

**OPEN MINUTES - NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - June 10, 2015**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, June 10, 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 Board President, Stewart Berkowitz, M.D.

PRESENT

Board Members Angrist, Stewart Berkowitz, Cheema, DeLuca, Lopez, McGrath, Metzger, Miksad, Miller, Rao, Rock, and Scott.

EXCUSED

Board Members Steven Berkowitz, Criss, Kubiel, Maffei, Parikh, and Shah.

ALSO PRESENT

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

II. RATIFICATION OF MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED,
VOTED TO APPROVE THE MAY 13, 2015 BOARD
MINUTES FOR DISCIPLINARY MATTERS PENDING
CONCLUSION.

The Motion, which carried unanimously, was made by Dr. Scott and seconded by Dr. Cheema.

III. HEARINGS, PLEAS AND APPEARANCE

**10:00 AM STROBECK, JOHN, M.D., 25MA03176700
Complaint #86327
Steven Antico, Esquire for Dr. Strobeck
Steven Gorelick, Esquire for Dr. Strobeck
DAG Lisa Brown, for the Attorney General
DAG Debra Levine, Counseling**

On or about June 1, 2015, the Attorney General filed a Verified Complaint seeking the Temporary Suspension of Dr. Strobeck's medical license based on allegations of sexually inappropriate conduct with at least seven female patients.

An Consent Agreement to Cease and Desist was presented to the Board which included a cessation from practice with a wind down period until June 12, 2015. The matter was adjourned and was rescheduled to the July meeting. In the Order, Dr. Strobeck is not permitted to enter the office premises except between the hours of 9-5 on Wednesdays and Saturdays at which time no patients are to be scheduled and no walk-ins were to be permitted. He is permitted to be on the premises solely for business management and business purposes only.

**THE BOARD, UPON MOTION MADE AND
SECONDED, VOTED TO APPROVE THE TERMS OF
THE CONSENT ORDER AND GRANT THE
ADJOURNMENT REQUEST.**

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

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**10:00 AM WILLIAMS, Dione, M.D., 25MA04572300
Complaint #
Michael Keating, Esquire for Dr. Williams
David Puteska, DAG, for the Attorney General
Steven Flanzman, SDAG, Counseling**

On or about April 17, 2015, ALJ Jesse H. Strauss issued an Initial Decision in the above referenced matter. To date, no exceptions have been filed by either party. The Board was asked to adopt, reject or modify the Initial Decision. Oral arguments were presented in mitigation of penalty after the Board decided that the Attorney General has sustained its burden on liability.

In the absence of written exceptions, the Board was to consider whether to adopt, modify or reject the proposed findings of fact or conclusions of law made by the ALJ. A motion was made by Dr. Cheema and seconded by Dr. Angrist to move into closed session for advice of counsel and deliberations and the motion carried unanimously. All parties, except administrative staff and counseling deputies left the room. Upon returning to open session, the Board announced its decision.

**THE BOARD, UPON MOTION MADE AND
SECONDED, VOTED TO ADOPT THE FINDINGS OF
FACT AND CONCLUSIONS OF LAW OF THE ALJ'S
DECISION IN ITS ENTIRETY.**

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

The Board proceeded to the mitigation phase.

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In proceeding to mitigation, DAG Puteska introduced three documents that he entered into evidence. They were as follows:

P-1 Consent Order 2005

P-2 Consent Order 2001

P-3 Certification of Costs.

Hearing no objection raised by Mr. Keating, P-1 through 3 were entered into evidence.

Mr. Keating called Dr. Williams to address the Board. After she was sworn in, Dr. Williams explained that today was difficult for her and wanted to express herself concerning the process in this matter. While she disagreed with the conclusions made by the Administrative Law Judge, however, she accepted responsibility in this case. Dr. Williams continued by explaining that she has dedicated her entire career to her patients, many of whom are economically distressed and have a number of co-morbidities. Dr. Williams felt it was a privilege to take care of these patients especially in the current state of medical practice. As she has served the community for more than 28 years, she passionately asked that these factors be taken into consideration in determining the likely sanctions. The doctor stressed the nature of her patients and proffered that it may be difficult, if not impossible, for her patient population to find adequate medical care in her absence. Dr. Williams asked for leniency in the imposition of her penalty. With only her testimony, Mr. Keating made his summation.

