

**State Board of Medical Examiners
Disciplinary Matters Pending Conclusion
March 9, 2005**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, March 09, 2005 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, Criscito, Criss, Farrell, Haddad, Harrer, Huston, Lamazow, Moussa, Patel, Paul, Perry, Ricketti, Robins, Rokosz, Trayner and Walsh.

EXCUSED

Board Members Chen, Harrer, and Weiss.

ABSENT

Board Members Desmond and Wallace.

ALSO PRESENT

Assistant Attorney General Joyce, Deputy Attorneys General Bey, Dick, Ehrenkrantz, Flanzman, Gelber, Goodman, Kenny, Krier, Warhaftig Executive Director Roeder and Medical Director Gluck .

RATIFICATION OF BOARD MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE FEBRUARY 9, 2005 OPEN DISCIPLINARY BOARD MINUTES AS SUBMITTED.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

10:00 a.m. - FASWALA, Munir H., M.D. (License # MA 61219) GOODMAN, Daniel D.A.G. for Complainant

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

This matter was set down before the Board based on an Order to Show Cause and Verified Complaint by the Attorney General filed on March 2, 2005 seeking the emergent temporary suspension of the license of Dr. Munir H. Faswala to practice surgery and medicine in the State of New Jersey. D.A.G. Daniel Goodman's letter brief to the Board dated March 2, 2005; and Certification of Service dated March 2, 2005 were enclosed for the Board's consideration as well.

Briefly, by way of background, Dr. Faswala was recently arrested by the Millville Police Department on or about February 16, 2005 and charged with four (4) counts of unlawfully dispensing a controlled dangerous substance; three (3) counts of unlawfully dispensing a prescription legend drug; four (4) counts of unlawfully dispensing a controlled dangerous substance within 500 feet of a public building; and three (3) counts of financial facilitation of criminal activity.

Board Chairman Farrell opened the meeting and noted that Dr. Huston was recused in this matter. The Chair requested D.A.G. Goodman to place his appearance on the record and made an announcement if Dr. Faswala was present to please acknowledge and if not, the Chair would continue to proceed. Having heard no response, the meeting proceeded.

D.A.G. Goodman placed his appearance on the record on behalf of the Attorney General for the State of New Jersey, Peter C. Harvey.

D.A.G. Goodman submitted for the record that it was 11:23 a.m. and he had gone into the hall way to call for Dr. Faswala and there was no response. He also reported to the Board that he attempted to call respondent's home on the morning of the meeting at 9:30 a.m. and respondent's telephone had been disconnected. D.A.G. Goodman further informed the Board that he was before them pursuant to an Order to Show Cause and Verified Complaint seeking the temporary suspension of the license of respondent Munir H. Faswala, M.D. D.A.G. Goodman made a motion to proceed in Default of this matter and indicated that he had evidence for submission in support of his Motion for Default. D.A.G. Goodman noted that the Respondent's address of record with the Board was 506 Lagoon Boulevard, Brigantine, New Jersey 08203-1222 as indicated on the printout from License 2000 dated February 15, 2005. It was entered into evidence and pre-marked as P-3.

The State indicated that all of the filings in this matter were served by Investigator Michael Carducci of the Enforcement Bureau at respondent's address of record on Friday, March 4, 2005 at approximately 12:05 p.m. The documents that were served included the letter which changed the return date of the Order to Show Cause from 3:00 p.m. to 10:00 a.m. and Investigator Carducci photographed the documents at the Respondent's front door on Friday morning at 12:05 p.m. The State noted that it was important to note that the overnight package that was mailed to respondent, otherwise known as the "Friday Morning Delivery" was also in that photograph and further noted that it was the only overnight delivery package in that photo and the "Thursday Morning Delivery" was not there and so one is to assume that it was picked up by either respondent or someone else in the household.

