

**State Board of Medical Examiners
Open Disciplinary Minutes
March 12, 2003**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, March 12, 2003 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. Farrell, Vice-Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Chen, Criss, DiFernando, Farrell, Haddad, Harrer, Huston, Moussa, Patel, Perry, Ricketti, Robins, Rokosz, Trayner and Wallace

EXCUSED

Board Members Desmond, Lucas, Walsh and Weiss

ALSO PRESENT

Assistant Attorney General Joyce, Deputy Attorney Generals Dick, Ehrenkrantz, Flanzman, Gelber, Harper, Kenny, Levine, and Warhaftig, and Executive Director Roeder.

RATIFICATION OF MINUTES

The Board Minutes from the February 19, 2003 Board meeting were approved as submitted.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

**CORRAL, Hector B., M.D., License #21257(Counseling D.A.G.Levine)
HAFNER, Doreen A., D.A.G., for Complainant**

Notice of Motion for Summary Decision filed with the Board by the Attorney General on February 19, 2003, seeking a Board Order granting Summary Decision against Dr. Corral on the allegations set forth in the Verified Complaint filed December 3, 2002. The Attorney General will also seek the revocation of Dr. Corral's license to practice medicine and surgery in the State of New Jersey, as well as, the imposition of costs, penalties and such other relief as may be warranted. On December 11, 2002, the Board ordered the temporary suspension of Dr. Corral's license based upon the clear and imminent danger presented by his continued practice.

The Four-Count Verified Complaint alleges indiscriminate prescribing of Controlled Dangerous Substances; conduct constituting gross malpractice, gross negligence, or gross incompetence; repeated acts of negligence, malpractice, or incompetence; professional misconduct; that Respondent's alleged conduct demonstrates that he is incapable of discharging the functions of a Board licensee in a manner consistent with the public's health safety, and welfare; and that Respondent's continued practice of medicine presents a clear and imminent danger to the public health, safety, welfare. The Verified Complaint further alleges multiple violations and failure to comply with regulations administered by the Board; allegations of issuing prescriptions for Controlled Dangerous Substances when not registered with the Drug Enforcement Administration, constituting both professional or occupational misconduct and violation of Board regulation; and allegations of his failure to provide records requested

in a Subpoena in a timely and complete fashion constituting a failure to cooperate.

Enclosed for Board consideration were the Notice of Motion for Summary Decision; D.A.G. Hafner's Letter Brief and Certification along with Exhibits 1 through 9.

The Board voted to go into Executive Session for advice of counsel and deliberations. Deputies other than Counseling Staff left the room along with all other members of the public present.

The Board returned to Open Session with all parties present. After a search of the premises, for Dr. Corral, it was determined that Dr. Corral was not present and the Board announced the following motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED AND DETERMINED THAT THE RESPONDENT WAS IN DEFAULT ON THE MOTION FOR SUMMARY DECISION, AS SERVICE WAS EFFECTIVE BY MAILING TO THE P.O. BOX RESPONDENT PROVIDED TO THE BOARD. IT FURTHER GRANTED SUMMARY DECISION ON ALL FOUR COUNTS OF COMPLAINT. THE BOARD ORDERED THAT DR. CORRAL'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY BE REVOKED, EFFECTIVE IMMEDIATELY. IT IMPOSED COSTS ASSESSED IN THE AMOUNT OF \$45,151.06 AND A CIVIL PENALTY OF \$10,000 PER COUNT FOR A TOTAL PENALTY OF \$40,000. AN ORDER MORE FULLY DETAILING THE RATIONALE WILL FOLLOW.

**ZAHL, Kenneth, M.D., Lic. #56413 (Counseling Deputy: FLANZMAN)
JACKSON, John Zen, Esq., for Respondent
HARPER, Douglas J., D.A.G., for Complainant**

Drs. Lucas and Perry were recused from this matter. Dr. Perry left the table.

