

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 1
DISCIPLINARY MATTERS PENDING CONCLUSION - JANUARY 09, 2013

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, January 9, 2013 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 Member.

PRESENT

Board Members, Ciechanowski, Cheema, Criss, DeGregorio, Jordan, Krauss, Lomazow, Maffei, Paul, Rajput, Scott, Stanley, Tedeschi and Walsh.

EXCUSED

Board Members Howard, Berkowitz, Rock, Mendelowitz and Weiss.

ALSO PRESENT

Senior Deputy Attorney General Dick; Deputy Attorneys General Puteska, Levine, Flanzman, Hafner, Warhaftig; Executive Director William V. Roeder; Harry Lessig M.D., Consultant Medical Director.

RATIFICATION OF MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE MINUTES FROM THE NOVEMBER 14, 2012 BOARD MEETING.

HEARINGS, PLEAS AND APPEARANCES

WILLIAMS, Dione M.D. 25MA04572300
Michael Keating Esq., for the Respondent
DAG David Puteska, Prosecuting
DAG Debra Levine, Counseling

The Board heard the Attorney General's Motion in Aid of Litigant's Rights which sought to vacate the October 11, 2012 Consent Order in the above captioned matter. The matter was to be heard on December 12, 2012 but that meeting was subsequently canceled.

The attorneys placed their appearances on the record.

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

All parties, except Administrative and Counseling Staff, left the room.

The Board returned to Open Session to hear the oral arguments of the parties.

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DAG Puteska addressed the Board reminding it that the Attorney General had filed this Motion to Vacate an Order because of subsequent information obtained by the Board which indicates and raises the question of whether Dr. Williams was truthful in her testimony under oath. In that testimony, she led the Panel to believe that the use of a Fentanyl patch was not a common practice and that part of the reason for its use was the patient's mother's request for an early release. This is contrary to the testimony of the patient's mother who testified that she begged the doctor to keep her daughter overnight. Additionally, Dr. Williams testified that she wanted to see the patient in her office for follow up later that day, but didn't. The testimony of the mother refutes that information and to the contrary, Dr. Williams never requested to see her in the office and in fact, told them on discharge that if needed, she should go to the Emergency Room in Pennsylvania if complications arose. DAG Puteska outlined the history of the Black Box warning for use of Fentanyl patch and it was clear that it was prohibited to be used for tonsillectomies. Dr. Williams further testified that she used the Fentanyl patch maybe once beyond the case at issue in the Panel matter. To the contrary, a nurse testified that Dr. Williams used it regularly and that she was the only one that used it at the facility. DAG Puteska noted that while Mr. Keating in his submission took issue with the characterization of nurse Jones' testimony, there are records that indicate Respondent's use of Fentanyl patch as follows: 2007 - on 5 occasions; 2008- on 9 occasions and 2009 - 5 occasions. According to DAG Puteska, such a use demonstrated a gross under-calculation of her use and raises the issue of a purposeful misrepresentation on the part of Dr. Williams. The Attorney General was not asking for findings of fact at this juncture, but requested that the Board vacate its prior Order so that the Attorney General would have the opportunity to fully explore and investigate Dr. William's use of the Fentanyl patch, and in order to fully discover what lead to the death of the 19 year old patient.

Mr. Keating maintained that the issue before the Board was a very narrow one and the details of the case were not necessary. He argued that the Panel knew the file and had reviewed the record and explored all the facts about the case. It judged the credibility of the testimony and evidence, and made a recommendation for a settlement. He reminded the Board that the relief that the Attorney General was seeking was an extraordinary remedy. There are core premises that the legal profession uses. Among them is the maxim that when a deal is negotiated and a deal was agreed upon it is a deal that should not be disturbed. In short, he posited, a deal is a deal and people should be able to rely in good faith on the finality of those deals. The case law demonstrates that you can't come back after a settlement and say I changed my mind on this. There needs to be closure that the parties can rely on. This was a settlement the Panel authorized and that was ratified by the Board. He urged the Board to deny the Motion and keep the long-standing legal premise that the case has been finalized. No extraordinary circumstances have been proven in the instant matter to disturb the Board's Order. Dr. Williams' testified that she used Fentanyl patches infrequently post 2004. He further noted that it could also be argued that when she testified, she believed it only related to her use subsequent to the black box warning from 2009 and subsequent to that, only used it infrequently. Mr. Keating asked that the Motion be denied.

DAG Puteska countered by arguing that in this case there were extraordinary reasons to vacate the

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settlement reached. There was a death of a patient and Dr. Williams' lack of candor, raises more questions now than when the Board entered into the settlement. He asked the Board to conclude that the settlement was based on material misrepresentations and that had the Board been aware of the untruths, it never would have authorized such a settlement in the case.

