

**OPEN MINUTES - NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION - September 14, 2016**

PRESENT

Board Members Angrist, Berkowitz, DeLuca, Haidri, Lopez, Maffei, Metzger, Rock, Scott and Shah.

EXCUSED

Board Members Carniol, Kubiel, McGrath, Miller, Parikh and Rao.

ABSENT

ALSO PRESENT

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

RATIFICATION OF MINUTES

THE BOARD MOVED THE MINUTES FROM AUGUST 10, 2016 AFTER A MOTION BY DR. BERKOWITZ AND SECOND BY MS. LOPEZ. THE MOTION CARRIED UNANIMOUSLY.

HEARINGS, PLEAS AND APPEARANCE

**10:00 AM DAVIS, Jeffrey, M.D.
25MA04397200
Svetlana Ros, Esquire for Respondent
David Puteska, DAG for Attorney General
Meaghan Goulding, DAG, Counseling**

A Provisional Order of Discipline (“POD”) was filed with the New Jersey State Board of Medicine (the “Board”) by the Attorney General on March 10, 2016. Counsel for Dr. Davis filed a request

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for dismissal of the Findings of Fact and Conclusions of Law on July 5, 2016. The Prosecution D.A.G. submitted a reply on July 27, 2016. The Board voted to schedule a hearing and the matter was scheduled for oral argument.

The Massachusetts Sister State Order was the basis for the hearing and Ms. Ros reminded the Board of the discretion it has in the action it takes against Dr. Davis. The Board, in fact has the authority to penalize the doctor in such a way that would allow him to practice and make a living. As the Order notes, the action is based on the lack of one medical record. Ms. Ros told the Board that Dr. Davis believes that the MA Medical Board mis-categorized the medication he was prescribing to his wife.

DAG Puteska explained to the Board that the Attorney General believed this is a sister state action where the only appropriate penalty is a license revocation. DAG Puteska reminded the Board that just as it expects other states to respect its actions, as a courtesy, it should respect the actions of theirs. While there maybe excellent arguments to be made by Dr. Davis, they are explanations that belong in front of the Massachusetts Medical Board, not the Board in New Jersey.

By way of history, Dr. Davis obtained a medical license in 1977 in Massachusetts and his New Jersey license in 1985. After a brief lapse, the New Jersey license was renewed in the 1990s. Aside from the Massachusetts actions, Dr. Davis has not had issues with other government agencies. Ms. Ros pointed out that Massachusetts identified all prescribed drugs as CDS 6 (i.e. class 6 is categorized as a controlled drug).

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In 2011, Dr. Davis moved to New York and maintained “some” employment in Massachusetts. While practicing, Dr. Davis placed orders at a certain pharmacy because it allowed him to feel more in control of his patient’s therapy.

Once, he ordered Crestor for himself because he switched jobs in the end of November, 2011 at Wing Memorial to Eye Centers and because of an administrative error through COBRA, he ordered the drug for himself through a wholesale pharmacy. Dr. Davis also prescribed to his wife even after they were divorced because she had long-standing problems relating to her chronic migraines. Because of a myriad of issues, his ex-wife discharged many of her physicians. The doctor pointed out that he never prescribed any new medications to her and since she had chronic issues for 30 years, he maintained a medical record and he felt comfortable prescribing to her.

R-5 was a copy of the partial medical records for his exwife. , Dr. Davis told the Board that, unfortunately he and his ex-wife’s relationship has devolved into something more contentious and she would not provide him with the complete medical record he kept on her. If he had access, he assured the Board, he would provide all that he could. Ms. Ros pointed out to the Board that Dr. Davis, during the divorce process, agreed to provide medical care through their divorce agreement.

During the required treatment, Dr. Davis provided his ex-wife enough medication for a month (150 pills). He reiterated, he only prescribed to her on the occasions when she was between doctors and other than his wife, he never prescribed to members of his family.

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Dr. Davis relocated to New York because he took a new job after having been through a difficult divorce and did not notify the MA Medical Board immediately, but changed his address when he became aware of the open investigation. The investigation continued and he retained an attorney. The doctor told the Board that he had no plans on returning to Massachusetts and after losing his attorney he represented himself and poorly cooperated. Looking back, Dr. Davis admitted regret for acting with such contempt.

At the time, he did not understand the concept of sister state actions and he was at no point under the impression that he would have to answer to New Jersey about the Massachusetts decision. The Massachusetts Board took action because he didn't "cooperate" and according to the doctor, the Order even stipulated that had he been more cooperative, the action would not have occurred.

Currently, Dr. Davis works in Paterson, NJ and he hasn't prescribed in New Jersey since renewing his licensing in the 1990s and he told the Board that doesn't have a New Jersey prescription pad. The doctor told the Board that he is looking for a penalty that allowed him to make a living as he has no retirement savings, and obligations that include alimony, child and grand-children with special needs who needs his financial support.