This matter was set down for oral argument on exceptions in the matter of Kenneth Zahl, M.D. Enclosed for Board review was the November 25, 2002 Initial Decision of Administrative Law Judge Edith Klinger. This matter was initiated based upon an 8-Count Verified Complaint filed August 18, 1999 seeking the revocation of Dr. Zahl's license to practice medicine and surgery. The Verified Complaint alleges in Counts I and II fraudulent, deceptive and otherwise unlawful submission of claims to Medicare for overlapping periods of time in successive anesthesia patients, in violation of Medicare billing guidelines, statutes and regulations. Partial Summary Decision was rendered sustaining these Counts on a finding that the claims were submitted with knowledge that they violated Medicare regulations. Counts III and IV allege the creation of false anesthesia records by insertion of overlapping times in patient charts and the insertion of not fewer than three employee-anesthesiologist's names into patient records when they did not perform any of the recorded anesthesia functions. Count V alleges multiple false statements (19) made to induce disability insurance carrier payments (\$118,000). Partial Summary Decision was rendered on this Count on a finding that the statements were knowingly false. Counts VI and VII allege fraudulent acceptance and retention of double payments made by insurance carriers for the same service, and Count VIII alleges failure to maintain good moral character. (The requisite extensions of time have been obtained from the OAL to permit the Board until April 17, 2003 to finalize this matter.)

Enclosed were the Verified Complaint filed August 18, 1999; Verified Answer filed September 29, 1999, Order Denying Motion for Summary Decision filed December 8, 1999; ALJ Klinger's August 27, 2001 Amended Order, Partial Summary Decision; Verified Complaint (Amended) dated October 2, 2001; Judge Klinger's December 5, 2001 Order Granting Leave to Amend Count Four; the Board's Scheduling Order filed January 13, 2002; Exceptions on Behalf of Respondent filed February 7, 2003; and the Attorney General's Reply and Appendix filed February 28, 2003 in support thereof to the Exceptions filed by Respondent.

The eight volumes referred to in the Verified Complaint were available at the meeting.

Mr. Farrell opened the hearing by reminding the parties that thirty minutes per side has been allocated for argument on the exceptions.

Mr. Jackson began by addressing the issues on the Amicus Brief filed on behalf of the Medical Society of New Jersey. He urged the Board to permit the filing because it addressed general and specific issues for the medical community as it related to the context of Medicare billing. Mr. Jackson sought to convince the Board that the issues were of a wider importance than just this case and contrary to D.A.G. Harper's assertion that it is a partisan submission, Mr. Jackson believed it dealt with issues that affect the entire licensed community. He apologized for the late submission, but reminded the Board that in the past several weeks, Mr. Conroy's attentions were directed at the medical malpractice crisis facing the State of New Jersey.

D.A.G. Harper directed the Board's attention to his submission which sets forth at length the Attorney General's opinion. He summarized his position by stating that the Medical Society is not a party to the case. Directing attention to the application, D.A.G. Harper took exception with the assertion that there was a sweeping issue that the Administrative Law Judge, and now the Board, needed to address, namely, whether a practitioner may be disciplined solely on an overpayment by Medicare. Rather, he continued, the real issue before the Board is whether it was appropriate for Dr. Zahl to submit to Medicare overlapping claims for overlapping time periods, and whether these claims were done appropriately under the Medicare regulations. D.A.G. Harper concluded with questioning the untimely submission of this request.

The Board voted to go into Executive Session for advice of counsel and deliberations. Deputies other than Counseling Staff left the room along with all other members of the public present.

The Board returned to Open Session with all parties present and the Board announced the following motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE MEDICAL SOCIETY'S APPLICATION TO APPEAR AS AMICUS IN THIS MATTER.

Mr. Jackson thanked the Board for the opportunity to appear to discuss this case in which he believed an adverse determination was erroneously made by the Administrative Law Judge. He recognized that the Board's purpose and responsibility was to protect the public, however, he opined that this was not a case in which patient safety was compromised or that there was a breach in the standard of care offered to any of Dr. Zahl's patients. He informed the Board that he has organized his case in a chronological presentation from the Medicare related issues, the overlapping time as a record keeping issue, the documentation of the other anesthesiologist names, the double-billing issue and finally, the disability issue. At this point, Mr. Jackson requested to provide the Board with copies of the enlargements which he planned to use during his presentation. When questioned, he acknowledged that not all the documents contained in the packet were part of the record below. D.A.G. Harper did not object per se to the admitting of the documents, however, he did object to the incompleteness of some of the documents. Each party argued as to the admissibility and/or non-admissibility for each of the proffered documents.

The Board voted to go into Executive Session for advice of counsel and deliberations. Deputies other than Counseling Staff left the room along with all other members of the public present.

The Board returned to Open Session with all parties present and the Board announced the following motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ADMIT THE DOCUMENTS WITH THE EXCEPTION OF R-8 BECAUSE IT WAS NOT CONSIDERED IN THE RECORD BELOW.

