A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, March 9, 2011 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 Paul Jordan, M.D., Board President.

PRESENT
Board Members Lomazow, Paul, Berkowitz, Cheema, Criss, Jordan, Lambert, Mendelowitz, Rajput, Scott, and Stanley,

EXCUSED

Board Members Baker, DeGregorio, Ciechanowski, Howard, Iannuzzi, Tedeschi, Walsh and Weiss.

ALSO PRESENT

Assistant Attorney General Joyce, Senior Deputy Attorney General Dick, and Gelber, Deputy Attorney's General Flanzman, Levine, Warhaftig, Puteska, Mendoza, Ehrenkrantz and Ringler and Executive Director Roeder.

RATIFICATION OF MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE MINUTES FROM THE FEBRUARY 9, 2011 BOARD MEETING.

HEARINGS, PLEAS, AND APPEARANCES

10:00 a.m. MOSSAVI, Ahmad, MD 25MA058130
John Orlovsky, Esq. For the Respondent
DAG William Lim, Prosecuting
SDAG Sandra Dick, Counseling

The Initial Decision of Administrative Law Judge Donald J. Stein was received on or about November 17, 2010. By previous Order of Extension, the period for issuing a final decision was extended until February 17, 2011. The matter was to be heard before the Board at its January 2011 meeting but was adjourned due to inclement weather and was rescheduled for the Board's February 9, 2011 meeting. Counsel for the Respondent requested an adjournment from the February meeting. This request was granted conditioned upon Respondent's agreement to have this matter scheduled for March 9, 2011 Board meeting. Counsel for the Respondent then requested an adjournment from the March Board meeting and it was denied.

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

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

Returning to Open Session, the Board President commenced the hearing and the parties placed their appearances on the record.

In his opening statement, Mr. Orlovsky noted for the Board that this case involved an act by Dr. Mossavi that should not have been done. He acknowledged that he changed the date of a hospital letter regarding his privileges, however, it was not done with any mal intent. At that time, Dr. Mossavi was faced with a telephone call from his insurance company requiring a letter from the hospital demonstrating that he had privileges at the hospital. He made a telephone call and was told to change the date by an employee at the hospital. While Mr. Orlovsky further acknowledged that this conversation was in dispute, he argued that the hospital did approve him through 2006 and at the time that he made the change, he thought he was current with his privileges. He cited various sections of the hospital by-laws and maintained that none of them were followed and therefore, Dr. Mossavi was never placed on notice that indeed his privileges were terminated. In the past, the notice had been sent via certified mail, and Dr. Mossavi recalled receiving only a letter that modified his two-year appointment to one and a half years. This decision, he continued, was made summarily and again, Dr. Mossavi was never apprised of this and in fact, he denied ever receiving the termination letter from the hospital. The only proof in the case, according to Respondent's attorney, was that he was on staff at the time that he altered the privileges letter because none of the procedures which the hospital was required to follow had taken place. Additionally, there was no harm, or even any risk of harm, created by his behavior. He argued that this conduct did not rise to a level that merited any active period of suspension and this was further supported by some of the prior penalties imposed by the Board. At best, he maintained, this behavior merited a reprimand. He requested that the Board focus on the fact that no harm occurred. He respectfully submitted that the Board reprimand him if it deemed some violation occurred that merited a penalty against Dr. Mossavi's license.

DAG Lim responded to Mr. Orlovsky's argument by reminding the Board that the harm created is not the standard by which one judges whether or not a violation of its regulations occurred. What Dr. Mossavi did, at the moment when he was confronted by Aetna, was falsify a document. He did not, according to DAG Lim, acknowledge that his privileges had lapsed, but rather affirmatively acted in a manner to deceive and misrepresent the truth. Dr. Mossavi acknowledged that he knew what he was doing when he changed the letter. In essence, this was an admission of fraudulent behavior on the part of Dr. Mossavi. At the OAL, this was proven and furthermore, it was demonstrated that indeed he did not have privileges even though he thought he had. Issues concerning whether or not UMDNJ followed its procedures or bylaws was a red herring that was being raised only to attempt to shift the Board's attention away from the facts. The facts, DAG Lim argued, were simple: Dr. Mossavi did not have privileges and he falsified a document to represent that he did. The judge rejected Dr. Mossavi's argument that he

telephoned and verified that he had privileges and that he never received notice that the privileges were suspended. Even if the procedures followed by UMDNJ were not proper, this is not the appropriate forum in which to challenge that procedure. He requested that the Board affirm in toto the substantive findings of fact and conclusions of law of the ALJ as there is nothing to dispute the facts established.

