

**STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION -
OPEN MINUTES -February 22, 2006**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, February 22, 2006 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor, Room D-1, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by Ms. Karen Criss, Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Criss, Jordan, Lambert, Lomazow, Mendelowitz, Nussbaum, Paul, Reichman, Scott, Strand, Walsh and Wheeler.

EXCUSED

Cheema, Ciechanowski, Clemency Kohler, Criscito, DeGregorio, Haddad, Salas-Lopez, Stanley, and Weiss

ABSENT

ALSO PRESENT

Senior Deputy Attorney General Dick, Deputy Attorney Generals Ehrenkrantz, Flanzman, Kenny, and Warhaftig; Executive Director Roeder, and Medical Director Gluck

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

**9:00 a.m. - ZAHL, Kenneth M.D. (License #MA 56413)
(Counseling Deputy: Flanzman, Steven N.,)
JACKSON, John Zen Esq., for Respondent
KENNY, Paul R., D.A.G. for Complainant**

Dr. Cheema and Ms. Clemency Kohler were recused in this matter and did not attend the hearing.

The Board reconvened the hearing for the continuation of the Order to Show in the Temporary Suspension of the license of Kenneth Zahl M.D. matter noting that the hearing commenced on February 8, 2006 and was adjourned at 10:15 p.m.

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

The Board returned to Open Session, with all other parties returning, and continued with hearing testimony on behalf of the Attorney General's application for a temporary suspension in

the matter of Dr. Kenneth Zahl.

D.A.G. Kenny placed his appearance on the record as well as D.A.G. Jeri Wharhaftig on behalf of the Attorney General and Mr. John Zen Jackson on behalf of Respondent Kenneth Zahl, M.D. entered his appearance.

D.A.G. Kenny marked for identification S-9, a copy of the Demand for Statement Under Oath that was served on Dr. Yulo. Counsel requested that it be admitted into evidence, along with a copy of the transmittal letter dated December 13, 2005 and Dr. Yulo's response. Counsel then requested that S-10, a copy of the transcript of investigative inquiry of Ms. Victoria Brand, CRNA (Respondent's Exhibit Z36) be entered into evidence. The Board accepted both into evidence without objection by Respondent's counsel. With that, the Attorney General

rested her case.

Ms. Miriam Vega Testimony

Mr. Jackson opened by calling his first witness, Ms. Miriam Vega, who worked for Dr. Zahl in Rockaway, New Jersey and in his Union, New Jersey office from time to time. Ms. Vega explained that she was the receptionist and her responsibilities included the booking of appointments, answering the telephone, some light record-keeping and occasionally, sending out the patient records. Ms. Vega testified that appointments were kept on the computer and the program permits daily printouts. When asked to look at Z-1 (KZ 0000105), the witness identified it as a copy of a scheduling page, which was something kept in the ordinary course of business in Dr. Zahl's office. She further identified the document as one being from the October, 2004 schedule. The witness was familiar with Dr. Yulo and recalled that the first time he came to Dr. Zahl's office was on September 23, 2004 to be interviewed by Dr. Zahl. During the interview, she could not recall if Dr. Yulo performed any procedures and recalled that Saturday, October 23, 2004 was the next time that Dr. Yulo came into the office. She was sure that it was a Saturday because she recalled giving him a ride to the train station upon his leaving. According to the witness, and after reviewing the schedule sheet, she testified that some patients were scheduled for Dr. Yulo on that Saturday.

Ms. Vega, on cross-examination, clarified that she had access to the computer program Medi-Soft. She also testified that Dr. Zahl had access to the same program and that he had the ability to input information, as well as, about six other individuals in the office had the same access. When in the office on October 23, 2004, she did not enter the operating room, so she had no idea what procedures Dr. Yulo may or may not have done. In looking at the schedule closely, she noted that the doctor that was going to perform the procedure was not noted on it. She further noted that just because Dr. Yulo's name was on the sheet that did not necessarily reflect that he performed the procedure. The witness also stated that from time to time, she would go back and fill in the doctor's name that performed the procedure after the procedure was finished. The witness acknowledged that although she could not verify that if the schedule indicated that Dr. Yulo performed any of the procedures that he actually performed them. She, however did believe that he did because that is what she recalled. While she continually testified that according to the schedule Dr. Yulo was noted to have performed the procedure, she could not for certain testify that he did because she was not in the operating room. Although she never worked on Saturday, she worked this particular day at the request of Dr. Zahl because Dr. Yulo was coming to the office. Ms. Vega also stated that she would schedule Dr. Yulo to perform EMGs, office visits, and some procedures.