Mr. Keating noted that he has known Dr. Williams over the years in a number of venues and believed that he knows her very well. Based on a lot of experience and contact, he personally vouched

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for Dr. Williams, in particular, in the way in which she treats her patients, many of whom are under-served. Mr. Keating knew first hand that she always gave her best efforts in treating her patients. She has accepted the process and relies on the Board to make a fair and just decision as it relates to the sanction. Mr. Keating assured the Board that Dr. Williams' statements were sincere.

DAG Puteska, in his concluding remarks, reminded the Board of the breadth of violations found by the Board and urged that it impose a significant penalty, not only based on the various violations (e.g., 1 case of gross negligence; 14 acts of repeated acts of negligence, and one count of misleading the Board), but her history with the Board. He reviewed the findings of fact found by the ALJ that were now adopted by the Board. In addition, it was undisputed that in her prior testimony before the Board she misrepresented her use of the patch and the Judge rejected the argument that she mistakenly testified in that regard.

The Board, upon motion made and seconded, voted to move into Closed Session for advice of counsel and deliberation. All parties, except counseling deputies and administrative staff, left the room. Returning to Open Session, the Board announced its decision.

**ON A MOTION BY DR. CHEEMA AND SECONDED
BY DR. RAO, THE BOARD VOTED TO FIND THAT
GOOD CAUSE EXISTED TO ADOPT THE
RECOMMENDATION ON PENALTY FROM THE
ALJ, BUT TO ALSO ADD CERTAIN CONDITIONS TO
BE COMPLIED WITH BEFORE SHE IS ELIGIBLE TO
RETURN TO PRACTICE AFER A FIVE YEARS'
SUSPENSION, THREE YEARS OF WHICH WILL BE
ACTIVE, WITH THE REMAINING PERIOD TO BE**

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SERVED AS A PERIOD OF PROBATION. THE ADDITIONAL CONDITIONS, INCLUDED: THAT BY JULY 10, 2015, DR. WILLIAMS SHOULD MAKE ALL APPROPRIATE ARRANGEMENTS FOR PATIENTS AND THEIR TRANSFER OF CARE; PRIOR TO REINSTATEMENT, COMPLETE COURSES PRE-APPROVED TO INCLUDE A BOARD-APPROVED ASSESSMENT OF HER GENERAL FOUNDATION OF KNOWLEDGE WITH AN AGREEMENT TO FOLLOW UP ON ANY RECOMMENDATIONS, A CDS COURSE AND AN ETHICS COURSE; AND SHE MUST APPEAR BEFORE a COMMITTEE OF THE BOARD. THE BOARD ASSESSED A CIVIL PENALTY IN THE AMOUNT OF \$50,000 AND COSTS IN THE AMOUNT \$43,685.11 PAYABLE WITHIN 30 DAYS OR SHE MUST REQUEST AN INSTALLMENT PLAN WHICH MAY NOT EXCEED A TWO YEAR PERIOD AND WHICH MUST BE REQUESTED WITHIN THIRTY DAYS OF THE ORDER. THE BOARD NOTED THAT IT READ THE ALJ'S DECISION TO HAVE FOUND GROSS NEGLIGENCE AS IT RELATES TO PATIENT AQ AND REPEATED NEGLIGENCE IN THE OTHER 14 CASES.

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

DAG Puteska noted for the record that the Attorney General maintained that the Judge found gross negligence in all 15 cases.

**11:30 AM DE LUCA, Anthony, M.D., 25MA056639
Complaint #103747
David S. Sokolow, Esquire for Dr. DeLuca
Bindi Merchant, DAG for Attorney General
Megan Cordoma, DAG, Counseling**

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On or about May 18, 2015, the Attorney General filed a Verified complaint based on Respondent's November 17, 2014 guilty plea in which he admitted using the mail and a facility in interstate commerce to facilitate the carrying on of commercial bribery by accepting bribes in connection with referrals of laboratory testing services. As part of his guilty plea, Respondent also admitted that on or about May 2012 through March 2013 he was offered and accepted bribes from a person in his medical office. Dr. DeLuca in his Answer has admitted to the allegations in the Verified Complaint. As is the Board's usual and customary practice, the Attorney General presented a brief, concise summary of the allegations set forth in the Verified Complaint and then the Board proceeded to the mitigation phase.