In rebuttal, Mr. Orlovsky argued that the relevance of whether the procedures were followed was paramount to determine whether or not Dr. Mossavi had mal intent in changing the letter. He asked the Board to recall that according to Dr. Mossavi, he was not aware that he did not have privileges. Mr. Orlovsky referred the Board to the letter from UMDNJ that indicated that he had privileges. The hospital never followed its own bylaws and in fact, the bylaws are silent as to what needs to be done for a change in privileges based on a lack of hospital activity. Dr. Atkins of UMDNJ could not produce any evidence to support that it informed Dr. Mossavi that his privileges were being suspended six months prior to the letter Dr. Mossavi acknowledged he received. He did not act on this early termination because he was never made aware that it was occurring. And even if the Board determined that he was wrong, he asked the Board to focus on the fact that there was no harm, or risk of harm, created. He acknowledged that there was a time and place for the Board to sanction its licensees for infractions, however, he respectfully submitted that this was not the case.

Mr. Lim simply reiterated the arguments raised during his opening statements and urged the Board to accept the findings of fact and conclusions of law in their entirety.

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

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

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ADOPT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THEIR ENTIRETY.

The motion was made by Dr. Paul and seconded by Dr. Berkowitz. It carried unanimously.

Moving to the mitigation phase, Mr. Orlovsky asked the Board to refer to the case law as noted in his papers when considering the standard of penalty that should be imposed. The surrounding facts do not merit any active period of suspension and he posited that the behavior, at best, merited a reprimand.

DAG Lim asked the Board to accept the ALJ's recommended penalty, including the imposition of penalty and costs. At that time, he submitted a copy of his certification to support his request

that costs be imposed. He apologized for the late submission. Mr. Orlovsky requested that he be given the opportunity to review the certification and submit any challenges that are appropriate to the submission.

DAG Lim, turning his attention to the recommended penalty, argued that the Board found that Dr. Mossavi committed fraud in representing his credentials and this merited some time out of practice. The ALJ listed a number of factors that outlined the rationale for the imposition of a penalty and DAG Lim maintained that this rationale was well reasoned. He asked the Board to consider increasing the penalty based on that rationale. This will send a clear message to the licensed community and act as a deterrent to such behavior in the future.

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

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

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FIND APPROPRIATE SANCTIONS TO INCLUDE A THREE-YEAR SUSPENSION OF LICENSE WITH THE FIRST SIX MONTHS AN ACTIVE SUSPENSION EFFECTIVE 30 DAYS AFTER A WRITTEN ORDER IS SERVED IN ORDER TO PERMIT A WIND DOWN OF RESPONDENT'S PRACTICE. THE REMAINDER OF THE SUSPENSION SHALL B E STAYED AND SERVED AS A PERIOD OF PROBATION. AN ETHICS COURSE MUST BE SUCCESSFULLY COMPLETED AND RESPONDENT MUST APPEAR BEFORE A COMMITTEE OF THE BOARD PRIOR TO REINSTATEMENT. A TEN THOUSAND DOLLAR PENALTY SHALL BE IMPOSED AND COSTS TO BE DETERMINED AT A LATER TIME AND CONSIDERED ON THE PAPERS. RESPONDENT SHALL HAVE 10 BUSINESS DAYS FROM THIS DATE TO SUBMIT OBJECTIONS TO THE APPLICATION TO COSTS AND ATTORNEY'S FEES. AN ORDER MORE FULLY DETAILING THE BOARD'S REASONING WILL FOLLOW.

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

12:00 p.m. CASTILLO, Hector MD 25MA04148100

Joseph Gorrell, Esq. For the Respondent
DAG Kathy Mendoza, Prosecuting
DAG Debra Levine, Counseling

The Motion for Summary Decision in the above referenced matter was filed by the Attorney General on January 11, 2011 with the Board based on a Complaint filed on or about October 29, 2010. Respondent's answer was filed with the Administrative office on or about December 8, 2010. This matter was to be considered by the Board at its February 9, 2011 meeting but Counsel for the Respondent requested an adjournment until the March 9, 2011 Board meeting. The adjournment was granted.

After introducing the matter, DAG Mendoza and Joseph Gorrell, Esq., placed their appearances on the record.