The witness recalled that on September 23, 2004, and according to the schedule, Dr. Yulo was noted. She acknowledged that his name made it on the schedule, however, she did not know who entered the appointment. Under his appointment, she also noted some notations that indicated that the patient after Dr. Yulo's interview was a new patient that was referred by the patient's brother. The new patient was scheduled for a forty-five minute appointment because he was a new patient. As was the general practice, the new patient would first be interviewed by a staff member for history taking purposes and then seen by Dr. Zahl.

On redirect, as best as she could tell from the schedule, Dr. Zahl did procedures on September 23, 2004 and that the nurse monitor was on premises to observe the procedures. The witness, however, could not recall whether or not the nurse monitor actually observed the procedures because the witness was not in the operating room.

Ms. Boin Testimony

Mr. Jackson continued with his case-in-chief by calling his next witness, Ms. Marie Boin, who has been a patient of Dr. Zahl since 2003. She stated that she worked as a secretary at the Shrine of St. Joseph in Sterling, New Jersey. The witness testified that she was referred to Dr. Zahl by another practitioner after she was in a motor vehicle accident. In the course of her treatment, she testified that she had received approximately 10 or 11 injections. She further testified that she had found the injections to be extremely helpful. Ms. Boin also recalled that there was a young doctor present and believed that his name was Dr. Yulo as she was introduced to him. Dr. Zahl, according to the witness, explained to her that Dr. Yulo would be performing the procedure on her and that Dr. Zahl would be overseeing him. She consented to the procedure and further recalled that upon entering the

room, she got on the table and lay on her stomach for her injection. She knew it was someone other than Dr. Zahl because of the pain that she experienced when the needle was inserted and recollected that Dr. Zahl yelled at Dr. Yulo, "no, no, you're going too far."

The witness also testified that even knowing about the problems he was having with the Board, she would return to Dr. Zahl because of the tremendous relief she had experienced from the incredible pain she experiences in her neck and back. She explained that she had been diagnosed with bulging and herniated discs in her neck and spine. She also had RSD.

When asked on cross-examination, she also recalled that Dr. Yulo did perform EMGs on her, but she only recalled this one procedure by Dr. Yulo. Although the needle came in from the back because she was laying on her stomach, she was sure that it was Dr. Yulo because of the location of Dr. Zahl's voice and because of the extreme pain that she felt. Looking at her medical record for April 14, 2005 (S-3 at #436), she acknowledged that she did not believe that she ever saw this particular radio frequency at L3 and L4. It was her understanding that it was to treat the nerves in the back and assist with the pain from the RSD. Turning her attention to another document, (March 2005 #385), Ms. Boin noted that it was for an injection into her neck performed by Dr. Zahl. She could not recall the date that Dr. Yulo performed the sole procedure and when Dr. Zahl performed them, although, she noted that Dr. Zahl did the vast majority of procedures. Victoria Brand, according to the witness, was the nurse anesthetist in Dr. Zahl's office. Also, in reviewing the operative report for a C-3 epidural injection (#186), she stated that this was one of the places where she received the epidurals and noted that the document indicated that Dr. Zahl performed the procedure.

Ms. Boin testified that she had an on going litigation about the motor vehicle accident and she believed that Dr. Zahl had prepared three, maybe four reports on her behalf. She also believed that Dr. Zahl would be a witness for her in the event that the case was to go to trial.

