he agreed to see S.R. that the staff would have left because she was a known patient to the practice. Although he tried to explain that his office hours go until nine and SR was scheduled for 8:00 or 8:30, upon being pushed further he again acknowledged that he scheduled this patient when he knew staff, as well as the chaperone, would have left the office. He also acknowledged that the staff told him that they were going to leave. He thought that the appointment would be brief as it was just to refill medications. When pushed

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further, he acknowledged that he was aware there would be no chaperone present. She also confronted him with his testimony about the value of the boundary course he took and his testimony that it helped him to draw the line. Within two months after taking the course and making that statement, he testified that he did invite his patient to lunch and that they did discuss personal issues. He stressed that he was not making excuses, but he wanted the Board to understand that she asked to meet him at the restaurant.

Dr. Steven Dame, M.D. was called as the first witness. He offered a brief background of his education, training and experience. He is a Board certified neurologist and is a ring side physician for the Athletic Control Board. He is the medical director of Saul Myers Associates which provides medical expert testimony in contested workers compensation cases. Currently, there are seven offices in the State. He first met Dr. Joachim in 1997 when he first started working at Saul Myers. He has shared patients with him and he attested that he always found Dr. Joachim's care and treatment excellent. The witness has never heard any complaints from any patients in the entire time of his association. Dr. Dame was aware of the chaperone requirement and to the best of his knowledge, Dr. Joachim always complied with that requirement. He was fully supportive and would supervise if Dr. Joachim would be permitted to return to practice even with a restriction to only treat males. Dr. Dame noted that he would be willing to do that because it appears that Dr. Joachim's cases include females under 30. The patient population, according to Dr. Dame, are those that are seeking evaluations for workers' comp cases and Dr. Joachim would be able to fill a need in particular in the IM field. He would be scheduled at each of the seven locations.

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

Ms. Manesca is the general manager of Saul Myers and is responsible for all the support staff, working in the Patterson location. She has been in this position for twenty years. She came to know Dr. Joachim since 1997 as a staff physician. According to the witness, she characterized him as a professional, knowledgeable about his profession. He has been used by her parents and many staff members as their physician. She characterized him as kind, caring and compassionate. The only complaint she has had about Dr. Joachim is that he keeps his patients waiting too long. Other than that, she testified that the patients respect him and are happy with his care. Dr. Dame discussed the possibility of hiring Dr. Joachim and the potential restrictions and Ms. Manesca did not see where it would pose a problem, and in fact she is supportive of, hiring him as he is an excellent physician.

His final witness, Dr. Philip Witt, was called. His CV was marked as R-1. He has a doctorate in clinical psychology and his practice has included working with the prison system and in the last twenty plus years, in private practice, with an emphasis on forensic medicine. He is experienced in performing examinations and preparing reports for professionals. He has evaluated Dr. Joachim in 2013 and performed an update in March 2015. His reports were marked as R-2 and R-3 respectively. After both evaluations, he concluded that Dr. Joachim did not present a risk to individuals other than adult women. This was based on some common sense, the allegations against him, and the information provided by Dr. Joachim. None of the tests indicated any issues and all allegations, including those that were proven, were solely

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involving younger women, not males, children, or the elderly. The totality of the information indicated that he presented low risk in general. When cross examined, he noted that Dr. Joachim has not provided all the information to him, however, the witness did not believe that any of that would change his opinion that he is at a low risk.

Mr. Gorrell moved into evidence copies of Dr. Joachim's tax returns to demonstrate his difficulty in meeting any penalty or fine assessed. These were marked as R-4 (2011), 5 (2012), 6 (2013) and 7 (2014). All were accepted into evidence.

DAF Hafner entered into evidence S-12 transcript of plea from 1995; S-13 Transcript of sentence 1995; S-14 Stipulation of Settlement 1995; and S-15 Certification of Costs. Mr. Gorrell did not raise any objection and they were accepted into evidence.

In closing, DAG Hafner informed the Board that this is the third time that Dr. Joachim has come before the Board on the same issue. She pointed out the similarities of the cases. In the 1995, he was reprimanded and was required to have a chaperone present when treating females. In 2003, another female came forward and although the charges were dropped, it resulted in a Consent Order and an imposition of a chaperone requirement among other things. This was then repeated again in 2010 and at this hearing, the Board has found numerous violations. Dr. Joachim's history included four complaints from young female patients, three Board actions and two criminal indictments. The Board has attempted to be fair and had given Dr. Joachim every benefit of the doubt and offered him a number of remedial measures. Unfortunately, none of them have worked and depending on when he tells his story, he makes excuses and twists

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the stories. While he claims he is a better person today because of this experience, he has told the Board this each time he has come before it. She urged the Board to use its experience with Dr. Joachim and urged that his license be revoked.