Mr. Jackson began the presentation of his case in chief by reminding the Board that for the most part, the care provided in this case was in an ambulatory surgical care facility. One of the keys to understanding the case, according to counsel, is that the facility is basically one big room, with areas dedicated to surgery and recovery. In the area, only one anesthesiologist is present. The record is clear that all the care whether pre-op or post-op was always within the appropriate standard of care. Mr. Jackson maintained that the record keeping and billing issues, which are at issue here, were performed at the direction of the insurance company. The Administrative Law Judge made the determination below that Dr. Zahl had committed professional misconduct, deception, dishonesty and misrepresentations by billing for the time that he was involved in the care of the patient. The standard of care employed by Dr. Zahl was supported by the two experts for the Respondent. The question was not whether what Dr. Zahl did was appropriate patient care, but rather how do you record it in the patients' records and bill for those services. For example, Dr. Zahl submitted bills for nerve blocks, a procedure code, rather than a time-based code. Unfortunately, Mr. Jackson argued, the information provided to him by the insurance company was never before the Administrative Law Judge. This makes the judge's decision fundamentally flawed. Also, because he was billing in the manner in which in his good faith belief was what he had been instructed by the insurance company, it cannot be determined that he knowingly or deliberately attempted to submit improper billings. Mr. Jackson postulated that the Administrative Law Judge made the leap that Dr. Zahl "should have" known that this method of billing was deceptive. It may have been wrong, but it was not deliberate or knowingly done. Mr. Jackson urged the Board to conclude that since it was not knowingly performed that it did not rise to the level of professional misconduct meriting revocation of licensure.

Mr. Jackson then turned his attention to the record keeping issues and the overlapping of time entries. He acknowledged that there is no question that overlapping of time is reflected in the records and that the record entries may not be consistent with the Board's regulations that the records are to accurately reflect the care given. Once again, he reminded the Board, that no standard of care was breached as to any patient. The addition of the another anesthesiologist's name is also at issue. He explained that Dr. Zahl entered the other doctor's name on the chart to reflect that someone else also was involved with the patient's care. He advocated that the Board should conclude that Dr. Zahl did not attempt to fabricate the record in order to fraudulently bill for the procedure because the evidence does not support any other conclusion. While it may be a case of sloppiness, it was not a scheme to commit fraud or be deceptive. A similar argument applies, continued Mr. Jackson, as to the double billing. A staff member (who was giving information to Dr. Zahl's ex-wife during their divorce proceeding) informed Dr. Zahl that she had corrected the information in the computer, when in fact she had not. Again, Dr. Zahl was operating on misinformation and was not intending to deceive anyone. Mr. Jackson asked the Board to overturn the Administrative Law Judge's decision in its entirety.

D.A.G. Harper agreed that there was no patient harm or endangerment in this case. He took exception, however, with Mr. Jackson's characterization that this case was not about professional misconduct. The evidence, continued D.A.G. Harper, demonstrates that this case is about lying, cheating, stealing, and an attempt to defraud-conduct, he went on to state, that should not be tolerated for a licensee of the Board. The legislature its infinite wisdom did not limit the Board's authority to revoke only when patient harm exists, but when the behavior of the licensee undermines the high professional standards required of it. In essence, D.A.G. Harper urged the Board to determine that this was a case about creating a record that would substantiate receiving payments for times that were inappropriate. For example, Dr. Zahl actually billed for time when the patient was not being attended by him. He also asked the Board to reject Respondent's argument that he did not know this was improper. Directing the Board to the evidence, D.A.G. Harper submitted that Dr. Zahl was informed as far back as 1995 of the impropriety of

this type of billing. Dr. Zahl created records to indicate that more than one anesthesiologist was responsible for the patient. He theorized that Dr. Zahl specifically created the form to accomplish his goal indicating more than one doctor was involved in the patient care. Another example of this dishonest scheme, recounted D.A.G. Harper, was when he instructed his staff that he would fill in the operative times or when the staff member brought up the issue about double payments, that he would take care of it.

D.A.G. Harper then addressed the deception relating to the disability claim in 1997. Dr. Zahl claimed to have cut his finger and that this injury prohibited him from performing anesthesia services. D.A.G. Harper maintained that this was a bold-faced lie. The record indicates that Dr. Zahl performed thirty-four procedures during this so-called disabled period.