On redirect, the witness again reviewed some of the documents. In particular, she noted that on the operative report identified as #188, it indicated that both Dr. Yulo and Dr. Zahl were the surgeons because this was listed on the document. She was adamant that on at least one occasion, Dr. Yulo performed an injection in her neck as she previously described. Ms. Boin acknowledged that he may have performed others, but she had no specific recollection of any.

Mr. Mulvihill Testimony

Mr. John Mulvihill was called as the next witness. He was a patient of Dr. Zahl and had been since the summer of 2004. He had seen Dr. Zahl for treatments, generally in the back, spine area, including from the neck to the lower back. He received injections over the course of his treatments, but could not recall any specific dates. According to the witness, Dr. Zahl would specify what he was doing step by step while he was performing the procedure. The patient appreciated this because he was teaching at the time and that, as an instructor, he always believed that detailed instructions were important. Mr. Mulvihill also recalled seeing Dr. Yulo at the practice, as well as, several staff nurses. He was introduced to Dr. Yulo who was in the room during some of his procedures. He was sure that Dr. Yulo was in the room on at least one occasion and testified that it may have been several. He further recalled that Dr. Yulo was in the room during injections or when a needle was being inserted in his spine – both cervical and lumbar areas. Although he believed that Dr. Yulo was present for both of these, he could not for certain verify that he was. Mr. Mulvihill stated that he was in both the supine and prone positions during these procedures. According to the witness, he also recalled Dr. Zahl would guide Dr. Yulo's hands when he was doing the procedure. He also believed that even when Dr. Yulo did the procedure, Dr. Zahl would be telling Dr. Yulo how to do the procedure. He specifically recalled this because this is the way in which he would teach his students – show them first, guide them and then let the student perform solo with him talking them through it.

On cross-examination, DAG Kenny directed the witness' attention to an April 7, 2005 anesthesia record. According to the record, it indicated that he had received versed and fentanyl, although the witness had no recollection at all about receiving them. He, however, did recall that at times it was suggested that he arrange a ride to and from the appointment. The witness further recalled that Dr. Zahl requested his consent to having Dr.

Yulo participate in his procedures, but could not recall whether he signed any formal consent forms. He was not certain whether he was aware of Dr. Yulo's level of experience or training when he gave the consent. While he did not recall a specific instance where Dr. Zahl guided Dr. Yulo's hands, he acknowledged that it was possible because from time to time, he believed that he felt more than one hand inserting the needle. The only time that he recalled Dr. Yulo speaking directly to him was when he saw Dr. Yulo for an office visit. He could not recall anytime that Dr. Yulo "walked" him through a procedure with the step by step instructions the way Dr. Zahl always did.

Ms. Martin Testimony

The next witness, Renee C. Martin, was a forensic doctor who examines documents to determine whether they are authentic or not. She is a member of the American Graphological Society, which is a special interest group. She became self-employed in 1955. In the area, she is constantly training and re-educating herself and she had testified in a number of proceedings, both nationally and internationally. The witness also had published a number of articles for some journals. She is the Co-founder of the National Association of Document Examiners and maintains an office in Princeton, New Jersey. On voir dire, the witness was not able to distinguish if the number of cases were civil or criminal, although she has equally testified for plaintiffs and defendants. S-11 was marked for identification which was a copy of Ms. Martin's report prepared for Dr. Zahl. Without objection from the parties, Ms. Martin was accepted as a document identification witness.

A questioned document marked CMS 855R was compared to known documents (Known 1) Federal Express Bill which was purported to be handwritten by Elaine Caruso-Long; a form with the name "Kenneth Zahl"; handwritten notes represented to be by Elaine Caruso-Long; employee assessment form for A. S. , which also was represented to be in Ms. Caruso's handwriting. There also was an employee assessment form for M.K. with handwriting represented to be in Ms. Caruso's handwriting. Another employment assessment form for R.K. and M.V. both with handwriting represented to be Ms. Caruso's handwriting. The witness evaluated the documents.