The common thread of his sexual misconduct has been to use his power as a doctor so that he was able to prey on his female patients. While Dr. Dame has tried to assure the Board that he can work in his office seeing only male patients, but this still does not prohibit from having contact with female patients. He will once again be cloaked in the power and prestige of his medical license. This is what he has used and needed to engage in his sexual misconduct. As he has in the past, he will side step whatever protections this Board would put in place. He attempted to hide much of his misconduct and issues with the Board from his evaluator. According to DAG Hafner, Dr. Joachim was less than candor with Dr. Witt and was filtering information in order to once again manipulate the situation to his best advantage. She concluded by urging the Board to revoke his license as that would be the only means to truly protect the public.

Mr. Gorrell acknowledged that the deputy made a good argument as to why Dr. Joachim should not treat or be around female patients. He posited, however, that there is no evidence that demonstrated that he should not be able to treat male patients in a structured setting. According to Mr. Gorrell, this case is an anomaly. There is another side to Dr. Joachim. Mr. Gorrell asked the Board to consider that Dr. Joachim was a caring, competent physician who has contributed positively to patients and their lives. He also characterized him as a gentle and caring man. This

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is what does not make sense. Dr. Witt, the expert, cannot explain it. Dr. Joachim knows that he should not be crossing those boundaries and no one can get a handle as to why he does it. But all of this has occurred with females and therefore, there is no evidence that male patients are at a risk. While in some cases, there should be punitive aspects to a case, and in this case, he has been punished by not practicing pending the outcome of this complaint. He assured the Board that Dr. Dame will structure an environment where Dr. Joachim will not have any contact with female patients.

DAG Hafner did not believe that there could be any structured settings that would assure compliance. In the past, he has side stepped the contours and restrictions in the Orders issued to Dr. Joachim. Due to his past history, DAG Hafner posited that there is no remedy short of revocation that would protect the public.

Ms. Miksad made a motion, seconded by Dr. DeLuca, to move into closed session for deliberations and advice of counsel. 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
WITH NO RIGHT TO REAPPLY UNTIL AFTER FIVE
YEARS GIVEN HIS HISTORY AND EGREGIOUS
NATURE OF THE VIOLATIONS; ASSESSED FINES
IN THE AMOUNT OF \$60,000 (\$20,000 FOR
COUNT I, II, AND IV); COSTS IN THE AMOUNT OF
\$50,000 AND FROM THE 2010 ORDER FOR A
COSTS TOTAL OF 74,731. BOTH FINES AND COSTS
ARE PAYABLE WITHIN THIRTY DAYS OF THE**

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ORDER. THE BOARD DID FIND SEVEN HOURS THAT WERE NOT REASONABLE AND DEDUCTED THOSE HOURS FROM THE COSTS ASSESSED. THE ORDER IS EFFECTIVE IN TEN DAYS.

The Motion was made by Dr. Cheema and seconded by Dr. DeLuca. It carried unanimously.

**NOON CLEMENTE, John S., 25MA05258900
Complaint #99770
Stephen Pascarella, Esquire, for Dr. Clemente
DAG Kathy Mendoza, for Prosecution**

On or about April 29, 2015, the Attorney General filed an application for the Temporary Suspension of the medical license of Dr. Clemente, alleging that his continued practice poses a clear and imminent danger to the public.

The matter was adjourned. Dr. Clemente signed an Interim Consent Order whereby he agreed to not practice pending the rescheduling of the matter for the June 10, 2015 Board meeting.

IV. OLD BUSINESS

Nothing Scheduled

V. NEW BUSINESS

HESSEIN, Amgad, M.D., 25MA0676500

Complaint #73992

Dr. Amgad Hessein, pro se

DAG Susan Brown-Peitz, Prosecution

DAG Debra Levine, Counseling

The matter of Dr. Hessein is before the Office of Administrative Law. Dr. Hessein wrote to the Board seeking interlocutory review of an evidentiary decision made by ALJ Strauss. A copy of his request, along with the April 13, 2015 Order, was presented for Board consideration. Additionally, the Attorney General's response in opposition was provided.

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

The Motion was made by Dr. Berkowitz and seconded by Dr. Rao. It carried unanimously.

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

**THE BOARD, UPON MOTION MADE AND
SECONDED, DETERMINED NOT TO OVERTURN
THE JUDGE'S ORDER ON AN ORDINARY
EVIDENTIARY RULING AND FOUND FOR THE**

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REASONS ARTICULATED IN THE JUDGE'S WELL-REASONED OPINION TO AFFIRM HIS RULING.

The Motion was made by Dr. Rao and seconded by Ms. Lopez. It carried unanimously.

Respectfully submitted,

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

WVR/br