

State Board of Medical Examiners
Open Disciplinary Minutes
January 14, 2004

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, January 14, 2004 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 Mr. Glenn Farrell, Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Chen, Criss, Farrell, Haddad, Harrer, Huston, Lucas, Moussa, Patel, Paul, Ricketti, Robins, Trayner, Wallace, and Walsh.

EXCUSED

Board Members Desmond, Perry, Rokosz and Weiss.

ALSO PRESENT

Assistant Attorney General Joyce, Deputy Attorneys General Dick, Ehrenkrantz, Flanzman, Gelber, Kenny, Levine, Executive Director Roeder and Medical Director Gluck.

RATIFICATION OF BOARD MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE DECEMBER 10, 2003 OPEN DISCIPLINARY BOARD MINUTES AS SUBMITTED.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

10:00 a.m. - KUBLIN, Anne, M.D. (License #MA 52227)
(LEVINE, Debra: Counseling D.A.G.)
KERN, Steven I., /WEIR, Bonnie Esq. formerly counsel For Respondent
GOODMAN, Daniel S., D.A.G. for Complainant

The Board voted at its December 10, 2003 meeting to approve the Attorney General's application to amend the Verified Complaint filed on December 3, 2003 and approved the motion to grant adjournment without prejudice of this matter until the January 14, 2004 Board Meeting.

On January 2, 2004 the Attorney General filed a Notice of Motion for Summary Decision in this matter, as it was alleged that there are no material facts in dispute. The Attorney General's motion was before the Board.

Enclosed for Board consideration were the Attorney General's Order to Show Cause; Certification of Counsel; Verified Complaint with Exhibits; Letter Brief in Support of Temporary Suspension and Certification of Service, all filed on January 30, 2003 in the matter of Dr. Anne Kublin. Also included was the Attorney General's Notice of Motion to Amend the Verified Complaint, along with its attached documents and accompanying brief. Dr. Kublin's Answer & Affirmative Defenses to the initial Verified complaint was also attached for Board review.

Noted was that all documents, including but not limited to the exhibits attached to the Verified Complaint, had been redacted to protect the confidentiality of the patients mentioned. However, Respondent and counsel were provided unredacted documents and advised not to release this information to the public.

D.A.G. Kenny noted for the record that Dr. Kublin has now been located and had been in communication with D.A.G. Goodman. Dr. Kublin could not be located at last month's meeting and Dr. Kublin indicated that she was no longer being represented by Mr. Kern. Confirmation by Mr. Kern was received by D.A.G. Goodman to that

effect and, therefore, negotiations that led to the Consent Order were carried out directly with Dr. Kublin, along with some assistance, from the PHP.

D.A.G. Kenny gave a little background regarding this case and refreshed the Board's memory that at last month's meeting, this matter was before them for an application for temporary suspension based on allegations that Dr. Kublin was engaged in passing prescriptions for medication, not necessarily for CDS, in Monmouth County. She told the committee of the Board that this was related to an ongoing illness, that she had lupus, to be specific.