The Board, upon motion made and seconded, voted to move into Closed Session for advice of counsel and deliberations. Returning to open session, it announced its decision.

THE BOARD, UPON MOTION MADE BY DR. CHEEMA AND SECONDED BY MS. LOPEZ, VOTED TO IMPOSE LIABILITY GIVEN THAT THE RESPONDENT ADMITTED TO THE ALLEGATIONS AND THERE WAS SUFFICIENT EVIDENCE TO DEMONSTRATE THAT HIS BEHAVIOR CONSITUTED THE USE OR EMPLOYMENT OF DECEPTION, FALSE PRETENSE AND SUCH BEHAVIOR CONSTITUTED PROFESSIONAL MISCONDUCT, CRIME OR OFFENSE THAT ADVERSELY IMPACTS THE PROFESSION.

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The Motion carried unanimously.

The Board then conducted the mitigation hearing.

In his opening statement, Mr. David Sokolow informed the Board that he has known Dr. DeLuca for a number of years and he assured the Board that he understood that what he has done is wrong. Mr. Sokolow also asked the Board to remember that part of justice is to be fundamentally fair in its decision while rendering a sanction merited by the offense. He further asked the Board to base their decision on the unique circumstances of his case. While he realized that there are a number of physicians in this case, Dr. DeLuca was the only one that did not have any direct contact with Biodiagnostic Laboratory Services LLC (“BLS”). Dr. DeLuca is a caring and professional man as evidenced by the number of emails and letters of support that attest how he has gone above and beyond what patients would expect from their health care provider.

Mr. Sokolow asked the Board to realize the amount of support Dr. DeLuca has within the community and their concern about how any absence from the profession would impact their lives. Dr. DeLuca was in charge of clinical matters, not the business/management practice aspect.

He claimed that Dr. Vitali, Dr. DeLuca’s partner in the practice who handled the business and administration aspects, hired BLS and kept office staff, including the office manager, in the dark as to why he was hiring them specifically. Dr. DeLuca had few dealings with them and only recalled meeting with them a few months after they were hired and there was no discussion about receiving any payments of money. Unequivocally, he had no

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expectations or knowledge when they were hired about receiving any money. Dr. DeLuca did receive an envelope thanking him for helping “Lenny” get set up. Although the doctor questioned the envelope, he kept it and he continues to regret that decision and his lapse in judgment.

Dr. DeLuca recognized that he has made a mistake and is prepared to accept a reasonable punishment for his lapse in judgment. While he was never aware that this “bonus” was improper until the investigation began, he knows he did not turn down the tainted money from his partner and on that basis he pled guilty. This lapse in judgment, however, is markedly different in that he never had any contact with BLS as occurred with the other involved physicians. The court did make that distinction in the sentencing and he asked the Board to do so as well.

DAG Merchant summarized the facts in the case highlighting his plea of accepting bribes and explained to the Board that Dr. DeLuca was sentenced to one year and one day in prison.

She moved into evidence P-1 through P-4. Hearing no objection, they were accepted into evidence.

Respondent entered into evidence R-1 through R-84, which included letters, unsolicited, concerning the integrity and health care services provided by Dr. DeLuca. They were accepted into evidence.

The Respondent called as the first witness, Cathleen Rowe, the former practice manager who is also a patient in the practice of Dr. DeLuca. In her role of practice manager, she was responsible for all the non-clinical aspects of the office. Dr. DeLuca was

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largely in charge of the medical aspects of the practice while Dr. Vitali concerned himself with the business end of the practice. Concerning the labs within the office, she oversaw the labs, and coordinated services. Following the use of a regional lab in 2010, who would even accommodate sending it to other labs, this lab was bought out and the practice was without a lab for a few months. At that time, Dr. Vitali approached her to work on getting a new lab to work with the facility. Though she had a deal in the works with one lab, Dr. Vitali decided that he was bringing in a new lab and when she questioned it, she was told to stay out of the process. Eventually, BLS came in and as she understood it, BLS was a friend of Dr. Vitali. She recalled that Dr. DeLuca questioned two tests which was when additional tests done beyond what was needed (which she believed was resolved internally). She also recalled that she was told by an employee of a competing lab to be careful with BLS because they were being “watched.” The witness shared this information with Dr. Vitali, but did not tell Dr. DeLuca.

She also testified to the quality of medicine that Dr. DeLuca provided. She watched him daily and was always amazed at how he treated the elderly.