As part of Z-1, page 104, which was used during Ms. Caruso's testimony, which was the questioned document. The witness observed that the name John Yulo, the signature of the practitioner, the date, the word Yulo, the printing of Elaine Caruso and the date, were examined. The witness noted that white-out was utilized on both of the dates. Using some techniques, she was able to look under the white out areas, although more definitive testing, included destruction, was available, she did not utilize any of them. Her examination was limited to what her sight could verify. On the top portion, there appeared that there was one date, while on the bottom printed line, there was a six that was written twice. The same held true for the "1". April 21, 2000 was the date that she believed was the one that was "whited-out." Ms. Martin described that she was concentrating on the handwriting and compared it with other documents. She has been trained to note the habitual shapes, strokes, darkness and scope of variation. These are known as the parameters within which all writers stay inside. The known documents were used to determine the scope of parameters for Elaine Caruso. In turn, the witness continued, she compared the questioned document and the known documents to determine if the handwriting was the same or where it was different. At the end of all the comparisons, Ms. Martin concluded that both the questioned document and the known documents were the product of Ms. Caruso's handwriting. An opinion she held to a reasonable degree of scientific certainty. Mr. Jackson, at page 359 of the February 8, 2006 hearing testimony, reminded the Board that he showed this document to Ms. Caruso and she denied that she created or signed the document. To the contrary, Ms. Martin believed after her comparison, that the same person that wrote the known documents also wrote the questioned document.

D.A.G. Kenny, on cross examination, questioned the witness about her experience with fingerprints. She acknowledged that while she had heard that no two are the same, she had never studied fingerprinting. She believed that just as it was true about fingerprints when applied to handwriting, that is, no two signatures were exactly the same. When she focused on the questioned document, the witness testified that in the legend at the bottom, it was dated 11/2001. She believed that this individual document was part of other documents, although she was not given the entire group to examine and could not explain why an earlier date was on a document that was clearly marked as a form completed in 2001.

The witness testified that she has been involved in a criminal case in which the criminal was requested to give a signature exemplar, which generally consists of at least twelve signatures. There was not an issue about white-out on the signatures, only on the dates. In looking at the dates on the questioned documents, the witness clarified that she was able to ascertain a date under the white-out, which she believed it was April 21, 2000. The witness continued by explaining that it was done by the same pen as what was used on the signature line.

D.A.G. Kenny continued to question the witness on her report. While the report indicated that she opined within a certain degree of certainty, she testified that certain degree was the same as a reasonable degree. She further explained that within her opinion, she stated that the same person completed all three dates, yet when she was focused on the document, she realized there were only two dates on the document. The witness acknowledged that as an expert in handwriting analysis accuracy was crucial. The witness also admitted that she did not ask to see any handwriting samples of any of the other personnel in Dr. Zahl's office. She explained that she was given the documents by Mr. Jackson and was specifically requested to examine the contested document against Ms. Caruso's handwritten documents.

The Board, upon motion made and seconded, voted to go into Executive Session for advice of counsel. All parties, except counseling and administrative staff, left the room. Upon returning to open session, the Board announced the following motion.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED THAT IT APPEARED THAT, AS OF APPROXIMATELY 4:00 P.M., THE BOARD WOULD LOSE ITS QUORUM. IN LIGHT THEREOF, AND CONSISTENT WITH THE BOARD'S PAST PRACTICES, THE BOARD VOTED THAT IN THE EVENT THAT LESS THAN A QUORUM OF BOARD MEMBERS WAS AVAILABLE TO HEAR THE MATTER, THE BOARD DELEGATED TO A COMMITTEE OF THE BOARD THE AUTHORITY TO CONTINUE THE HEARING UPON THE APPLICATION FOR THE TEMPORARY SUSPENSION OF THE LICENSE OF DR. ZAHL. THE COMMITTEE SHALL BE AUTHORIZED, UPON COMPLETION OF THE HEARING, TO MAKE A DECISION UPON THE ATTORNEY GENERAL'S APPLICATION FOR TEMPORARY SUSPENSION AND, IN THE EVENT THAT THE COMMITTEE FINDS SUFFICIENT CAUSE TO ENTER AN ORDER OF TEMPORARY SUSPENSION OR OTHERWISE LIMIT THE PRACTICE OF DR. ZAHL. ANY DECISION MADE AND/OR ACTION TAKEN BY THE COMMITTEE SHALL BE EFFECTIVE IMMEDIATELY UPON PRONOUNCEMENT, BUT SHALL BE SUBJECT TO REVIEW BY THE FULL BOARD AT THE BOARD'S NEXT SCHEDULED MEETING ON MARCH 8, 2006. AT THAT TIME, ALL MEMBERS OF THE BOARD, INCLUDING THOSE WHO DID NOT SIT ON THE COMMITTEE OR VOTE ON THIS MATTER, SHALL BE PROVIDED WITH COPIES OF THE TRANSCRIPTS OF THIS HEARING AND COPIES OF ALL DOCUMENTS IN EVIDENCE, AND, FOLLOWING REVIEW, THE FULL BOARD WILL THEN VOTE TO EITHER ADOPT, REJECT OR MODIFY ANY DETERMINATIONS MADE AND/OR ACTIONS TAKEN BY THE COMMITTEE.