She entered into PTI in Monmouth County and she was thereafter unable to be located. At last month's meeting, there was an agreement on the record that she would not practice if located. A settlement has been reached based on the original settlement proposal of the Board and which has been discussed with and approved by Board President Wallace.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE CONSENT ORDER IN WHICH DR. KUBLIN AGREED TO A THREE YEAR SUSPENSION OF LICENSE, THE FIRST SIX MONTHS ACTIVE RETROACTIVE TO JANUARY 1, 2003; AGREED TO ABIDE BY ALL TERMS OF THE PTI PROGRAM; AGREED TO MAKE RESTITUTION TO CIGNA TX PRIME INSURANCE COMPANY IN THE AMOUNT OF \$875.50; AGREED TO WEEKLY PSYCHO-THERAPY WITH A BOARD-APPROVED PSYCHIATRIST OR PSYCHOLOGIST FOR TWO YEARS FROM THE ENTRY OF CONSENT ORDER, WHICH WILL BE FACILITATED WITH THE HELP OF THE PHP; QUARTERLY REPORTS TO THE BOARD; MONTHLY FACE-TO-FACE VISITS WITH THE PHP TO DISCUSS CURRENT MEDICAL CONDITION AND TO DISCUSS HER COMPLIANCE WITH THE TERMS OF THIS CONSENT ORDER; QUARTERLY FACE-TO-FACE VISITS WITH MEDICAL DIRECTOR GLUCK TO DISCUSS HER CURRENT MEDICAL CONDITION AND COMPLIANCE WITH THE BOARD ORDER; AGREED TO NOTIFY THE BOARD IN WRITING WHEN SHE WISHES TO COMMENCE OR CHANGE EMPLOYMENT AND CONSENT MUST BE GIVEN THROUGH THE BOARD OFFICE; AGREED TO PRACTICE ONLY PART-TIME 20 HRS. PER WEEK FOR THE FIRST 18 MONTHS FOLLOWING HER RETURN TO ACTIVE PRACTICE AND WILL DISCLOSE TO HER WORK EMPLOYER HER INVOLVEMENT WITH THE PHP, AS WELL AS, ANY FUTURE EMPLOYER. HER EMPLOYERS ALSO WILL RECEIVE A COPY OF THE CONSENT ORDER SHE FURTHER AGREED TO ENROLL IN, AND SATISFACTORILY COMPLETE, A BOARD APPROVED ETHICS COURSE WITHIN 6 MONTHS. SHE ALSO AGREED TO PAY CIVIL PENALTY OF \$5,000 AND COSTS AMOUNTING TO \$6,871.36. AND WILL MAKE MONTHLY INSTALLMENT PAYMENTS OF \$109.00. FOLLOWING A YEAR FROM THE DATE OF ENTRY OF THIS CONSENT ORDER, DR. KUBLIN WILL APPEAR BEFORE THE BOARD OR COMMITTEE OF THE BOARD, TO DISCUSS HER MEDICAL CONDITION, AS WELL AS HER COMPLIANCE WITH THIS ORDER.

OLD BUSINESS

1. ASHKAR, Michael G., M.D. (License # MA 43615)
(DICK, Sandra Y., Counseling D.A.G.)
KERN, Steven I., Esq. For Respondent
BAUDRY, Adriana D.A.G. for Complainant

Enclosed for Board adoption was the November 18, 2003 Initial Decision of Settlement of Administrative Law Judge Joseph F. Fidler.

This matter was initiated based upon a five-count Verified Complaint filed July 1, 2002 alleging that Dr. Ashkar had engaged in an inappropriate sexual relationship with a female patient during the course of the physician-patient relationship; that he indiscriminately prescribed medication, including controlled dangerous substances, to the patient; that he failed to document the majority of prescriptions in the patient's record; that he prescribed medications, including controlled dangerous substances, to the patient's husband without maintaining any medical record for him, and that he fraudulently issued prescriptions in the name of the patient for controlled dangerous substances for his own use and/or for the use of his wife; and that he performed silicone breast implant surgery on

the patient without obtaining the required consent forms to enroll the patient into an experimental study.

On or about July 8, 2002, Dr. Ashkar filed an answer to the Verified Complaint in which he essentially denied the allegations of the Complaint, except that he admitted that he had a sexual relationship with the patient, but denied that she was his patient at the time of the relationship. He also provided explanations for most of the medications he prescribed for the patient. After a hearing, the Board ordered that Dr. Ashkar's license be temporarily suspended, effective July 17, 2002. This matter was transmitted to the Office of Administrative Law on November 8, 2002, for determination as a contested case.

The Board had 45 days in which to adopt, modify or reject the Initial Decision of Settlement. The 45-day period ended on January 5, 2004. Prior to that date, Board President Wallace and Vice President Farrell reviewed the Decision, the proposed Consent Order, the payment schedule, and Dr. Ashkar's completed Financial Questionnaire and his tax turns for the years 2000, 2001 and 2002. As noted in paragraph 8 of the Order, Schedule A attached to the Order was subject to Board approval following receipt of these documents. These documents along with the Board's November 12, 2003 Closed Minutes concerning its offer of settlement in this matter were provided to the Board with its Closed Agenda. Dr. Wallace and Mr. Farrell approved this settlement along with the payment schedule. Therefore, this decision was permitted to become a final decision on January 6, 2004, by operation of law, after the deadline and no request for an extension of time was requested from the Office of Administrative Law.