D.A.G. Goodman submitted into evidence the copy of Affidavit of Service by Investigator Michael Carducci which was pre-marked as exhibit P-4. D.A.G. Goodman also sent three separate overnight deliveries of these documents via UPS/ Next Day Air to Respondent's address of record with the Board on March 2, March 3, and March 4 of 2005. All of these packets were left at respondent's door on Thursday, March 3, 2005 at 9:47 a.m. which was referred to as the "Thursday Morning Delivery" consisting of The Order to Show Cause; The Verified Complaint; The Certification of Counsel; The Letter Brief; and The Certification of Service and the Cover letter to the Board. D.A.G. Goodman submitted into evidence the UPS Tracking Summary for the "Thursday Morning Delivery" which was pre-marked and entered into evidence as Exhibit P-5.

D.A.G. Goodman submitted into evidence the UPS Tracking Summary for the "Friday Morning Delivery" pre-marked as P-6 which consisted of D.A.G. Goodman's letter to the respondent advising him of a change of time for the hearing from 3:00 p.m. to 10:00 a.m. as a result of the adjournment of the 10:00 a.m. hearing previously scheduled. These documents were delivered on March 4, 2005 at 9:37 a.m.

D.A.G. Goodman noted that when he realized that he had neglected to attach the "Dr. Siddique case" which was referenced in his papers to his letter brief, D.A.G. Goodman then submitted into evidence the UPS Tracking Summary for the "Saturday Morning Delivery" pre-marked as Exhibit P-7 which included the letter changing the time of hearing to 10:00 a.m., the Siddique case; and the redacted version of all of the exhibits to respondent at that same address. These documents were delivered on Saturday, March 5, 2005 at 10:30 a.m. and were additionally sent by regular mail on March 4, 2005 and nothing had been returned to D.A.G. Goodman as of the date of the Board meeting.

Finally, D.A.G. Goodman submitted a certification from Sgt. Robert Rubino from the Brigantine Police Department, Atlantic County, New Jersey into evidence pre-marked P-8 certifying that Sgt. Rubino drove by the house of respondent on Tuesday, March 8, 2005 at approximately 3:20 p.m. and that there was a Pontiac Grand Prix in the drive- way with license plate registered to Munir H. Faswala. Additionally, Sgt. Rubino certified that there were no packages on the respondent's front porch. D.A.G. Goodman stated that this is evidence that all three of his overnight deliveries, as well as, the attempted personal delivery from Investigator Michael Carducci were picked up by the Respondent or someone else living in his household, thereby it would be difficult to argue that respondent did not have notice of this hearing scheduled for 10:00 a.m. this morning.

D.A.G. Goodman officially moved all of his Exhibits into evidence and provided copies to counseling D.A.G.

Steven Flanzman. The Board accepted the materials into evidence.

. The Attorney General respectfully requested that the Board grant his Motion for Default as the Respondent was properly served and he has not responded to any of the documents.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ATTORNEY GENERAL'S MOTION FOR DEFAULT IN THIS MATTER. THE ATTORNEY GENERAL THEN MOVED FORWARD WITH HIS ORDER TO SHOW CAUSE FOR THE TEMPORARY SUSPENSION OF RESPONDENT'S LICENSE TO PRACTICE MEDICINE IN THE STATE OF NEW JERSEY.

D.A.G. Goodman addressed the Board with a brief statement before submitting the State's evidence. D.A.G. Goodman argued that simply put, the evidence in this case showed that the respondent unlawfully dispensed CDS and prescription level drugs to an undercover police officer in Millville, New Jersey on three separate occasions for cash payments. The evidence further showed that at no point in time did respondent ever perform a physical examination or even touch the undercover officer at any of his three office visits. Dr. Faswala never inquired about the medications that the undercover officer may have been on at that time, and in sum, the evidence showed that there did not exist any medical necessity, whatsoever, for issuing these prescriptions to the undercover officer. The evidence would further show that Dr. Faswala even offered to provide the undercover officer with additional prescriptions for CDS at no charge if the undercover officer agreed to fix respondent's car. D.A.G. Goodman noted that the last exchange was secretly recorded by the undercover officer and the transcript of that conversation was presented to the Board.