Dr. Davis left Massachusetts in 2011 with no intention of returning. While he regretted not informing the Massachusetts Medical Board of his address change and how he cooperated during its investigation, he told the Board that he is looking to move on from this matter.

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On cross-examination, Dr. Davis told the Board that the Massachusetts Board revoked his license because he didn't notify it of his address change until his license lapsed. Elaborating on his acknowledgment of "poorly" cooperating with the Massachusetts Board, he told the Board he didn't appear at any of the hearings. Since New Jersey began proceedings against his license, he has made no attempts to remediate his standing in Massachusetts.

In his closing statement, DAG Puteska cited the Massachusetts Order as demonstrating an "utter disregard" and disrespect for laws governing the practice of medicine. The Attorney General of New Jersey had been able to do a more thorough investigation because Dr. Davis ignored the subpoenas issued by Massachusetts, just as he had ignored the request to appear before the Board. DAG Puteska asked the Board to remain consistent with its precedent and history and reaffirm its prior Order.

In her closing statement, Ms. Ros told the Board that the case built around her client, Dr. Davis, in Massachusetts was founded on the failure to provide one record. As he told the Board earlier in the appearance, Dr. Davis was treating his wife while she was transitioning with new providers. Ms. Davis reminded the Board that her client did not have an attorney to warn him of the damage that could be caused by not cooperating with the state. In trying to close the door on that part of his life, he wrongfully ignored requests for information.

The matter, Ms. Ros went on, was adjudicated because of the doctor's inability to provide records, not overprescribing, patient care, or anything that would endanger the public. Additionally,

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Dr. Davis has cooperated fully with the State of New Jersey and at best, this is a recordkeeping issue. This entire case was adjudicated because of the doctor's inability to provide records. This case was not centered around over prescribing, patient care or anything endangering the public. Ms. Ross noted that the Doctor has done everything he could do to cooperate with the Board. At best, this is a recordkeeping issue.

After the Board returned to open session from closed deliberations, it announced its decision after a motion by Ms. Lopez and second by Dr. Angrist.

THE PARTIES, HAVING ALREADY
ACKNOWLEDGED THAT THERE IS A BASIS FOR
DISCIPLINE, WILL TREAT THIS MATTER AS IT
TREATS ALL SISTER STATE MATTERS. DR. DAVIS'S
NEW JERSEY LICENSE WILL BE REVOKED UNTIL
SUCH TIME AS HE CAN DEMONSTRATE HE HAS AN
UNRESTRICTED LICENSE IN MASSACHUSETTS.

ON THE PAPERS:

1. **ELAMIR, Magdy, M.D., *pro se***
25MA04140400, Complaint #8331
Kathy Mendoza, DAG

On or about August 10, 2016, ALJ Ken R. Springer issued the Initial Decision in the above-referenced matter. Neither party filed exceptions nor requested oral argument. The matter was before the Board for review and decision to accept, reject, or modify the ALJ's findings of fact and conclusions of law on the papers.

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Both parties put their appearance on the record; Dr. Elamir was appearing *pro se*.

DAG Mendoza requested the Board to adopt Counts 1 and 3 and to dismiss Count 2.

Taking the Deputy's requests under consideration, the Board moved to enter into closed session and dis so.

Upon returning from closed session, the Board announced its decision after a motion by Ms. Lopez and second by Dr. Shah.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT THE DECISION AND PENALTIES RECOMMENDED BY ALJ SPRINGER. SPECIFICALLY, THE BOARD FOUND THE CIVIL PENALTY FOR COUNT ONE OF \$700 TO BE APPROPRIATE GIVEN THE FINDINGS MADE ON COUNT ONE. DR. ELAMIR SHOULD CEASE AND DESIST FROM PRACTICE IMMEDIATELY. THE BOARD ALSO FOUND THE COSTS FAIR AND REASONABLE, HOWEVER, SINCE THE ATTORNEY GENERAL WAS UNABLE TO ACHIEVE SUMMARY DECISION, AS A MATTER OF FAIRNESS, THE BOARD REDUCED THE COSTS OF \$18,085.56 BY 33%.

2. **FRANCOIS, Emanuel J., M.D.**
25MA05779500, Complaint #114972
John Dell'Talia, Esquire
Kathy Mendoza, DAG for the Attorney General
Megan Cordoma, Counseling

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This matter was opened to the Board upon the filing of a Verified Complaint and Order to Show Cause based on allegations of unsanitary conditions in the Doctor's office. It was scheduled for a temporary suspension hearing before a Committee of the Board on August 25, 2016. Prior to the commencement of the hearing, the parties reached an agreement on an Interim Consent Order, the terms of which were approved by the Board President. The Interim Consent Order was before the Board to ratify, reject or modify.

THE BOARD ACCEPTED THE CONSENT ORDER AS IS.

IV. OLD BUSINESS

No old business discussed.

V. NEW BUSINESS

No new business discussed.