The next witness was Ms. Soko who is the current office manager for the practice. She has been associated with the practice for the last 21 years. Ms. Soko wanted to testify today because she felt strongly that everyone should be treated differently, judged against their own participation in these unfortunate circumstances.

Dr. DeLuca, according to the witness, is responsible for about 5,000 patients since 2012. If his license were suspended, she is

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not sure how the practice can handle reassigning them. She testified how caring he is to all of his patients. Ms. Soko confirmed the number of letters of support that the practice has received. According to the witness, ever since the news broke about his sentencing, the patients wanted to help and reached out to the office with the letters and emails in support.

Ms. McCormick was called next and was sworn in. She is a RN and provided a brief summary of her credentials. She works at the medical office with Dr. DeLuca in the role of a patient medical coordinator, educating the patients, collaborating with the other physicians and general follow-up of patient care. Initially, she met Dr. DeLuca with a Horizon BC/BS quality of care program. From the onset, she was impressed with Dr. DeLuca and the care that he provided to his patients. She talked about various clinical programs on which she worked with Dr. DeLuca, in particular ones that he developed to motivate patients to improve their quality of life through diet, exercise, and other management tools. The witness questioned as to the viability of the programs if Dr. DeLuca was not able to continue to practice, which will necessarily impact the quality of care of the patients. Ms. McCormick also encountered the countless ways he has treated his patients with creative problem solving and the ways he has demonstrated his high moral character.

Dr. Janice Sicilian, who is Board Certified in Internal Medicine currently practicing in the same office as Dr. DeLuca, was sworn in. Dr. Sicilian first met him roughly 15 years ago and then didn't see him for a number of years until an opportunity to work at his practice eight years ago. According to the witness, she has been amazed at all that Dr. DeLuca has gone through and his ability to

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keep a positive attitude while always making his patients the top priority. Dr. Sicilian has taken over some of Dr. DeLuca's patients and has learned just how happy they were with the care that he has provided and the support they have offered for Dr. DeLuca. The witness offered a number of examples of specific patients that he has helped over the years.

Dr. DeLuca then testified next on his own behalf. He summarized his work history and talked about his relationship with his patients and the work that he has done with the various programs implemented in his office. He believed that he was making an impact on the quality of patients' lives by giving better care at lower costs and this has been proven with the statistics that have come out of BC/BS. He confirmed prior testimony that, generally, in his practice, he concerned himself more with the medical aspects of the practice. There was always a lab in the office, except for a short period of time, for the convenience of his patients. The only discussion he recalled having with "Lenny" from BLS was about what panel of tests he preferred to be run with certain conditions. This was the only time he met with him or had a discussion with him. The next time he recalled that Lenny was around was when he brought some lunch in for the staff and they merely passed each other in the hall.

Turning his attention to a discussion he had with Dr. Vitali was when he handed him an envelope, Dr. Vitali told him it was okay and that it was a gift from Lenny for helping him out. About a month or so later, he got another envelope and at that time Dr. DeLuca testified that he questioned himself, but did not question Dr. Vitali again about it. Looking back, he could not provide an explanation as to why he accepted the money and acknowledged

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that it was a lapse of judgment. He did not feel that he was being paid for anything because he didn't change anything that he did. Dr. DeLuca testified that he believed it was okay because Dr. Vitali told him, although he did question it internally.

Dr. DeLuca recalled the criminal proceeding and he understood that he had to admit that he took the money, but he wanted to fight it as he disagreed with what he had to admit to. Based on the advice of his lawyer, and fearful of what could happen, he accepted the plea. The amount of money the government alleged he took, he believed, was grossly overestimated and Dr. DeLuca continues to believe that his sentence was on the lower end of those handed out. He cooperated with the government and he wore a wire and based on the information he was able to obtain, that lab was indicted.

Dr. DeLuca believes he has paid for his lapse in judgment as this experience has been devastating to him, his career, and his family. His reputation in the community has been tarnished and as his father has taught him, that is all that one has. According to the witness, he has accepted responsibility for his actions. He is committed to not allowing this to define him and that this is so contrary to what he is all about. Dr. DeLuca asked the Board to consider the uniqueness of his circumstances and judge him for his own actions.