D.A.G. Harper concluded by pointing out that Dr. Zahl's total indifference to the consequences of his behavior strongly indicate that he does not have the moral fitness to be a licensee of the Board. He urged the Board to adopt in its entirety the findings and fact and conclusions of law of the Administrative Law Judge.

The Board voted to go into Executive Session for advice of counsel and deliberations. Deputies other than Counseling Staff left the room along with all other members of the public present.

The Board returned to Open Session with all parties present and the Board announced the following motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ADOPT THE ADMINISTRATIVE LAW JUDGE'S DECISION PERTAINING TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN ITS ENTIRETY, EXCEPT AS TO COUNT V.

Dr. Rokosz left the Board meeting.

The parties then proceed to the mitigation hearing. Mr. Jackson began by presenting letters of reference from Dr. Zahl's patients and colleagues. He also submitted a memorandum concerning prior decisions of the Board that he believed were relevant to the severity of sanction that Dr. Zahl should receive. D.A.G. Harper objected to the memorandum. Ruling from the Chair, Mr. Farrell informed the parties that the Board would not consider the memorandum as the Attorney General's office had not been provided with an opportunity for rebuttal of the information contained therein.

Mr. Jackson called Ms. Kathleen Lawson as his first witness in mitigation. Ms. Lawson is a RPN in the State of New Jersey and has been a patient of Dr. Zahl over the past several years. Prior to initiating treatment with Dr. Zahl, she experienced a chronic pain problem and had seen a number of physicians who were not able to treat her in spite of the number of diagnostic workups that had been performed. She was depressed and nearly suicidal prior to working with Dr. Zahl. She told the Board that she could not put into words the relief that she has received with his treatment. Ms. Lawson was even more hard pressed to put into words the impact on her life if Dr. Zahl were not permitted to practice.

Mr. Eric Stehling testified next. He recalled that he met Dr. Zahl sometime in 1997. He further recalled that the initial consultation lasted about two hours and he had never experienced a physician who took so much time to explain everything. Prior to seeing Dr. Zahl, Mr. Stehling testified that he experienced tremendous joint pain and no other doctor was able to effectively treat his pain. He was at the end of his rope and all his prior physicians basically told him he would have to learn to live with it. Mr. Stehling credited Dr. Zahl for giving the witness his life back. Mr. Stehling also testified about his wife's experiences. She had been in the hospital in a coma and no doctor was able to figure out the cause. Almost immediately, Dr. Zahl recognized the etiology and had he not, she would have died, according to

one of her other physicians. He concluded by stating that not to allow Dr. Zahl to continue to practice medicine and care for his patients would be tantamount to a criminal act.

The next witness, Mr. Scott Van Moerkerken, addressed the Board. Mr. Van Moerkerken has been a patient of Dr. Zahl for the past two years. Prior to coming to him, Mr. Van Moerkerken had two back surgeries on the lower lumbar area. He had been injured at work and the Workers Compensation doctor had recommended that multi level fusions be done. After these surgeries, Mr. Van Moerkerken continued to be in extreme pain. Upon beginning therapy with Dr. Zahl, the witness stated that relief was almost immediate. Mr. Van Moerkerken, believing he represents the viewpoint of all of Dr. Zahl's patients, concluded by informing the Board that if Dr. Zahl was taken out of practice he was not sure what the patients would do. Dr. Zahl, according to the witness, is the only one who is compassionate enough to determine what the real problem is and diagnose the appropriate treatment.

Ms. Diana Clark testified before the Board and informed it that she has been a patient of Dr. Zahl for the past three years. Ms. Clark went on and stated that she had exhausted her options and had seen a number of doctors throughout the state prior to making an appointment with Dr. Zahl. She wanted to die because she already had submitted to a number of procedures, none of which offered her any relief. Now that she has been treated by Dr. Zahl, her life has been significantly improved. Dr. Zahl, in the witness' opinion, is the only doctor that she knows that is available "twenty-four seven". She urged the Board to permit Dr. Zahl to continue to practice because if not, she was not sure how she could live without his compassionate treatment.