Mr. Jackson noted on the record that he did not consent to the Board's decision to delegate to a Committee of the Board the decision as to whether to grant or deny the Attorney General's Application for Temporary Suspension. Mr. Jackson placed on the record that he believed he was entitled to a hearing before a full quorum of the Board.

Dr. Reichman left the meeting and did not participate further in this section of the hearing.

DAG Kenny also noted on the record that Ms. Warhaftig would be questioning the following witness.

Ms. Graham Testimony

The next witness, Shontell D. Graham, was called. Ms. Graham was an x-ray technologist and clinical manager, who has worked for Dr. Zahl since September 2003 after answering a want ad. Prior to her employment with Dr. Zahl, she had worked in a Workers Compensation office. She received \$500 a semester for tuition reimbursement and stated that her pay is about average for what she does.

According to the witness, even with her personal and professional relationship with Dr. Zahl, she would not lie

for him. As she continued, the Board learned that her responsibilities included obtaining consent forms from the patients, setting up the instrument tray and from time to time, she may sit in on office visits. She further informed the Board that she uses a BV100 machine at Dr. Zahl's office and acknowledged that the pictures marked Z25 through 34 were accurate depictions as to Dr. Zahl's office. Ms. Graham believed that the pictures were taken a few days before the hearing, except for the last two which were images of patients. Z- 25, 26, 28 were of the Rockaway facility, while 27 was of Union facility. The witness testified that she was unsure of the location of 29, 30, 31, 32. Ms. Graham continued by explaining how the equipment works. In the pictures, Ms. Graham noted that in the background, there is a hard drive that saves the pictures of the procedures performed. She uses a keyboard to enter the patient name and the additional information needed to be recorded in the patient record, which would include the patient name, registration number, chart number, date of the examination, type of examination, Phys (i.e., physician name) and STAT (number of procedures saved for that patient). Under physician name, she stated that it was a drop down menu with names of the physicians already pre populated. Generally, if it were a Thursday, unless otherwise instructed by Dr. Zahl, she would put in Dr. Yulo's name. Once the procedure begins, she could change the name, but she could not recall any time when she did change the name once the procedure began. The witness believed that most of the cervical procedures were performed by Dr. Zahl, although, there were a few that were performed by Dr. Yulo. From October 2004 into September 2005, according to Ms. Graham, Dr. Liebowitz name would not have been in the computer as he was not working at the facility. Dr. Yulo's name, she continued, remains in the drop down menu even though he is not working there any longer. Similarly, there is a Dr. Parik in the system who the witness believes covers for Dr. Zahl, although she has never met him. The witness indicated that after the information is entered, if one selects a particular patient then the image of that patient is brought up. When shown a slide with Dr. Yulo's name, Ms. Graham confirmed that she was the one that saved the information. She worked with Dr. Yulo from about October 2004 through August 2005. The witness was shown a copy of what was previously marked as Z-35. Mr. Jackson requested that the document be entered under seal because the patient names had not been redacted.