The State also presented evidence that showed that on or about February 16, 2005 respondent was arrested by the Millville Police Department in Cumberland County, New Jersey and was charged with four counts of unlawfully dispensing a CDS, three counts of unlawfully dispensing a prescription level drug, four counts of unlawfully dispensing of CDS within 500 ft. of a public building and three counts of financial facilitation of criminal activity. D.A.G. Goodman submitted that the Attorney General's proofs in this matter palpably demonstrated by a preponderance of the credible evidence that respondent selling the prescriptions for CDS and prescription level drugs for cash on more than one occasion with no medical necessity at all, posed a clear and imminent danger to the public's safety and welfare in violation of N.J.S.A. 45:1-22.

The following exhibits were entered into evidence by the Attorney General.

P-1 - Certification and true copy of Det. Sgt. Ronald A. Harvey of the Millville Police Department dated March 1, 2005. Document is one page long with many attached documents.

P-1a - Arrest report and criminal complaint for Munir H. Faswala M.D. These documents are nine (9) pages long and are dated February 6, 2005.

P-1b - Initial investigation report signed by Det. Sgt. Harvey. This document is two pages long and is dated February 15, 2005.

P-1c - Supplemental investigation report signed by Det. Brian R. Starcher. This document is one page long and is dated February 15, 2005.

P-1d - Supplemental investigation report signed by Det. Harold N. Duffield. This document is one page long and is dated February 15, 2005.

P-1e - Two prescriptions from Munir H. Faswala, M.D. written to Daulton Reeves. The prescriptions are for Soma, Fioricet and Xanax. This document is one page long and the prescriptions are dated January 28, 2005.

P-1f - Supplemental investigation report signed by Det. Starcher. This document is two-pages long and is dated February 15, 2005.

P-1g - Supplemental investigation report signed by Det. Duffield. This document is one page long and is dated

February 15, 2005.

P-1h - Two prescriptions from Munir H. Faswala M.D. written to patient Daulton Reeves for Xanax and Zydone. This document is one page long and the prescriptions are dated February 9, 2005.

P-1i - Supplemental investigation report signed by Det. Starcher. This document is three pages long and is dated February 15, 2005.

P-1j - Supplemental investigation report signed by Det. Sgt. Harvey. This document is three pages long and is dated February 15, 2005.

P-1k - Supplemental investigation report signed by Det. Starcher. This document is one page and is dated February 17, 2005.

P-1l - Supplemental investigation report signed by Det. Duffield. This document is one page and is dated February 16, 2005.

P-1m - Supplemental investigation report signed by Det. Sgt. Harvey. This document is two pages long and is dated February 17, 2005.

P-1n - Supplemental investigation report signed by Det. Starcher. This document is one page long and dated February 18, 2005.

P-1o - Supplemental investigation report signed by Det. Duffield and is one page long and dated February 28, 2005.

P-1p - Supplemental investigation report signed by Det. Starcher and this document is one page long and dated February 18, 2005.

P-1q - Supplemental investigation report signed by Det. Starcher and this document is one page long and dated February 18, 2005.

P-1r - Supplemental investigation report signed by Det. Duffield and this document is one page long and dated February 18, 2005.

P-1s - Two prescriptions from Munir H. Faswala M.D. written to patient Daulton Reeves for Calcifol and Zydone and this document is one page long and the prescriptions are dated February 16, 2005 although they were actually written on February 14, 2005.

P-1t - Copy of a two fifty dollar bills that were used in the undercover operation of Dr. Faswala on February 14, 2005. This document is one page.

P-1u - Copy of the receipt from Advanced Auto Parts for a blower motor dated February 14, 2005 for the total of \$89.71. This document is one page long.

P-1v - Transcription of the recording taken on February 14, 2005 between respondent and the undercover Det. Starcher. This document is 14 pages long.

