

**Open Minutes
New Jersey State
Board of Medical Examiners
Disciplinary Matters Pending Conclusion**

March 13, 2002

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, March 13, 2002 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 David M. Wallace, M.D., Chairperson for Open Disciplinary Matters.

PRESENT

Present were Board Members Chen, Criss, DiFerdinando, Farrell, Haddad, Harrer, Lucas, Moussa, Perry, Ricketti, Rokosz, Trayner, Wallace and Walsh.

EXCUSED

Board Members Desmond, Huston, Patel, Reid, Robins and Weiss.

ALSO PRESENT

Deputy Attorneys General Dick, Flanzman, Gelber, Joyce, Kenny, Levine and Warhaftig; Executive Director Roeder and Medical Director Gluck, New Jersey State Board of Medical Examiners.

RATIFICATION OF MINUTES

The Minutes from the February 13, 2002 Board meeting were approved with clerical changes.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

MATKIWSKY, Zenon, D.O. (Counseling Deputy: FLANZMAN)
GORRELL, Joseph M., Esq., for Respondent
GELBER, Joan D., D.A.G., for Complainant

(Proceedings Recorded by Tammy Lynn Ensana, C.S.R., GUY J. RENZI & ASSOCIATES)

Matter set down for hearing on mitigation of penalty. A Complaint was filed December 15, 1999 alleging radiation administered by unlicensed persons; negligent radiology practice; negligent maintenance of radiological equipment/supplies; administration of injections by unauthorized persons; expired medications and supplies; failure to establish or implement medical office policies; impermissible medical practice structure; misrepresentation of medical provider and supervisor; failure to disclose financial interests to Board; and alleged failure to disclose financial interests to patients. The trial at the Office of Administrative Law was scheduled to begin March 4, 2002, but was canceled due to the entry of an Interim Agreement received by the Board, which was approved by Board President Harrer, wherein Dr. Matkiwsky agreed to plead no contest to the allegations of the Complaint; will pay costs of \$6,000 and will appear today to make a presentation in mitigation of penalty. Enclosed were the Complaint filed December 15, 1999, Answer filed January 5, 2000, Interim Agreement filed February 27, 2002, and Mr. Gorrell's March 4, 2002 letter to the Board with attachments.

Dr. Rokosz recused himself from discussion and vote in this matter and removed himself from the Board table.

Dr. Wallace stated for the record that Mr. Gorrell is his medical staff President, but that fact would not impair him in rendering a judgment. Dr. Wallace also stated he knows Dr. Jacobs and that also would not impair his

judgment in this matter. There was no objection by either counsel to Dr. Wallace remaining in the room and participating in this matter.

Mr. Gorrell acknowledged that he received a telephone call from D.A.G. Gelber on Monday indicating that the costs in the case were \$8,000 and not \$6,000. He stated on the record that Dr. Matkiwsky consented to that change in the Order. In addition, he pointed out that the Board indicated that Dr. Matkiwsky agreed not to appeal this Order, but Mr. Gorrell did not believe that to be correct. According to Mr. Gorrell, Dr. Matkiwsky agreed not to appeal as to the liability issues, but the Order did not indicate that he does not have the right to appeal the sanction. In addition, Mr. Gorrell requested permission to submit supporting letters. D.A.G. Gelber had no objection to the letter from the attorney Smorodsky, however, she had strong objections to the proposed inclusion of letters from a Dr. Billings and Dr. Rodgers. While these two letters are not strictly character documents, the letters do make references to factual issues which would have been significant and thoroughly addressed had there been a trial on this issue. Mr. Gorrell stressed that the doctor is not contesting the charges and he accepted full responsibility. He respectfully requested that the Board consider the letters because they placed the charges into the proper context since Doctors Billings and Rodgers worked at the Center for several years.

D.A.G. Gelber countered by stating that neither letter mentioned the time frames that these individuals worked at the facility. Additionally, the letters were pure hearsay and colored in a misleading way the circumstances at the Center. She also stated that she just received the letters and was not given an opportunity to respond to them.