The Board upon motion made and seconded, voted to move into Executive Session for advice of counsel. All parties, except administrative staff and counseling staff left the room.

Upon returning to Open Session, the Board announced that it would accept Z-35 into evidence under seal, however, subsequent to the hearing, requested that Mr. Jackson provide the Board office with redacted copies of the documents. Thereafter, the redacted copies would become part of the open, public record. The parties were also instructed to only use initials when referring to any patients.

The witness explained that her function was to set up the equipment, set up the trays, and to retrieve the image set up on the monitor for the procedure that was going to be performed. When she started with Dr. Zahl, there was a practice monitor at the office and she observed that the monitor went around looking at things and the procedures performed. Ms. Graham also testified that the monitor was always present when Dr. Zahl performed procedures. She further testified that both Dr. Zahl and Dr. Yulo performed services together as well as independent of one another. In reviewing various patient records contained within Exhibit Z-2, she identified a number of procedures that Dr. Yulo performed on his own. She also clarified that at times Dr. Zahl would have been in the room because Dr. Zahl would talk Dr. Yulo through some of the procedures. The witness could not recall a time when Dr. Yulo began the procedure and then Dr. Zahl had to take over. Ms. Graham acknowledged that she has made some mistakes in her input of information, however, as a general rule she enters the name of the physician that is doing the procedure as she observes the procedure taking place. She noted that once the images were saved to a disc then no alterations or changes could be made on the records.

When she worked with Dr. Yulo, the witness testified that she personally observed him doing several procedures. During the time period that he worked for Dr. Zahl, she only recalled one instance when he did not come to work on his normally scheduled day. At the beginning, she recalled that Dr. Zahl would assist Dr. Yulo with some of the procedures as Dr. Yulo was not very experienced. She did, however, remember that at some point Dr. Yulo began to do the procedures solo, without the assistance of Dr. Zahl. She estimated that Dr. Yulo performed somewhere between fifty and a hundred procedures solo.

DAG Warhaftig, on behalf of the Attorney General, questioned Ms. Graham about the patient records that were

provided in Z-35. The witness acknowledged that some were performed by Dr. Zahl. When the witness focused her attention on page 506, the record for C.A., dated 05/19/2005, she identified it as anesthesia records and Ms. Graham noted that she does not make any notation on this type of record. According to the document, it was completed by Ms. Brandt. The document indicated that Dr. Yulo performed the procedure. She further noted that there was not an operative report and did not know why. Patient record at 604 was identified as an operative report and at the top it is noted that both Yulo and Zahl were the physicians. On the accompanying anesthesia record it was noted that Dr. Zahl performed the anesthesia. When comparing the two, she could not explain the discrepancies. While she noted that sometimes the operative report is right and the image is wrong and vice versa, she did not know why. She did, however, state that Dr. Zahl was the one that completed the operative report.

Ms. Graham further testified that sometimes before the procedure began, the patient was required to sign a Consent form. The witness testified that sometimes she obtained the consent form and identified the form that was used in the office. Typically, when she was going to obtain the consent, she obtained a blank copy which was attached to the patient's chart. After the signature was obtained, the consent form was placed in the patient files. The consent form, according to the witness, would not contain Dr. Yulo's name, but only Dr. Zahl's name. She believed that some of the images could not be found because there was only one DVD recorder and unless she backed up the images, they could be lost if the image was not placed into the patient's file.

Ms. Graham testified that she was asked to do various tasks which she did not believe were part of a professional's job description. She admitted that she did not believe that Dr. Zahl respected her when she first started, and believed that he has learned to over the years. The witness was shown a copy of an e-mail that purportedly was sent from Ms. Graham to Ms Caruso and there was some discussion as to why this information was not previously provided to Mr. Jackson prior to the hearing. DAG Warhaftig responded, because the document was being used in rebuttal because of Ms. Graham's testimony. Mr. Jackson took some time to review the e-mail and the witness acknowledged that she wrote this to Ms. Caruso and that the contents included complaints about things that Dr. Zahl was asking her to do in the operating room.