P-1w - Copy of the New Jersey Medicaid card for Daulton Reeves and this document is one page long.

P-1x - University Imaging Center referral for a patient Daulton Reeves and this document is one page long.

Finally, the last item that the State moved into evidence was Exhibit P-2 which was the certification of Det. Brian R. Starcher. This document is two pages long and was dated on March 2, 2005.

In conclusion, the Attorney General argued that he had demonstrated to the Board that Exhibits P-1 with all the

attached documents and exhibits P-2 clearly set forth all the factors necessary for the Board to conclude that respondent unlawfully dispensed CDS and prescription drugs for cash on more than one occasion to an undercover police officer without any medical necessity for any of these prescriptions. In addition, the Attorney General palpably demonstrated by a preponderance of the credible evidence that respondent's continued practice of medicine constituted a clear and imminent danger to the public. It's a violation of N.J.S.A. 45:1-22. Therefore, the Attorney General asked for the temporary suspension of respondent's medical license pending a full plenary hearing in this matter.

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.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED THAT THE ATTORNEY GENERAL MADE A PALPABLE DEMONSTRATION OF CLEAR AND IMMINENT DANGER TO THE PUBLIC'S HEALTH, SAFETY AND WELFARE AND THEREFORE ORDERED THE TEMPORARY SUSPENSION OF THE LICENSE OF RESPONDENT MUNIR H. FASWALA, M.D. PENDING THE COMPLETION OF ALL PROCEEDINGS IN THIS MATTER.

1:00 p.m. - COHEN, Wendy M.D. (License #MA 32189)
(Counseling D.A.G.: LEVINE, Debra W.,)
KERN, Steven I., Esq., for Respondent
BEY, Hakima D.A.G. for Complainant

Drs. Rokosz and Trayner recused from discussion and vote in this matter.

By way of background, this matter was set down before the Board on December 8, 2004 and was adjourned until January 12, 2005 and then was again adjourned and was before the Board at its February 9, 2005 meeting based on the filing of a Notice of Motion for a Summary Decision with an accompanying Letter Brief Certification and Exhibits. The Board moved to grant the State's motion for Summary Decision as there were no genuine issues of material facts in dispute and as a matter of law the Board found that Respondent engaged in violations of N.J.S.A. 45:1-21(b) by engaging in the use of misrepresentation and a violation of N.J.S.A. 45:1-21 (e), professional misconduct .

As a result of the Board's decision at its February 9, 2005 meeting, this matter was set down for a Mitigation Hearing. The Chair further indicated that there would be no further adjournments given the fact that there had been prior adjournments on the matter.

All pertinent materials regarding this matter were enclosed for the Board's review.

Chairman Farrell opened the meeting and S.D.A.G. Sandra Dick distributed to the Board members for review a copy of the defense Motion for Reconsideration in the Wendy Cohen M.D. matter and the Attorney General's response. The Chair opened the hearing by reminding the parties that there was a Motion for Reconsideration filed on behalf of the respondent and noted that there was opposition to that motion filed by the State by letter dated March 8, 2005. He informed the parties that the Board would entertain ten minutes of oral argument on the Motion for Reconsideration. The Chair asked if there were any preliminary matters that needed to be discussed before entertaining argument. Mr. Kern replied that his understanding was that the Board had a copy of the certification of the Vice President of Claims from Oxford Health Inc. and the Chair confirmed that the Board had his March 7, 2005 submission with the attached certification of Mr. Michael Santoro, dated March 1, 2005.

In Mr. Kern's opening remarks, he asked the Board if they recalled that the State had argued the previous month that there were no facts in dispute and that before any discovery could be conducted in this matter, he had argued that there were facts in dispute. Mr. Kern argued that there had been no opportunity for discovery and although, the Board ultimately decided that there were no facts in dispute, he had since been able to obtain information from Oxford Health Inc. which clearly indicated that what the Board believed to be the case last month was not

the case ? there are facts in dispute.