The Board was asked to accept, reject or ratify the approval of this settlement. Also attached was the Consent Order filed January 6, 2004 in the matter of Dr. Ashkar, effective November 13, 2003. It was also noted that Dr. Ashkar had submitted the first two payments as required by the Board Order.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE AND RATIFY THE ADOPTION OF THE NOVEMBER 18, 2003 INITIAL DECISION OF SETTLEMENT OF ADMINISTRATIVE LAW JUDGE JOSEPH F. FIDLER WITHOUT MODIFICATION.

**2. DAVIS, Mark S., D.P.M. (License #MD 02618)
(LEVINE, Debra W., Counseling D.A.G.) DEMBIN, Nathan, L., Esq. For Respondent
OO, Swang, D.A. G. for Complainant**

D.A.G. Oo requested the Board's approval of the attached Notice of Motion for Leave to File An Amended Verified Complaint filed on December 19, 2003 in the matter of Dr. Mark S. Davis.

Attached for the Board's information and review were the Order of Temporary Suspension filed on December 24, 2003 and to become effective on January 12, 2004; D.A.G.'s Oo's December 19, 2003 Certification of Service ; Brief in Support of the Proposed Amended Verified Complaint; Order to Show Cause of Hearing and Requirement to File Answer; Verified Complaint; November 25, 2003 Certification of D.A.G. Oo and Letter Brief; and Exhibits A through L in this matter.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE MOTION FOR LEAVE TO FILE AN AMENDED VERIFIED COMPLAINT FILED ON DECEMBER 19, 2003.

D.A.G. Kenny informed the Board that on the morning of the Board meeting, that the Supreme Court had denied Dr. Davis' application for a stay of the Board's Order. Earlier in the week, the Appellate Division denied that application for a stay Dr. Davis' suspension is in effect.

**3. KAUL, Richard, M. D. (License # MA 63281)
GORRELL, Joseph M., Esq. For Respondent
NIEDZ, Alan D.A.G. for Complainant**

Dr. Robins was recused from discussion and vote in this matter and left the room.

In accordance with the Board's Final Decision and Order in the above matter, dated May 13, 2003, Dr. Kaul was

required to successfully complete an ethics course, approved in advance by the Board. Respondent's counsel, Mr. Gorrell, requested the Board in his December 10, 2003 letter to Executive Director Roeder approval for the ProBe Course to satisfy this requirement. Dr. Kaul requested to take the course on January 16-18, 2004.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE DR. KAUL'S REQUEST TO TAKE THE PROBE COURSE ON JANUARY 16-18, 2004 TO SATISFY THE BOARD'S REQUIREMENT IN ACCORDANCE WITH THE BOARD'S FINAL DECISION AND ORDER DATED MAY 13, 2003.

**4. WEINSTEIN, Martin H., D.P.M. (License # MD 12240)
GELBER, Joan D., D.A.G. for Complainant**

D.A.G. Gelber on behalf of the Office of the Attorney General was seeking an application for entry of default and for decision issued in favor of the Attorney General on the allegations of the attached Complaint filed March 3, 2003 against Martin H. Weinstein, D.P.M., subject to allowing respondent, within six months from the date of the Board Order, to seek to reopen the judgment in the event that he is found, and can be personally served, and shows good cause for such reopening.

Attached for Board information and review were all pertinent materials related to this matter.

D.A.G. Gelber briefly outlined the nature of the complaint against Dr. Weinstein and related the efforts that were made to effectuate service. She was asking the Board to enter a Default Order based on the fact that after very extensive efforts, the Attorney General has not been able to locate Dr. Weinstein to effectuate service of the complaint.