When she reviewed the operative report for C.A., dated 05/24/2005, Ms. Graham noted that Dr. Yulo was the physician although Dr. Zahl was listed on the operative report. The anesthesia record for this same patient indicated both Zahl and Yulo and it was represented to the witness that Ms. Brandt had maintained that if she listed them both it was because she observed both of them during that procedure. Similar records, with similar inconsistencies, were shown to the witness and she could not explain the discrepancies. She was sure, however, that if she listed the physician on the flouroscopy report it was because she observed that physician performing the procedure.

Ms. Graham when questioned again by Mr. Jackson, testified that although she was asked to do a lot, Dr. Zahl did not act unprofessionally or over step certain bounds. According to the witness, she believed that Dr. Zahl provides quality service to his patients and is demanding on himself and on those that work with him. He can, she admitted, be overbearing, especially as it related to the case load and the way he tries to squeeze patients in. She also clarified that because Ms. Caruso was the office manager, any problems that she had were to be addressed by Ms. Caruso first. After Ms. Caruso was no longer employed by Dr. Zahl, she informed the witness that the federal agents were going to be shutting him down and that Ms. Graham should leave his employ immediately.

Mr. Jackson showed the witness a copy of a Consent form, which was marked as Z-41 (06/2005) and Z-42 (07/2005), respectively. She noted that Dr. Zahl's name was preprinted, however, there was space to include another physician if needed. She could not explain why Dr. Zahl's name was the only one on the consent form. For the most part, she was the witness to the signing of the consent form.

Certifications of Sandra Bernard, CRNA, Patient Robert Miller, Paul Wojerwich, Kathy McNamara, Scott Moerkerken, Eric Stehlen, Patient San Felipe, and Diana Clark were marked into evidence.

From Exhibit S-10, the transcript of the investigation of Victoria Brandt, Mr. Jackson noted for the Board that she testified that she was an independent contractor that worked in Dr. Zahl's office. She was aware of Dr. Yulo who

worked in Dr. Zahl's office and she also testified that she was present when Dr. Yulo performed procedures in his office. Ms. Brandt also noted that she would put the physician's name that performed the procedure in the box on the form. When she looked at some of the records, she identified her signature and the procedures that were performed. She confirmed that Dr. Yulo performed cervical injections without the assistance of Dr. Zahl and this also included selective epidurals. In other areas of the transcript, she also stated that Dr. Yulo and Dr. Zahl did perform some procedures together. While the witness during the inquiry did not recall any specific patient or procedure, relying on the documents she was able to confirm who did what.

Ms. Kornegay Testimony

Robin Kornegay was called as a witness and sworn in. She informed the Board that she worked for Dr. Zahl and was responsible for sending out the claims for reimbursement. Ms. Kornegay recalled that Alicia pulled the bills for Elaine Caruso-Long to be sent to Horizon BC/BS and when a matter was being appealed to Aetna. She also sent copies to USR which was a monitoring service to which Dr. Zahl was required to send materials in order to be able to bill for those services. She acknowledged that she was familiar with the Medicare forms and has had contact with that office. When she telephoned the Medicare office, she was not able to verify that Dr. Yulo had not been registered with Medicare since 1999.

Dr. Zahl Testimony

Dr. Zahl was called as a witness. He explained to the Board that he was aware that the Board had entered an Order that required him to be observed by a monitor in order to be able to bill for the procedure as long as the bills were approved by a billing monitor. He further testified that he complied as best as he was able. He also acknowledged that there were questions along the way that questioned whether he was in compliance or not.

Dr. Zahl's attention was focused on three letters that were sent to Dr. Gluck, the Board's Medical Director, in which he was seeking guidance and clarification on the Board's requirements. Dr. Zahl testified that he did not receive a response to the October 20, 2005 in which he was seeking to discontinue the USR monitor at the Bergen Ambulatory Facility. As a matter of routine, according to Dr. Zahl, he continued to have monitors there, although he did recall there were a few times that one was not present. For those procedures, he further explained that there was a motion pending before the Board to seek the ability to bill for those services. When Dr. Yulo began working with Dr. Zahl, he believed that Dr. Yulo was permitted to perform services without the monitor. He did not bring this to the Board's attention because the witness believed that the Order exempted the employees in his practice from the monitor requirement and only he was bound by the terms of the Order.