Mr. Kern pointed out that D.A.G. Bey in her October 25, 2004 brief presented to the Board last month, on page four, that the facts were not in dispute, yet presented to the Board a remittance invoice from Oxford Health Inc., in which the carrier adjusted the codes. As a result, the charges of \$4,000 from the respondent's last bill, Oxford adjusted the charges to \$1,500 and paid Dr. Cohen \$1,019.00 for the usual and customary and reasonable allowance for services rendered to patient M.P. Mr. Kern stated that they now know that fact was untrue. The fact of the matter was that Oxford Health never considered the \$4,000 claim at all and in furtherance of its position, the State last month had submitted an expert report which according to the State was based upon facts not in dispute, one of which was that Dr. Cohen knowingly and intentionally billed the insurance carrier for services she did not provide, on page two of that report. Mr. Kern added that they now have the certification of the Vice President in charge of claims for Oxford Health who specifically signs claims and that based upon the review of the hospital record and Dr. Cohen's office notes, paragraph 11 of his certifications that the CPT codes provided on the claim form at issue was a \$1,000 accurately reflecting the services provided to their member. Oxford certified that the CPT codes were correct and Oxford went on to say that in effect they did not care as to what dollar amount was put next to the CPT codes. Mr. Kern continued that this was one of the issues in dispute and Oxford now confirms not only was it an issue in dispute, but that Dr. Cohen's version of what Oxford does in fact was correct. Mr. Kern suspected that the State would argue that this is information that should have been made available to the Board before the March 9, 2005 meeting. He submitted that anyone who had ever tried to reach Oxford knew that it is virtually impossible to get through to Oxford and they were not in discovery, and did not have the ability to take a deposition. He further pointed out that it was through Dr. Cohen's efforts and seven hours on the telephone, and only when she was able to tell them of the Board's decision last month, was she able to meet with Oxford. It was only as a result of that needed meeting that Dr. Cohen was able to determine that Oxford did not pay based upon the \$4,000 claim but rather paid based upon a \$1,500 claim form fraudulently submitted by the patient M.P. The claim form that Oxford paid upon was not one submitted by Dr. Cohen. The claim was fraudulently submitted in Dr. Cohen's name, by the patient that Dr. Cohen was completely unaware of. In light of the above facts, Mr. Kern asked the Board to reopen the matter for reconsideration or be sent to OAL or the Board find a proper way to resolve this matter and reserved the rest of his time to respond to the State.

D.A.G. Bey in her opening statement informed the Board that for Dr. Cohen to prevail under a Motion for Reconsideration for newly discovered evidence, there were certain standards that must be met. According to the Deputy, Dr. Cohen would have to prove that the additional information was unobtainable by exercise of due diligence; needed to prove that the additional evidence would probably have changed the result; and that Dr. Cohen needed to prove that the additional evidence is not cumulative. D.A.G. Bey submitted that Dr. Cohen could not reach the burden in moving for reconsideration based upon her newly discovered evidence. As to the articulated standards, Respondent must have exercised due diligence. She pointed out that the complaint in this matter was filed in July of 2004, approximately eight months ago and D.A.G. Bey further argued that Dr. Cohen had plenty of time to gather evidence in support of her dissent, as she also had time after receiving the Attorney General's Motion for Summary Decision in October of 2004. Dr. Cohen also had time to gather evidence in support of her motion to oppose the Attorney General's motion. D.A.G. Bey further argued that Dr. Cohen did not exercise due care in this case to gather information and submitted that Respondent waited until she received an adverse ruling from the Board before gathering information in this matter.

In addition to showing exercise of due diligence, the Deputy continued, Dr. Cohen must also show that the evidence that was newly discovered would probably have changed the result. D.A.G. Bey argued that nothing had changed since the Board's ruling last month for Summary Decision. D.A.G. Bey reiterated that the facts are the same as shown in the State's proofs from last month that Dr. Cohen testified under oath before a PEC admitted that she submitted a claim for Oxford that was five times the amount of her original bill for \$800.00 and also admitted the same to Judge Gallipoli.