D.A.G. Gelber informed the Board that she had submitted certifications to the Board indicating that the Enforcement Bureau had visited prior office locations. She also had the investigator check out any addresses that appear on the various police reports, including a hotel, and employer for whom Dr. Weinstein briefly worked for in a non-medical capacity. Dr. Weinstein's parent's home was checked out and his mother insisted that she has not seen him in a long while and did not know where he was. A copy of the Complaint was nevertheless delivered to the mother. D.A.G. Gelber informed the Board that there is an active Bench Warrant issued against Dr. Weinstein in Monmouth County, which has been in effect for probably over a year. No one knows where he is. There are two indictments for fugitive from justice as far as the police are concerned. D.A.G. Gelber explained that, as a last resort, she asked the Board office to publish notices on two days in December. December 19th and December 26th of 2003, in two newspapers of general circulation in the area of where he lived and practiced. Those newspaper notices were published in the Star Ledger and The Asbury Park Press. The D.A.G. noted that she has the proofs of publication of those notices. No response has been received from Dr. Weinstein. D.A.G. Gelber also noted that a certified letter had been sent to Dr. Weinstein's parent's address, which was one of the addresses he had listed, and that letter was returned as undeliverable, because his parents claim he doesn't live there. With that background, D.A.G. Gelber asked the Board to enter a Default judgment and consider the merits of the complaint.

Mr. Farrell made a motion that the Attorney General has satisfied the statutory requirements in order to enter a Default judgment.

THE BOARD, UPON MOTION MADE AND SECONDED, FOUND THAT RESPONDENT DR. WEINSTEIN HAS NOT ANSWERED THE COMPLAINT. THE ATTORNEY GENERAL HAS USED ALL BEST EFFORTS TO EFFECTUATE SERVICE OF THE COMPLAINT ON RESPONDENT. THE BOARD GRANTED THE ATTORNEY GENERAL'S MOTION FOR ENTRY OF DEFAULT DECISION.

D.A.G. Gelber summarized the various types of fraudulent conduct that the Attorney General has alleged.

The first count related to a situation with Blue Cross/Blue Shield, in the early 1990's, where the carrier discovered that Dr. Weinstein had over-billed for surgeries for a substantial number of patients, billing twice the amount that he should have billed. Dr. Weinstein acknowledged that in a signed reimbursement agreement whereby Dr. Weinstein agreed to repay over \$56,000 because of his over-billing. He paid a small portion, but still

owes in excess of \$35,000. A judgement was entered in court in February, 1997 finding Dr. Weinstein in default and entered that judgement for the \$35,000 plus. D.A.G. Gelber noted that since Dr. Weinstein acknowledged the overcharging and that it was double the amount that he should have charged, the Attorney General sought a determination by the Board that this conduct was deception and professional misconduct.

D.A.G. Gelber continued to explain that after that incident, the carrier terminated Dr. Weinstein in November, 1995 as a provider, and he was unable to submit bills directly to the carrier. He apparently began submitting bills to the carrier by electronic submission for all kinds of surgical procedures, all within podiatry. These were all purportedly rendered at his office, and all in the names of patients he had previously treated. However, in the section where it said, "Where the carrier should send the payment" because he was now no longer a provider, he put in a P.O. box and the P.O. box that he put in turned out to be, after investigation by the carrier, his own P.O. box. The investigation was initiated when a former patient contacted the carrier and informed them that she had not seen Dr. Weinstein in years and never had surgery. The investigation came up with at least 26 instances where Dr. Weinstein carried out this scheme. The actual payout was for approximately \$230,249.00. The third kind of theft was in 2001 when he acquired the opportunity to have in hand credit card checks, checks to be drawn on a credit card account for a small business which had been begun by his then wife and her business partner. (D.A.G. Gelber noted that the business partner's name is not redacted in the proceedings because it was part of the criminal proceeding.) The victim was alleged to be Mrs. Patricia Blume and the fraud was that Dr. Weinstein acquired the six checks, wrote them out with himself as the payee in a professional-looking context, addressing it to Dr. M. Weinstein. There was a total of \$9,877.00 and he forged Mrs. Blume's name as the check writer. It was not until the credit card company bank began asking her for the payment that she learned that this had happened. As a result, Dr. Weinstein was indicted for insurance fraud in Monmouth County, and also has an indictment for this victimization of forgery of the six checks regarding Mrs. Patricia Blume after his PTI of that matter was revoked. D.A.G. Gelber asked the Board to enter an Order of Revocation, even though his license is presently lapsed, since the Board is aware that he could reinstate his license at any time by just paying a reinstatement fee.