The Board voted to go into executive session to discuss the above. 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.

Chairman Wallace announced that the Board, in executive session, considered a motion, which was seconded and the Board voted unanimously to accept these two letters into the record. The Board, however, would not consider any parts of the letters that addressed the factual issues, since Dr. Matkiwsky was not contesting the facts. The portions of the letters that spoke to the mitigation issues would be considered.

Mr. Gorrell called as his first witness Fred M. Jacobs, M.D. , former President of this Board. After being sworn in, Dr. Jacobs stated that at present he is the Vice President for Medical Affairs for the New Jersey Health System. He has known Dr. Matkiwsky for about eight years. Dr. Jacobs had many opportunities to work with Dr. Matkiwsky. He described him as a fine, very decent and caring physician, a giving and charitable person. He is known for work here and abroad where he and his wife founded an organization for the children of Chernobyl. Dr. Jacobs knows that Dr. Matkiwsky made some decisions which he regrets and he is truly sorry for the mistakes. He pointed out for the Board the number of physicians that came to offer their support for him.

Dr. Jacobs went on to explain that recently he was on a tour where the guide was a West Point graduate. The cadets have a "Long Gray Line" of tradition which started with the beginnings of our republic and is passed down from cadet to cadet. According to Dr. Jacobs, that tradition is not dissimilar to the tradition of medicine. It is what Dr. Matkiwsky has done with students, residents and colleagues. He has taken on the responsibility for passing it on and nurturing it for the future. The profession promotes humanism in medicine and emphasize traits which go to the roots of a medical calling --- honor, duty, and life-long learning. The caring and giving by Dr. Matkiwsky to children of a faraway land is so typical of this charitable person's selfless devotion. Dr. Jacobs asked the Board in its deliberations to base its decision on the following considerations: How does one balance mistakes against a lifetime of service and lifetime of commitment? How should one view these errors judged against all the good performed over all the years? What more should be asked of Dr. Matkiwsky? Dr. Jacobs assured the Board that Dr. Matkiwsky was sorry for his mistakes and, in fact, has retired from the practice of surgery. His life should be acknowledged as one of dedication, and he should be honored as he has the respect and honor of his family, colleagues and friends. He urged the Board to respect its own tradition, and say that enough is enough.

Dr. Matkiwsky was sworn. He thanked the Board for the opportunity to speak on his behalf. He acknowledged that this was very difficult for him, not only because of the nature of the charges, but because it was not easy for him to speak out about himself. He appreciated Dr. Jacobs' remarks and thanked his colleagues who were there to

support him. Dr. Matkiwsky asked the Board to consider that he always strove to uphold professionalism in his work at Union Hospital and in the charitable work he has performed. While he admitted that he was not perfect and that he made mistakes in his practice, he stressed that none of it was intentional. The errors were of omission and perhaps, a result of his inadequate oversight. Mistakes were made in the incorporation of his business and when he became aware of them, he immediately changed the corporate structure to that of a P.A. As the owner of a medical walk-in center, it was his responsibility to hire and review the procedures with the doctors. He personally interviewed doctors licensed to practice medicine and surgery in New Jersey. He delegated the tasks of taking x-rays, administering injections, performing minor surgeries, and suturing of minor lacerations to the physicians that he hired. From 1989 to 1998, two doctors, Doctors Joseph Billings and John Rodgers were full-time at the hospital. Subsequent to their departure from Immediate Health Care, he hired x-ray technicians. He was not aware that the doctors to whom he delegated these functions, had allowed medical assistants to position patients and take x-rays. He attempted to assure the Board that this was done without his knowledge or authority.

At this point, D.A.G. Gelber objected because the testimony of Dr. Matkiwsky was going beyond that of mitigation. She believed that the testimony undercut the plea of no contest to all of the allegations which included the doctor's responsibility as the owner and medical director of this facility. She requested that the Board not permit him to assert that he was ignorant of the operations.