Nelson Rodriguez testified on behalf of Dr. DeLuca and is his brother-in-law. The decision that Dr. DeLuca made to take the money is so far removed from who he is. He has paid the price for that lapse in judgment. Mr. Rodriguez looked past his transgressions because his brother-in-law has accepted responsibility for taking those envelopes. The doctor has always

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provided excellent care to his patients and he acknowledged that he may have lost the trust of the public, but asked the Board to consider all the letters of support of his patients. The greater harm that will be created here is in depriving patients of his excellent care because of one mistake.

The final witness, Mr. Robert Cooper, was called. He is President of a restaurant group, Chefs America. Mr. Cooper is a patient of Dr. DeLuca and wanted to testify so much that he left a business meeting in Florida to attend the meeting. In 2013, he went to see Dr. DeLuca and relayed a story about his wife in the Emergency Room. The ER couldn't figure out what was wrong and so they made an appointment with another doctor and Dr. DeLuca immediately contacted him. His wife had a procedure which resulted in some complications. They drove her to the hospital and discovered a hole in her bladder. He telephoned Dr. DeLuca and he helped her through the process as she had been diagnosed with cancer. Dr. DeLuca stayed with him and his family, even assisting with arranging some follow-ups with other doctors. He provided the same care and concern when the witness recently had a heart attack.

In closing Ms. Hamton asked the Board to consider all the testimony of the witnesses which came from their heart. She asked the Board for proportionality considering the uniqueness of the circumstances. As noted in the sentencing hearing, Mr. Sokolow said deterrence was not needed in this case as it was unlikely he would ever repeat this conduct. The mitigating factors in this case caused the judge and the prosecuting attorney to recognize were somewhat unique from the other BLS cases. He did not believe that the cases cited by DAG Merchant applied in

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this matter and attempted to distinguish each one. He submitted that this matter was unique because Dr. DeLuca had no knowledge about the scheme and did not have any direct contact with BLS or its representatives, or at best it was minimal.

DAG Merchant addressed the Board. In her closing remarks, she noted the consistency that the Board has had in cases involving bribes in assessing penalty. There should be consequences to Dr. DeLuca's "lapse in judgment." His internal voice as he testified knew something was not right, but continued to accept the money in the envelope. While he argued that he cooperated, DAG Merchant proffered that this does not change what he did and was done only in the hope that he would receive a lighter sentence. Consistently for the same conduct, the Board has imposed a three year suspension regardless of the amount of money received or the sentence. She asked the Board to impose the same penalty here to give a message to the community that this behavior will not be tolerated.

Motion made to move into closed session for advice of counsel and deliberations. The Motion was made by Ms. Lopez and Dr. Metzger and it carried unanimously. All parties, except administrative and counseling staff, left the room. Returning to open session, it announced the decision.

**THE BOARD DETERMINED THAT DR. DELUCA
ADMITTED UNDER OATH THAT HE ACCEPTED
MONEY KNOWING IT CAME FROM BLS, AND NOT
FOR ANY MEDICAL REASON. THE TRANSCRIPT
OF PLEA SHOWED A PATTERN OF CONSCIOUS
DISHONESTY AND FINANCIAL GAIN. THIS
PRACTICE DIRECTLY RELATED TO PATIENT CARE**

IN THAT EVISCERATES THE TRUST, ALTHOUGH THERE WAS SINCERE REMORSE IN THE PRESENTATION OF TESTIMONY IN MITIGATION. THE BOARD WAS CONVINCED THAT THIS CASE IS NOT MUCH DIFFERENT FROM OTHERS AND HIS REASONING DID NOT EXCUSE HIS CONDUCT, AS HE KNOWINGLY ACCEPTED BRIBES. FOR THESE REASONS, THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO IMMEDIATELY REVOKE DR. DELUCA'S LICENSE AND THE BOARD WILL NOT ENTERTAIN A REAPPLICATION FOR A MINIMUM PERIOD OF THREE YEARS. AT THE TIME OF APPLICATION, HE MUST BE IN FULL COMPLIANCE WITH HIS SENTENCING AND PROBATION TERMS AND HE MAY BE REQUIRED TO APPEAR BEFORE A COMMITTEE OF THE BOARD TO DEMONSTRATE THAT HE IS FIT TO PRACTICE. HE MUST SUCCESSFULLY COMPLETE AN ETHICS COURSE, AND HIS ACTIVE PERIOD OF SUSPENSION MAY BE TOLLED IF HE PRACTICES IN ANOTHER JURISDICTION. HE WAS ASSESSED A MONETARY PENALTY IN THE AMOUNT OF \$10,000, WHICH IS TO BE PAID BY AUGUST 15, 2015 AND COSTS IN THE AMOUNT \$2,600.78 AS THE RESPONDENT HAS NOT DEMONSTRATED AN INABILITY TO PAY SUCH COSTS.