D.A.G. Bey continued to argue that regardless of what Mr. Santoro of Oxford Health Inc. believed that it did not matter what Dr. Cohen submitted on her claim form because Oxford would pay whatever they want, did not make it the appropriate standard. D.A.G. Bey referenced that even in the event that the patient submitted a fraudulent claim which is speculative, did not make it right either. The fact remains, she continued, that Dr. Cohen admitted

to Judge Gallipoli that she billed for five times the amount of her services. D.A.G. Bey submitted that the newly discovered evidence is nothing new and has no bearing on the decision that was rendered at the February 9, 2005 by the Board and further urged the Board members to not be distracted about what this case was all about. She urged the Board to remember that it's very simple and that the Board made their findings in this case. The core of the case is about Dr. Cohen and her treatment of her patient M.P. in which she submitted a claim form to Oxford Health Inc. for five times the amount of her original bill. Nothing had changed and there was no newly discovered evidence and this recent submission from Oxford was in-material to the underlying allegations of the case.

Mr. Kern, in his rebuttal argued, that of course, there was no newly discovered evidence, it was evidence that there was a \$1,500 claim form that nobody knew about. How could Dr. Cohen have known about this claim, if no one else knew about it? Mr. Kern further argued that Dr. Cohen was not involved in submitting the claim form and was never involved in the communication or correspondence of the claim submission. Mr. Kern reiterated that this matter went before the Board on the Attorney General's motion before any discovery in the underlying case. He pointed out that Oxford Health was in Connecticut and they had no subpoena power and could not take a deposition because he would have had to go to OAL for that as the case was never transferred to OAL as it should have been. The fact that there was no way to obtain this new information did not mean that it should not be considered as it goes to the heart of the issue. Dr. Cohen's expectation was that Oxford would base its determination on CPT codes and paid upon CPT codes not upon her evaluation of a CPT code. He noted that there was probably not a doctor the room that when they submit a bill in the amount that they anticipate getting paid, whether it's the medicare and any third party provider. Mr. Kern emphasized that physicians are valuing their services on their invoices probably two or three times the amount of their anticipated payment which happens all the time thus proving that it is not uncommon for Oxford Health Inc. to receive a corrected claim form from the provider after the provider already submitted a claim form. Oxford Health goes as far as to have a P.O. Box to deal with those types of claim forms. Mr. Kern referenced paragraph thirteen (13) where it indicated that it is common for a corrected claim form to have different CPT codes than the original claim or for the corrected claim to have a different amount billed. The fact that Oxford received a corrected claim form does not in and of itself indicate that the prior claim was a misrepresentation or fraudulent and that's the underlying question in this case. Mr. Kern argued that it's a question of fact. Since it's a question of fact, it deserves a hearing and is not the subject of a Motion for Summary Decision. Mr. Kern reiterated that Oxford confirmed that fact and that this was newly discovered information that could not have had conceivably been obtained prior to last month's meeting and for that reason Mr. Kern requested that the Board reconsider and reverse its prior decision in this matter due to the common practice resulting from the HMO's own methodology.

D.A.G. Bey in her rebuttal found it very interesting that Dr. Cohen was actually arguing that this was common practice for all physicians at today's meeting. D.A.G. Bey directed the Board's attention to the PEC transcript submitted in the Attorney General's original motion papers. She referenced exhibit C which was Dr. Cohen's PEC transcript dated June 26, 2000 and identified page 36, line 10 where committee member Dr. Wallace asked Dr. Cohen "When you're having difficulty getting reimburse, was that your usual practice to do that?" and asked the Board to look at line # 3 & 4 indicating that Dr. Cohen admitted overlapping the codes. D.A.G. Bey going back to her answer on line 13 pointed out that she further testified that she had never done this before and she had not needed to do it before, and "no it's not usual." D.A.G. Bey argued that Dr. Cohen through her own admission stated that she had never engaged in this practice that she had only done this on one occasion. She questioned how Mr. Kern could argue, in light of his own client's admission, that this is common practice for all physicians. The State again argued that nothing had changed and that was the core in the Motion for Reconsideration since the Attorney General had filed its complaint in July of 2004.