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

Motion made by Dr. Jordan and seconded by Dr. Paul. It was a unanimous vote in the affirmative.

All parties, except Administrative and Counseling Staff, left the room.

Returning to Open Session, it announced its decision.

THE BOARD HAS HEARD THE ORAL ARGUMENT OF THE PARTIES AND REVIEWED THE MATERIAL SUBMITTED AND FOUND THAT RESPONDENT ENGAGED IN MATERIAL MISREPRESENTATION IN THE CONDUCT OF THE SWORN TESTIMONY BEFORE THE PANEL. FURTHER, THE BOARD FOUND THAT THE MISREPRESENTATION WAS RELIED UPON BY THE BOARD IN ENTERING INTO THE OCTOBER 11, 2012 CONSENT ORDER. THEREFORE, THE BOARD DETERMINED THAT THE ATTORNEY GENERAL HAS MAINTAINED ITS BURDEN OF PROOF AND GRANTED THE STATE'S MOTION IN AID OF LITIGANT'S RIGHTS AND VACATED ITS PRIOR ORDER OF SETTLEMENT IN ORDER TO PERMIT FURTHER INVESTIGATION OF THIS MATTER. THE BOARD SHALL RETURN ANY MONIES PAID BY RESPONDENT PURSUANT TO THAT ORDER.

The Motion was made by Dr. Cheema and seconded by Dr. Paul. It carried 11 in favor and 3 in opposition.

New Business

1. **RIVERA, Roberto E., M.D. 25MA04784600**
DAG Carla Silva, Prosecuting

The Attorney General sought the Temporary Suspension of Respondent's license to practice medicine and surgery in the State of New Jersey. A sub-committee of the Board heard the matter and decided to suspend Respondent's license. The hearing committee's report was submitted to the Board for the matter to be decided on the papers. The Board was requested to decide whether to accept, modify or reject the Decision by the Board's subcommittee.

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

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, VOTED TO ADOPT THE SUB COMMITTEE'S REPORT AND TO RATIFY THE COMMITTEE'S DECISION TO TEMPORARILY SUSPEND DR. RIVERA'S MEDICAL LICENSE PENDING THE PLENARY HEARING IN THIS MATTER, *NUNC PRO TUNC* TO DECEMBER 21, 2012. THE BOARD GRANTED RESPONDENT'S REQUEST TO STAY THE PROCEEDINGS IN THE MATTER PENDING THE OUTCOME OF HIS CRIMINAL PROCEEDINGS.

Motion was made by Ms. Criss and seconded by Dr. Paul. It carried unanimously.

2. **WEINTRAUB, Frederick M., D.P.M. 25MD00178500**
Keith J. Roberts, Esq., for the Respondent
DAG David Puteska, Prosecuting
DAG Steven Flanzman, Counseling

The Attorney General sought the Temporary Suspension of Respondent's license to practice medicine and surgery in the State of New Jersey. A sub-committee of the Board heard the matter and decided to suspend Respondent's license. The matter was heard on the papers whereupon the full Board was asked to decide whether to accept, modify or reject the Decision by the Board's subcommittee.

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. Paul and seconded by Dr. Rajput. It carried unanimously.

All parties, except counseling and administrative staff, left the room.

Returning to Open Session, it announced its decision.

THE BOARD, HAVING CONSIDERED THE ENTIRE RECORD IN THIS MATTER, AND UPON MOTION MADE AND SECONDED, VOTED TO ADOPT IN ITS ENTIRETY THE FINDINGS OF THE SUBCOMMITTEE REPORT AND FURTHER ORDERED THAT DR. WEINTRAUB'S LICENSE BE TEMPORARILY

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SUSPENDED PENDING THE PLENARY HEARING IN THIS MATTER.

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

OLD BUSINESS

Nothing scheduled.

OFF AGENDA

NARAG, Rodolfo D. MD 25MA02307200

DAG Jeri Warhaftig, Prosecuting

DAG Warhaftig informed the Board of the settlement in this matter. She outlined the terms of the Consent Order which included Respondent's agreement to a Voluntary Suspension which shall be deemed a Revocation. Dr. Narag is barred from seeking reinstatement. His outstanding penalties will be stayed unless he violates any terms of the Order.

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RATIFY
THE TERMS OF THE SETTLEMENT.**

Motion was made by Ms. Criss and seconded by Dr. Rajput. It carried unanimously.

Respectfully Submitted,

Karen Criss, R.N., C.N.M.
Board Member

WVR/dt/br