D.A.G. Gelber presented the entire packet that was submitted to the Board members, but also requested to she'd leave on file in the Board office, for future possibilities, any original certificates that she had including the proofs of publication. D.A.G. Gelber noted that Dr. Weinstein possibly could turn up at some time in the future, and he may have a plausible explanation for why nobody has been able to find him. She asked the Board to enter this order providing Dr. Weinstein the opportunity to seek to reopen for good cause within six months, but noted that it's at the Board's discretion to open it at any time for good cause shown.

D.A.G. Gelber informed the Board that the investigative costs and attorney fees to date were \$16,524.96 and suggested that the Board assess a penalty because of this fraudulent conduct.

Mr. Farrell accepted the evidence into the record and D.A.G. Gelber gave the packet to the Court Reporter. She identified the evidence for the record.

Packet #1 - Certifications on efforts to locate and serve Dr. Weinstein.

Packet #2 - Certification from Blue Cross/Blue Shield relating to Count #2.

Packet #3 - Documents from Monmouth County dealing with Mrs. Patricia Blume's forged check matter

Packet #4 - Certification of Investigative Costs and Attorneys Fees.

The Board, upon motion made and seconded, voted to go into executive session for deliberations and advice of counsel. All parties, except counseling staff, left the room.

The Board returned to open session and announced the following motion.

THE BOARD, UPON MOTION MADE AND SECONDED, FOUND THAT GIVEN THE UNREBUTTED CHARGES, THE ATTORNEY GENERAL HAS SATISFIED THE BURDEN OF PROOF AS TO ALL THREE COUNTS OF THE COMPLAINT IN THAT THE RESPONDENT@S CONDUCT CONSTITUTED A

VIOLATION OF N.J.S.A. 45:1-21 AND N.J.S.A. 45:5-5.2; ORDERED RESTITUTION IN THE AMOUNT OF \$35,196.32, \$230,248.93 AND ENFORCEMENT BUREAU COSTS OF INVESTIGATION OF \$2,304.96, ATTORNEY FEES IN THE AMOUNT OF \$14,220.00 AND A PENALTY IN THE AMOUNT OF \$10,000 PER COUNT (\$30,000). RESPONDENT SHALL BE PERMITTED TO MOVE WITHIN SIX MONTHS FROM THE DATE OF THE FINAL ORDER TO VACATE THE DEFAULT AND THE ORDER UPON THE SHOWING OF GOOD CAUSE. A MORE DETAILED ORDER EXPLAINING THE BOARD'S RATIONALE SHALL FOLLOW.

NEW BUSINESS

1. SISTER-STATE MATTERS - REQUEST FOR REINSTATEMENT OF NEW JERSEY LICENSE/PETITION TO MIRROR NEW YORK SANCTIONS.

BLACK, Andrew, M.D. (License #MA 50779)

BROWN, Joyce/PEREZ, Mileidy D.A.G.'s

By Order of the enclosed Summary Suspension entered on October 16, 2003, the Attorney General issued a summary suspension suspending Dr. Black's license to practice medicine and surgery in the State of New Jersey based on his failure to renew his medical license in June 2003 and requiring that Respondent account to the Board regarding the attached 2003 New York disciplinary action.

Based on the provisions set forth in the New York Consent Order and Respondent's December 9, 2003 request for reinstatement with sanctions mirroring those of the Sister-State, a PEC was recommended in this matter. It was necessary for the Board to determine whether Respondent's submission established a need for his appearance before the Board or a Committee thereof, as required by the Summary Order of Suspension.

There was a motion to go into Executive Session to discuss a settlement position.

The meeting ended at 3:00 p.m.

Respectfully Submitted,

Glenn Farrell Esq.,
President
Chairperson for Open
Disciplinary Matters

 [back](#)

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