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, VOTED TO DENY THE MOTION FOR RECONSIDERATION AND EVEN ASSUMING THAT THE INFORMATION COULD HAVE BEEN

OBTAINED MORE TIMELY, THE BOARD FINDS THE INFORMATION PROVIDED WITH THE MOTION, DOES NOT CHANGE THE RESULTS REACHED BY THE BOARD LAST MONTH.

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

The parties returned to Open Session and announced the following proposed settlement position read by Mr. Steven I. Kern, attorney for the respondent, Wendy Cohen M.D.

THIS MATTER WAS OPENED TO THE NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS, HEREINAFTER THE BOARD, BY WAY OF A ONE COUNT ADMINISTRATIVE COMPLAINT FILED ON JULY 2, 2004 BY PETER C. HARVEY, ATTORNEY GENERAL OF NEW JERSEY, HAKIMA BEY D.A.G. THE COMPLAINT ALLEGED THAT WENDY COHEN, M. D. HEREINAFTER RESPONDENT, APPEARED WITH COUNSEL STEVEN I. KERN BEFORE A PRELIMINARY EVALUATION COMMITTEE OF THE BOARD ON JUNE 26, 2002 AND TESTIFIED THAT SHE HAD SUBMITTED A SUBSEQUENT CLAIM FORM FOR PATIENT M.P. TO OXFORD HEALTH FOR THE \$4,000 FOR MEDICAL SERVICES TO PATIENT M.P., ALTHOUGH THE ORIGINAL BILL FOR SUBMISSION TO THE INSURANCE COMPANY TOTALLED \$800.00. THE ADMINISTRATIVE COMPLAINT ALLEGED THAT RESPONDENT'S BILLING DEMONSTRATED A VIOLATION OF NJSA 45:1-21 (b) & (e). THE

RESPONDENT HAD ANSWERED THE COMPLAINT ON AUGUST 2, 2004 IN WHICH SHE DENIED THE ALLEGATIONS. PRIOR TO A FINAL DISPOSITION BY THE BOARD, THE BOARD AND THE ATTORNEY GENERAL WERE PRESENTED WITH A CERTIFICATION FROM THE VICE PRESIDENT OF CLAIMS AND OPERATIONS FOR OXFORD HEALTH PLANS LLC WHICH INDICATED IN PERTINENT PART THAT OXFORD HAD NOT RELIED UPON THE SUBSEQUENT SUBMISSION IN PROCESSING THIS CLAIM AND THE BOARD DETERMINED THAT SUCH CERTIFICATION DID NOT ALTER ITS FINAL DETERMINATION TO GRANT SUMMARY DECISION TO THE ATTORNEY GENERAL FINDING MISREPRESENTATION AND PROFESSIONAL MISCONDUCT WITHOUT FINDING FRAUD. THEREFORE THE PARTIES BEING DESIROUS OF AMICABLY RESOLVING THIS MATTER WITHOUT FURTHER PROCEEDINGS AND THE BOARD FINDING THAT THE WITHIN ORDER IS ADEQUATELY PROTECTIVE OF THE PUBLIC'S SAFETY AND WELFARE AND OTHER GOOD CAUSE HAVING BEEN SHOWN, IT IS ON THIS 9TH DAY OF MARCH, 2005 ORDERED AND AGREED THAT: (1.) RESPONDENT WENDY COHEN M.D. AGREES TO CEASE AND DESIST FROM ENGAGING IN THE BILLING ACTIVITY ALLEGING COUNT I IN THE ADMINISTRATIVE COMPLAINT (2.) RESPONDENT SHALL REIMBURSE INVESTIGATIVE COSTS IN THE AMOUNT OF \$8,177.00 A CERTIFICATE OF DEBT SHALL BE FILED (3.) THE PAYMENT FOR COSTS SHALL BE PAID IN 18 MONTHLY INSTALLMENTS WITH THE FIRST PAYMENT DUE WITHIN 30 DAYS OF ENTRY OF THIS ORDER AND MADE PAYABLE TO THE BOARD OF MEDICAL EXAMINERS. IT SHALL BE SUBMITTED TO WILLIAM ROEDER, EXECUTIVE DIRECTOR OF THE BOARD OF MEDICAL EXAMINERS, P.O. BOX 183, TRENTON, NJ 08625. INTEREST SHALL ACCRUE AT THE RATE FOR JUDGEMENT IN ACCORD WITH THE RULES OF COURT. THE RESPONDENT AGREES THAT SHE SHALL UTILIZE SERVICES OF THIS BOARD. THE RESPONDENT AGREES THAT SHE SHALL UTILIZE THE SERVICES OF A THIRD PARTY BILLING PRACTICE IDENTIFIED TO THE BOARD WITHIN 30 DAYS OF THE ENTRY OF THIS ORDER FOR A MINIMUM OF 18 MONTHS FOLLOWING THE ENTRY OF THIS ORDER. REPORTS REGARDING RESPONDENT'S BILLING PRACTICES SHALL BE SUPPLIED BY THE BILLING PRACTICE TO THE MEDICAL DIRECTOR OF THE BOARD EVERY SIX MONTHS BEGINNING SEVEN MONTHS FROM THE DATE OF ENTRY OF THIS ORDER. SUCH REPORTS SHALL ATTEST TO THE PROPER BILLING PRACTICES BEING OBSERVED OR SPECIFY WHAT IMPROPER PRACTICES MAY HAVE OCCURRED.