Dr. Berkowitz recused from the matter and left the table, not participating in the discussion or decision in the matter.

DAG Mendoza reminded the Board that she filed a Motion for Summary Decision on certain counts of the Complaint filed with the Board. She provided the Board with Dr. Castillo's disciplinary history with the Board and the requirements it had put in place over the years. She noted that respondent had repeatedly failed to comply with all of the terms of the three Consent Orders that he signed. He demonstrated a pattern of disrespect for the Board in not fulfilling the terms on which he had agreed to follow. She continued, arguing that Dr. Castillo failed to perform all the remedial measures as required by two of the Consent Orders. In spite of his failure, the Board has given him ample opportunities to perform the activities required under the Orders. Nonetheless, he has continually failed to comply with those terms. While Dr. Castillo has offered a number of excuses for his failures, he has not been able to demonstrate significant efforts to achieve compliance. His failure to comply with the terms of the Board's Orders is grounds for discipline as professional misconduct.

Another count of the complaint alleged that Dr. Castillo prescribed CDS during a period of time that his CDS registration was expired. Dr. Castillo acknowledged that he allowed his registration to lapse. He admitted that he wrote prescriptions for a period of almost six years on an invalid CDS registration. Dr. Castillo, according to DAG Mendoza, has not, nor can he, offer any reasonable explanation for this failure.

DAG Mendoza said the Complaint also alleged that he wrote a prescription without performing the required physical examination. During an office visit of an undercover agent, he wrote a prescription in the name of a patient name who was not present for the appointment because the (undercover patient) did not have the requisite insurance needed. Without a legitimate doctor-patient relationship Dr. Castillo's actions constituted professional misconduct, dishonesty, and misrepresentation and clearly violated the Board's rules.

Another count, she continued, deals with the revocation of his New York license based on the New Jersey Consent Orders. At the time of his renewal, Dr. Castillo failed to inform the Board of the pending or final action of the New York authorities. He answered this falsely on his renewal application. Again, an act of dishonesty.

Finally, the Attorney General, she noted, moved for summary decision on the count of the Complaint which alleged improper maintenance of his medical records. Even though the Board required him to take a medical record keeping course, there has not been any improvement in his record keeping. His records, according to DAG Mendoza, are illegible and do not include copies of the prescriptions or information about the physical examinations performed. Inadequate record keeping is professional misconduct and actionable by the Board.

In conclusion, DAG Mendoza argued that the facts in the case were undisputed, admitted, and supported by objective evidence. Dr. Castillo failed to comply with the Consent Orders, had lied on his biennial renewal, wrote a prescription for a patient he never examined and his medical record keeping is abysmal. She urged the Board to grant the Attorney General's Motion for Summary Decision and take him out of practice.

Mr. Gorrell noted that the Attorney General had failed to cite any basis why her motion should be granted based on the law. He reminded the Board that if there are any questions as to the facts, the motion failed. She also failed, according to Mr. Gorrell, to recognize that any inference of doubt should be resolved in the favor of Dr. Castillo. In the case of Dr. Ragi, the court gave direction to the Board. The attorney recited the law that Summary Decision is inappropriate prior to the completion of discovery because it often yields facts not yet in evidence that dispute and render the claims raised moot. Additionally, there has not been any finding of credibility and as directed by the Court, should wait until discovery allows the parties to explore the veracity of certain statements. The court also stressed that the state of mind of the individual is crucial and this must be proven with clear and convincing evidence especially when fraud and misrepresentation are at issue.

Turning his attention to the complaint, Mr. Gorrell disputed that Dr. Castillo repeatedly violated or ignored Board Orders. He additionally maintained that some of the Orders have already dealt with his failure to comply with a term of an Order in a subsequent Order and the Board should be precluded from taken any further action.

Concerning Dr. Castillo's failure to take some of the remedial measures, Mr. Gorrell noted that only an insignificant amount was not completed and when it was pointed out to him, he did comply. Mr. Gorrell then listed all of the times that he was in compliance with the Orders. Judged against the totality of the requirements, substantially, the Respondent has complied. Mr. Gorrell submitted that in the face of substantial compliance, there is a factual dispute as to whether or not he has complied. Accordingly, he posited that summary decision is not appropriate.

While Dr. Castillo did admit to inappropriately writing CDS, the Attorney General has maintained that this was done fraudulently. Again, as noted above, Mr. Gorrell argued that further discovery was needed in order to sustain or defeat this claim in determining his state of mind. Again, this issue, according to Mr. Gorrell, should be decided by a fact finder.