Mr. Jackson next called George Kenny, Esquire. D.A. G. Harper objected to his testimony because Mr. Kenny was his attorney in the disability hearing and any testimony regarding the disability claim/hearing was irrelevant in a mitigation hearing. Mr. Jackson responded and proffered that Mr. Kenny's testimony would go to the essence of Dr. Zahl's honesty in making the disability claim. From the Chair, Mr. Farrell overruled the objection and informed the parties that the Board would permit the testimony and would afford it the appropriate weight during deliberations. He cautioned Mr. Jackson, however, noting that if the testimony begins to go far afield, the Board would limit the testimony. It should be noted that during the course of Mr. Kenny's testimony, D.A.G. Harper continued to object to his testimony arguing that it was irrelevant and that Respondent was attempting to establish that Dr. Zahl was disabled at the time of the claim. D.A.G. Harper further argued that any information concerning the disability claim was irrelevant to the issue of mitigation. Mr. Jackson continued to argue that Mr. Jackson's testimony was relevant because it went to the issue of the truthfulness of Dr. Zahl, which is always a relevant issue in mitigation. Continually, Mr. Farrell ruled that the testimony would be permitted only as to the issue of veracity and that the Board would afford it the appropriate weight during its deliberative process.

Mr. Kenny testified that he has been an attorney for the last forty one years and has represented Dr. Zahl in the disability action. Mr. Kenny testified that during his representation of Dr. Zahl he was always honest and that honesty was proved during the disability hearing in which others agreed with his assessments about his inability to work. Mr. Kenny believed that if you look at the documents, the Board should conclude that Dr. Zahl is a man of high moral character.

Mrs. Zahl then testified about the last five years of this proceeding begging the Board to finally put an end to it. She explained about all the altruistic endeavors of her husband providing care to the needy not only here in the United States, but abroad as well. She reminded the Board that no patient harm occurred in this case. If the Board revokes his license, according to Mrs. Zahl, patients will be harmed, eight employees will lose their jobs, and the community as a whole will suffer. She concluded by asking the Board When is enough, enough? She opined that no good will be served by revoking his license.

As the final witness in mitigation, Dr. Zahl addressed the Board thanking it for the opportunity to speak. He asked the Board in determining a sanction that it keep in mind that no patients were ever harmed. He

acknowledged that he made a mistake but explained that during this time, he was going through a difficult divorce and he was not paying as much attention. By way of background, Dr. Zahl testified that at this time he had left New York because of political reasons at the hospital and was trying to build up his practice here in New Jersey. He experienced a major injury to his thumb and could not work primarily as an anesthesiologist and began doing pain management. Throughout his career, according to Dr. Zahl, the patient and patient safety had been his primary concern. He urged the Board to read the letters of recommendation that have been submitted in support. He asked the Board if he were to receive an active suspension or revocation, that he be afforded some additional time to wind down his practice as this would be in the best interest of his patients.

In conclusion, Mr. Jackson asked the Board to focus on the fact that no patients were harmed and directed it to read the various statements from his patients who all acknowledge that he is an exemplary, compassionate physician. The only issues, which Mr. Jackson believed might rise to disciplinary action are the billing and record keeping issues. He asked the Board to discount the information submitted in the Family Court because it was being taken out of context. Again, he urged the Board to rely on the testimony of Dr. Zahl's patients that illustrate that he practiced high quality medicine for a population that were not able to obtain relief from anyone else. Mr. Jackson assured the Board that Dr. Zahl learned his lesson and requested that the Board not impose a sanction of revocation.

D.A.G. Harper in the summation noted that Mr. Jackson continually argues no patient was harmed. D.A.G. Harper submitted that this was a red herring. The statute speaks to good moral character, D.A. G. Harper continued, and the record below supports the conclusion that Dr. Zahl's conduct was dishonest, deceitful and abundantly filled with misrepresentations. According to D.A.G. Harper, Dr. Zahl lied to the workers' compensation carrier, lied to Medicare, and kept anything less than accurate patient records. Such actions, concluded D.A.G. Harper, merit the revocation of his license to practice medicine and surgery in this State.

The Board voted to go into Executive Session for advice of counsel and deliberations. Deputies other than Counseling Staff left the room along with all other members of the public present.