The Chair asked Mr. Kern if he had discussed the matter with his client Wendy Cohen, M.D and the record reflected that Dr. Cohen was present with her counsel in the room and the Chair requested that Dr. Cohen be sworn in and have her agreement to the proposed settlement placed on the record and for the Board to vote on the settlement. Dr. Cohen did place her agreement on the record.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE PROPOSED SETTLEMENT AS READ BY RESPONDENT'S COUNSEL, STEVEN I. KERN IN RESOLUTION OF THE MATTER OF WENDY COHEN, M.D.

OLD BUSINESS

1. GOLDSTEIN, Jerrold D.O. (License # MB 22185)
(COUNSELING D.A.G.: DICK, Sandra Y.,)
GORRELL, Joseph M., Esq. for Respondent
BAUDRY, Adriana E., D.A.G. for Complainant

Drs. Robins and Rokosz was recused from discussion and vote in this matter.

This matter was set before the Board upon receipt of Mr. Joseph Gorrell's March 2, 2005 letter. Mr. Gorrell again was requesting that Dr. Goldstein's license be reinstated. In support of the request, Dr. Goldstein was requesting a Board meeting or with the Committee of the Board to answer any outstanding questions.

All pertinent materials regarding this matter were enclosed for the Board's review and consideration.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO HAVE DR. GOLDSTEIN APPEAR BEFORE A COMMITTEE OF THE BOARD WITH CURRENT AND ALL OUTSTANDING REPORTS FROM HIS TREATING PSYCHIATRISTS.

2. ALTERNATIVE PRIVILEGES - CRNAs

A.A.G. Sharon Joyce updated the Board that the Supreme Court of New Jersey had granted a petition for certification and that means that it is going to hear the case that the Board won in the Appellate Division. The CRNAs filed a motion for a stay in the implementation of the Board's Alternative Privileging actions. The stay was granted even though the BME had not filed a response. A Motion for Reconsideration which was granted and then denied, to modify the stay, more than likely, will be scheduled for argument in the Fall.

NEW BUSINESS

None.

The meeting ended at 5:30 p.m.

Respectfully Submitted,

Glenn Farrell, Esq.
Chairperson for Open
Disciplinary Matters

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