Turning to Count III, Mr. Gorrell argued that the allegation that a prescription written in the name of a relative is denied by Dr. Castillo. Again, this is a factual dispute that should be explored in discovery. He also repeated his argument of the necessity of determining Dr. Castillo's state of mind.

Concerning the failure to alert the Board about the action taken in New York, Mr. Gorrell also argued that this was in dispute. Dr. Castillo, Mr. Gorrell continued, claims that he was unaware of the New York action and his state of mind as to what he knew, or should have known, remains in dispute.

Mr. Gorrell continued his argument by noting that the Attorney General's claim about the inadequacies of his medical record also must fail because no expert opinion has been ordered. But even assuming that is not needed, the Attorney General cannot meet her burden on this claim based on one record. This, in and of itself, mandates that discovery should proceed in order to determine whether or not his record keeping, the overall pattern of his medical record keeping, is within acceptable standards.

Based on the above, Mr. Gorrell asked the Board to take the direction offered by the Ragi matter and let the case proceed to the discovery stage and ultimately, to the Office of Administrative Law, for a complete and fair adjudication of the allegations.

In response, DAG Mendoza repeated what the Attorney General had previously argued and reminded the Board that her position was that there are not any undisputed facts. While Dr. Castillo has made general denials, according to DAG Mendoza, this was not sufficient to defeat a Motion for Summary Decision. There are no missing elements remaining that haven't been put before the Board that need discovery. She also asked the Board to take the *In re Ragi* case in the context within which it was written. DAG Mendoza also stressed that it was an unpublished decision and that the appropriate weight to that opinion should be given for what it is, an unpublished decision.

Mr. Gorrell, with due respect, asked the Board to consider *In re Ragi* as a decision of the Court that is directly on point, and as an unpublished opinion, so long as provided to the opposing side, it can be considered and should be considered. If the Board even listens to the argument of the Attorney General, this motion must fail because there is no evidence that Dr. Castillo did anything intentionally. That has not been established and according to Mr. Gorrell could not be established until discovery moves forward and there is a complete vetting of the issues before the trial judge. For all the reasons he proffered, he asked the Board to deny the motion for summary decision.

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

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

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

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT PARTIAL SUMMARY DECISION AS TO COUNT I AS THERE WAS NO GENUINE ISSUE OF MATERIAL FACT REGARDING RESPONDENT'S FAILURE TO COMPLY WITH THE BOARD ORDERS. THE BOARD THEREFORE FINDS RESPONDENTS NON-COMPLIANCE WITH PORTIONS OF BOARD ORDERS INVOLVED PROFESSIONAL MISCONDUCT. AS TO COUNT II THE BOARD FINDS NO GENUINE ISSUE OF MATERIAL FACT AND GRANTS SUMMARY DECISION. THE BOARD FINDS THAT RESPONDENT WROTE PRESCRIPTIONS FOR NARCOTICS FROM 2006 THROUGH 2009 WITHOUT A VALID CDS REGISTRATION AND SUCH ACTIONS ARE CONSIDERED PROFESSIONAL MISCONDUCT AND VIOLATE A REGULATION OF THE BOARD. THE BOARD DOES NOT GRANT SUMMARY DECISION BASED ON THE ALLEGATION OF FRAUD. THE BOARD DECLINED TO ISSUE SUMMARY DECISION ON COUNTS III, IV AND V BECAUSE THE BOARD PERCEIVED THERE ARE GENUINE ISSUES OF MATERIAL FACT. THE BOARD FURTHER DIRECTS THAT BY MARCH 16, 2011 THE ATTORNEY GENERAL SHALL ADVISE THE BOARD AND RESPONDENT AS TO WHETHER THE ATTORNEY GENERAL WILL MOVE FORWARD TO TRIAL, AND IF NOT, THE BOARD WILL SCHEDULE THIS MATTER FOR MITIGATION FOR APRIL BEFORE THE BOARD.

Motion made by Dr. Paul and seconded by Dr. Lomazow. The decision was unanimous.

OLD BUSINESS

I/M/O Richard Stillman, M.D. and Leslie Shrem, M.D.

This matter was before the Board for Interlocutory Review of Administrative Law Judge Jesse Strauss' decision.