Additionally, a letter dated November 14, 2005 addressed to the Executive Director was also handed out to the Board members. In that letter, Dr. Zahl requested some clarification as to whether he had to submit the bills of other licensees that were not subject to the monitoring requirement. The letter also informed the Board that he was having others perform procedures outside of the monitor. According to Dr. Zahl, he did not receive a response to this letter.

Dr. Zahl went on to explain that under the terms of the monitoring agreement, he was required to pay a minimum of eight hours and then it was decreased to six hours for the monitoring agreement. He further explained that he had some patients that had to be there more than eight hours. As he recalled there were times that the monitors would request to leave early, not work beyond six o'clock, or to leave as soon as the last patient was finished. Dr. Zahl clarified that the billing that was done for Dr. Yulo was the same way that he billed for the services that he performed himself while he was monitored. He prepared the bills for those procedures performed by Dr. Yulo, as well as those for his own services, and submitted all of them to be reviewed by the billing monitor. Prior to Dr. Yulo starting, the monitor, Patricia Bogler, observed a number of employees in the office and this was an issue. Because of this behavior, according to Dr. Zahl, he began to experience personnel problems and he began to lose some employees. He was sure that because of the monitoring requirement, he lost both a Physician Assistant and a Nurse Practitioner. In part, he continued, this was in part his motivation of requesting the Board's clarification of its Orders.

The witness recalled that when Dr. Yulo first started, Dr. Zahl told him during the interview about the practice

monitor. Dr. Zahl also arranged to have Dr. Yulo observed some of the procedures. Dr. Yulo was aware that the monitor was there to observe procedures done by Dr. Zahl and that from time to time, would monitor some other procedures in general. As Dr. Zahl recalls, he started looking for assistance in the office beginning in March 2000 when he began to have discussions with other practitioners. It was his idea to work with some physicians with other skills (i.e., diagnostic or manipulative) and learn those skills, while at the same time, Dr. Zahl would impart his pain management skills. It was, according to Dr. Zahl, a cross training concept to better assist patients. After the Board 's Orders, the witness also attempted to bring some other physicians into the practice, in particular, as a protection, if he was not successful with his appeal. This would permit a transition for his patients and provide him with some options if and when he would be permitted to return to practice. Respondent remembered that sometime in the fall of 2004, he placed an advertisement in the paper. Dr. Zahl identified Dr. Yulo as one who answered his advertisement. He met with him in the Union office on September 23, 2004. During the interview, he had Dr. Yulo observe one, maybe two, procedures. During the interview, Dr. Yulo represented that he had performed various types of interventional injections. Dr. Zahl also recalled that Dr. Yulo expressed some desire to learn some additional techniques. According to the witness, he was prepared to teach Dr. Yulo whatever he wanted to learn. Dr. Zahl stated that this was the type of qualifications that he had been seeking. Dr. Yulo began to work sometime in October 2004, toward the latter part of the month. Subsequent to hiring Dr. Yulo, Dr. Zahl testified that he has learned that Dr. Yulo misrepresented his credentials.

When he is with patients, Dr. Zahl stated that he attempts to teach his patients about the procedures whenever he can. He believes that this is in the best interest of the patients so that they can understand what medicine and/or procedure the patient is undergoing.

Based on the representations that Dr. Zahl was not feeling well and the Board's inability to accommodate him with less light, the Board adjourned the hearing in this matter and announced that it would reconvene the hearing at 9:00 A.M. in the Administrative Office's large conference room, 140 East Front Street, 2nd Floor, Trenton, the following day, February 23, 2005.

Karen Criss R.N., C.N.M.
Vice-President
Chairperson for Open Disciplinary Matters
RCS/wr February '06

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