The motion was made by Dr. Cheema and seconded by Ms. Miller. It carried unanimously.

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**1:00 PM CLEMENTE, John S., 25MA05258900
Complaint #104678
Stephen Pascarella, Esq., 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.

Dr. Scott was recused from the discussion.

AFTER A MOTION MADE AND SECONDED, THE BOARD RATIFIED THE CONSENT ORDER OF VOLUNTARY SURRENDER, TO BE DEEMED A TEMPORARY SUSPENSION PENDING PLENARY HEARING. DR. CLEMENTE MAY REAPPLY AT SUCH TIME AS HE CAN DEMONSTRATE FITNESS AND COMPETENCY TO PRACTICE MEDICINE. DR. CLEMENTE MADE NO ADMISSION OF WRONG DOING. DURING TIME OF TEMPORARY SUSPENSION, HE MUST CEASE ANY CONTACT WITH ANY PATIENTS FOR THE PROVISION OF CARE, INCLUDING THE PRESCRIBING OF MEDICATIONS.

The Motion was made by Dr. Rock and seconded by Ms. Miller. It carried unanimously.

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**1:00 PM GILLISS, Adam, D.O., 25MB05998100
Michael Keating, Esquire for Respondent
Bindi Merchant, DAG for Prosecution
Steven Flanzman, SDAG, Counseling**

The matter that was before the Board was based on the Attorney General's Verified Application seeking the Temporary Suspension of Dr. Gilliss' medical license for engaging in acts constituting the indiscriminate prescribing of CDS and his gross deviation from accepted standards of practice. This issue of liability was decided by a Committee of the Board on June 11, 2014, and the Board ratified its recommendation, to temporarily suspend Dr. Gilliss' license. Dr. Gilliss has admitted to the allegations in the Verified Complaint and the matter was before the Board to hear oral argument in mitigation.

**THIS MATTER WAS ADJOURNED UNTIL THE JULY,
2015 FULL BOARD MEETING.**

IV. OLD BUSINESS

No old business discussed.

V. NEW BUSINESS

**ENRICO, Anthony, DPM, 25MD00172300
Complaint #60534**

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Steven Bennet, Esquire for Dr. Enrico
Kathy Stroh Mendoza, DAG for the Attorney General
Megan Cordoma, DAG, Counseling

DAG Mendoza has requested Interlocutory Review of the ruling of Administrative Law Judge Williams' denial of the State's Motion for Entry of an Initial Decision in the above noted matter. The Motion was scheduled for Board review on the papers.

Ms. Miller was recused from this discussion.

A Motion was made to move into closed session for advice of counsel. All parties, except counseling and administrative staff, left the room. Returning to open session, it announced its decision.

**UPON MOTION MADE BY DR. ROCK AND
SECONDED BY DR. RAO: AS THE REVIEW OF THE
RECORD DEMONSTRATED AN ABSENCE OF
INFORMATION OR DISCUSSION OF LIABILITY,
THE BOARD VOTED TO REFER THE CASE BACK
TO THE ALJ WITH INSTRUCTIONS TO HOLD A
SETTLEMENT CONFERENCE TO WORK OUT THE
LIABILITY LANGUAGE OF THE ORDER OR IN THE
ALTERNATIVE, IF THAT IS NOT SUCCESSFUL,
REQUESTED THAT THE JUDGE ARTICULATE WHY
AN INITIAL DECISION WAS NOT ISSUED. THE
BOARD IS COGNIZANT OF THE TRIAL DATE SET
FOR JULY 22 AND REQUESTS THAT THE ALJ IF
NOT SETTLED, TO PROVIDE A RATIONALE BY
JULY 1 SO THAT THE BOARD MAY ENTERTAIN**

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**INTERLOCUTORY REVIEW ANEW AT THE NEXT
FULL BOARD MEETING.**

The Motion carried unanimously.

Respectfully submitted,

Stewart Berkowitz, M.D.
Board President

WVR/br