The Board returned to Open Session with all parties present and the Board announced the following motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REVOKE DR. ZAHL'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY EFFECTIVE APRIL 11, 2003. DURING THE PERIOD BETWEEN THE BOARD MEETING ANNOUNCEMENT AND APRIL 11, 2003, DR. ZAHL SHALL NOT SEE OR TREAT ANY NEW PATIENTS AND SHALL MAKE THE ARRANGEMENTS FOR THE TRANSFER OF CARE OF HIS PATIENTS. HE WAS ASSESSED CIVIL PENALTIES IN THE AMOUNT OF \$30,000 AND COSTS WILL BE ASSESSED UPON APPLICATION BY THE ATTORNEY GENERAL. ADDITIONALLY, DR. ZAHL IS ORDERED TO PAY RESTITUTION IN THE AMOUNT OF \$1,700 TO THE ASSOCIATION MASTER TRUST INSURANCE COMPANY. A MORE DETAILED ORDER WILL FOLLOW.

OLD BUSINESS

**1. KAUL, Richard A., M.D. (Counseling Deputy: JOYCE)
VOLKERT, Susan E., Esq., for Respondent
NIEDZ, ALAN, D.A.G., for Complainant**

This matter was adjourned from the February 19, 2003 meeting and was re- scheduled for finalization on April 9, 2003. Enclosed for the Board's review was a list of witnesses Respondent's counsel intends to have testify on April 9, 2003. Deliberations on this matter took place at a Special Board Meeting held

on March 5, 2003. At that time, the Board dealt with two particular issues which were not announced in Open Session at that time.

The first matter before the Board was the State's Motion to file supplemental charges.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO PERMIT THE FILING OF THE SUPPLEMENTAL CHARGES BECAUSE THE RESPONDENT HAD KNOWLEDGE ABOUT THE CHARGES AS OUTLINED IN THE PROVISIONAL ORDER OF DISCIPLINE AND THEY ARE GERMANE TO THE BOARD'S JURISDICTION AND AUTHORITY.

The second issue the Board dealt with last week was the parties' submission concerning evidentiary issues.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RULE AS FOLLOWS:

ENCLOSURES 1, 2, 3, 4 (ALREADY INTRODUCED), 11 (ADMITTED AS R-1), 15, 18 & 19, AS WELL AS EXHIBITS A THROUGH F AND H WILL BE ADMITTED AS THEY PUT INTO PERSPECTIVE AND CONTEXT THE ACTIONS UPON WHICH THE MATTER IS PREDICATED AND WILL ASSIST THE BOARD IN ACHIEVING AN UNDERSTANDING OF THE PROCESS FOLLOWED AND THE SYSTEM OF REGULATION.

ENCLOSURES 10, 14, & 16 WILL BE ADMITTED BECAUSE THE STATEMENTS WERE MADE BY THE RESPONDENT HIMSELF.

ENCLOSURE 5 WILL BE ADMITTED, BUT WILL BE GIVEN THE APPROPRIATE WEIGHT AS CORROBORATING EVIDENCE. WITH RESPECT TO ENCLOSURE 6 & 7, THE BOARD WILL RESERVE MAKING A DETERMINATION TO ADMIT THESE DOCUMENTS SUBJECT TO FURTHER REVIEW TO DETERMINE THE NEED TO REDACT MATERIALS AND FURTHER ASSESS THE RELEVANCE.

ENCLOSURE 8 & 9, THE BOARD WILL RESERVE MAKING A DETERMINATION AT THIS TIME, ALTHOUGH IT IS INCLINED TO ADMIT THEM BECAUSE SOME OF THE WITNESSES THAT RESPONDENT MAY PRODUCE WILL BE TESTIFYING AS TO THE STANDARD OF CARE ISSUES.

ENCLOSURES 12 & 13 WERE NOT OBJECTED TO AND THEREFORE, WILL BE ADMITTED.

ENCLOSURE 17 AND EXHIBIT G WILL NOT BE ADMITTED AS THEY DO NOT APPEAR TO PROVIDE INFORMATION OF A SUFFICIENTLY PROBATIVE NATURE AT THIS TIME.

With respect to the witness list that was considered by the Board, the Board made the following determinations.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO PERMIT THE FOLLOWING SCOPE OF TESTIMONY.

DR. KAUL WOULD CERTAINLY BE PERMITTED TO TESTIFY.

THERE IS A SERIES OF WITNESSES ON THE LIST THAT APPEAR TO BE PROFFERED FOR THE PURPOSES OF OFFERING CHARACTER, CREDENTIALS OR CAPABILITIES EVIDENCE. THE BOARD WOULD PERMIT THEM TO TESTIFY AS TO THOSE ISSUES REGARDING THE MITIGATION PHASE OF THE MATTER SO LONG AS THEY ARE NOT CUMULATIVE, AND THE BOARD WOULD CERTAINLY RESERVE THE RIGHT TO DETERMINE WHAT WOULD BE CUMULATIVE.