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

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

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FIND THE APPLICATION FOR INTERLOCUTORY REVIEW ABANDONED SINCE COUNSEL FOR THE RESPONDENT FAILED TO FILE A BRIEF IN SUPPORT OF HIS MOTION BEFORE FEBRUARY 18, 2011.

BORELLI, Henry D.P.M .
Susan Fruchtman, Esq. For the Respondent
DAG Doreen Hafner, Prosecuting
DAG Debra Levine, Counseling

By way of background, on or about July 1, 2010, the Board filed a Provisional Order of Discipline (POD) seeking, *inter alia*, the revocation of Dr. Borelli's license to practice podiatry in the State of New Jersey based on his guilty plea in the United States District Court, Southern District of New York. The Board, after consideration on the papers, denied the penalty modifications that Dr. Borelli's counsel requested.

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

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

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REOPEN THIS MATTER AT THE APRIL 13, 2011 BOARD MEETING.

NEW BUSINESS

I/M/O JOEL R. CARR, DO 25MB08222900

Dr. Carr's license to practice Medicine and Surgery in the State of New Jersey was temporarily suspended effective upon pronouncement and pending further order of the Board. This matter was before the Board for ratification of the Interim Consent Order signed by Acting President Kevin Walsh, P.A. and filed on March 2, 2011.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RATIFY THE INTERIM CONSENT ORDER SIGNED BY ACTING PRESIDENT KEVIN WALSH, PA.

OFF AGENDA ITEMS

1. Zahid Hussain M.D.
DAG David Puteska, Prosecuting

D.A.G. Puteska reported that, following an investigation by the Enforcement Bureau, evidence revealed that on two occasions, Dr. Hussain engaged in sexual misconduct during patient visits.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO TEMPORARILY SUSPEND DR. HUSSAIN'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY PENDING FURTHER ORDER OF THE BOARD.

2. Farouk Al-Salihi, M.D.
Richard A West , Esq. for Respondent
DAG David Puteska, Prosecuting

D.A.G. Puteska reported to the Board that Dr. Al-Salihi agreed to the terms of a Consent Order following a current Administrative Complaint alleging various violations of the Board's rules and regulations. The matter was opened to the Board based on information that Dr. Al-Salihi's medical office operated in an unsanitary and unsafe manner. Information was also received regarding Respondent's care, treatment and prescribing for a patient.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO SUSPEND RESPONDENT'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY FOR 2 YEARS EFFECTIVE UPON ENTRY OF THE CONSENT ORDER. SIX MONTHS OF THE SUSPENSION SHALL BE ACTIVE AND RESPONDENT SHALL CEASE AND DESIST THE PRACTICE OF MEDICINE AND SURGERY ON MAY 1, 2011 . THE REMAINING ONE YEAR AND SIX MONTHS SHALL BE STAYED AND SERVED AS A PERIOD OF PROBATION PROVIDED RESPONDENT DEMONSTRATES COMPLIANCE WITH ALL TERMS AND CONDITIONS WITHIN THE CONSENT ORDER.

3. Ross Finesmith**, M.D.**
DAG David Puteska, Prosecuting

D.A.G. Warhaftig reported to the Board that Dr. Ross Finesmith, a pediatric neurologist, agreed to permanently surrender his license after he pled guilty to one count of fourth-degree criminal charge - Endangering the Welfare of a Child (Possession of Child Pornography) in violation of the Board's regulation. By way of background, on July 14,

2005, Dr. Finesmith was indicted in the Superior Court of New Jersey for knowingly engaging in and possessing child pornography. A Consent Order of Voluntary Surrender was entered on March 27, 2006 pursuant to which Respondent agreed to surrender his license to practice medicine and surgery with leave to apply for reinstatement upon the resolution of the pending criminal charge.

Dr. Finesmith entered a plea agreement to permanently forfeit his medical licenses in New Jersey and New York, and not to seek or obtain a license to practice medicine in any jurisdiction at any time in the future. Dr. Finesmith is permanently barred from re-application for licensure by this Board. The Attorney General prepared an Order of Revocation which summarized the charges on which Dr. Finesmith was indicted and his guilty plea. The Board was asked to approve the terms set forth in the Order signed by Board President Jordan.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE CONSENT ORDER OF REVOCATION, WITH PREJUDICE, OF HIS MEDICAL LICENSE FOR CONVICTION RELATED TO CHILD PORNOGRAPHY.

Respectfully submitted,

_____
Paul Jordan M.D.,
Chairperson for Open Discipline Minutes

WVR/dt/br
March 2011