**MARK SCHLESINGER, M.D.
ADOLPHO LAMANNA, M.D.
JULIA GILL YOUNG, M.D.
DEBORAH FINCH, R.N.
LUCY DUFFY, R.N.
PAMELA MOREHEAD, R.N.**

CONCERNING CHARLES SEMEL, M.D., AND JEROME GOODMAN, M.D., WHO APPEAR TO BE PROFFERED FOR PURPOSES OF PROVIDING EVIDENCE AS TO DR. KAHL' PSYCHIATRIC STATE, THE BOARD WOULD ENTERTAIN TESTIMONY AS TO THE PSYCHIATRIC CONDITION NOW, AND DEPENDING ON ADDITIONAL PROFFERS, PERHAPS AT THE TIME OF THE ACTS THEMSELVES.

WITH RESPECT TO PAUL GOLDINER, M.D., AND ALBERT SAUBERMANN, M.D., AS TO THE STANDARD OF CARE, THE BOARD WOULD NEED A MORE SPECIFIC PROFFER.

AS TO MR. DAVID LUNDQUIST (C.E.O. OF ST. CLARE'S HOSPITAL, DENVILLE, NJ) AND MR. TERENCE TAYLOR (PATIENT OF DR. KAUL'S), THERE IS NO PROFFER AT ALL THAT HAS BEEN OFFERED, AND THE BOARD FINDS THEM TO BE TOO VAGUE IN ORDER TO KNOW WHETHER THEY SHOULD BE DEEMED RELEVANT.

AS TO STEPHANO ZUCCHI, D.D.S., A MORE SPECIFIC PROFFER IS NEEDED, ALTHOUGH THE BOARD WILL CONSIDER THAT THERE MIGHT BE SOME RELEVANT TESTIMONY.

AS TO BERNARD HOFFMAN, ESQ. (RETIRED PRESIDING CRIMINAL JUDGE, MIDDLESEX COUNTY), THE BOARD WILL NOT ENTERTAIN THE TESTIMONY OF MR. HOFFMAN AS IS DEPICTED IN THE MATERIALS TO DATE.

A.A.G. Joyce reported to the Board that Executive Director Roeder received the night before the meeting a 62-page document via fax from Respondent's attorney, Ms. Volkert.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REFER THIS DOCUMENT TO THE EXECUTIVE COMMITTEE FOR ITS PRELIMINARY REVIEW ALONG WITH ANY RESPONSES THAT MAY BE RECEIVED.

**2. KING, Constancio Yuzon, M.D., License #23979
COBOS, Tony, Esq.
PHAM, Jacqueline, D.A.G.**

A Provisional Order of Discipline (POD) was filed January 28, 2002 which sought to revoke the above physician's license. In the alternative, Respondent could voluntarily surrender his license. The Board received for review at its July 10, 2002 meeting the enclosed March 26, 2002 letter to the Board from D.A.G. Pham; Dr. King's February 12, 2002 response without attachments at this time; and the POD with attachments filed January 28, 2002. As noted in the enclosed July 10, 2002 Open Disciplinary Minutes in the matter of Dr. King, the Board voted to finalize the POD with a FOD. To date the FOD has not been filed. Enclosed for Board consideration were DAG Pham's February 24, 2003 letter to the Board and Mr. Cobos' February 13, 2003 letter to DAG Brown with attachments.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MODIFY THE POD TO MIRROR THE TEXAS REPRIMAND WITH AN APPEARANCE BEFORE A PRELIMINARY EVALUATION COMMITTEE SHOULD DR. KING CHOOSE TO RESUME A PRACTICE IN THE STATE OF NEW JERSEY.

INFORMATIONAL

1. CARAGINE, Paul J., Jr., M.D., License #28394 KOZYRA, Barry A., Esq. LIEBERMAN, Melissa, E., D.A.G

Enclosed was the Superior Court of New Jersey Appellate Division's decision of February 28, 2003 affirming the Board's Final Order which revoked Dr. Paul J. Caragine's license to practice medicine, barred any reapplication for a license for five years and imposed a \$55,000 civil penalty.

THIS MATTER WAS FILED AS INFORMATIONAL.

Respectfully submitted,

Glenn A. Farrell, Esquire
Secretary
Acting Chairperson for Open
Disciplinary Matters

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