The Board sustained the objection on the same basis as it decided on the issue of the two letters and reminded the doctor to limit his testimony to the issue of mitigation.

Dr. Matkiwsky continued by explaining that his purpose in opening the medical center was to provide care for walk-in patients and Workmen Compensation cases, which included members of the Police Department, Fire Department, Public Works and Board of Education. Dr. Matkiwsky believed the physicians and entire medical staff did a wonderful job of providing the utmost professional care. He stated that it has been his honor to serve the community in his thirty-one years of medical practice. He hoped the Board would permit him to continue to do so as best he can.

D.A.G. Gelber reminded the Board that as of March 29, 1999, when the Enforcement Bureau and the Department of Environmental Protection inspected Immediate Health Care Medical Center, the only business card available was one listing Dr. Matkiwsky as the medical director.

In summation, Mr. Gorrell stated that the Board had heard Dr. Jacobs talk of the humanism throughout his career and spoke about honor and respect. Letters have been presented attesting to the doctor's high quality of work, high quality of patient care, dedication to patients, service to his hospitals, service to community, and charity work for children of Chernobyl. He urged the Board to read those letters before it made its decision. He went on to explain that when Dr. Jacobs, Dr. Matkiwsky and he walked in, they were not alone -- they were accompanied by twenty of his colleagues, physicians from Union County to Trenton, the Executive Director of Union Hospital, and members of the Board of Trustees at the hospital. If the Board allotted a full day, Mr. Gorrell posited that each one would have said things similar to what Dr. Jacobs said and would have echoed his words about his dedication to the medical profession. He believed their presence here today told the same story. They did not have to be here and were here for a reason --- they have respect and hold Dr. Matkiwsky in high professional esteem. Mr. Gorrell stated he has known Dr. Matkiwsky for more than 15 years and did not believe that he could convey as eloquently as Dr. Jacobs regarding his work for patients and the community. Mr. Gorrell admitted that he has a deep high honor and respect for Dr. Matkiwsky, who Mr. Gorrell believed deserved the Board's honor and respect as well.

D.A.G. Gelber began by expressing how difficult cases like this can be for the Attorney General's Office. In this instance, it was not necessary to detract or say anything at all negative of Dr. Matkiwsky, to his hospital, to the community or special interests he had. At the same time, she stated the Board has had a longstanding duty to the public and to cases of negligence and gross negligence which have a strong affect on the community and the reputation of the practice of medicine. She argued that all of the letters received by the Board related to opinions held in 1999 and 2000, which was prior to the uncontested facts in the case. She asked the Board to look at the allegations to which he pleaded and view the detail in the Complaint which is not all the detail which would have

been presented at trial. She asked the Board to look at the level of the problems in the radiologic practice which seemed ironic considering Dr. Matkiwsky's interest in protecting the victims of unnecessary radiation. She argued Dr. Matkiwsky allowed unlicensed persons to administer tests (Count I), the lack of quality of the films taken by unlicensed individuals (Count II), the lack of maintenance of the equipment (Count III), injections that were given by unlicensed personnel (Count IV), and the expired medication and supplies (Count V). She argued these violations all demanded a serious sanction against Dr. Matkiwsky's license.

D.A.G. Gelber requested that when the Board considers Dr. Jacob's reference to Hippocratic Oath, that the Board remember that "do no harm" as in "do not expose patients to unnecessary risk of harm such as seen here" is a critical element of the oath. She argued in this case, there was no one minding that store. The fact he now does reports, has monetary interests in some places and not in others, and has elected not to do so in other years is irrelevant. She argued the fact Dr. Matkiwsky had apparently a fine career in the hospital should not in any way cause the Board to be less concerned about the welfare of the patients who went for the many years that this medical office was operational without proper supervision, and if Dr. Matkiwsky was there, he was turning a blind eye to it. She argued retirement was not the solution for the conduct in this Complaint and that it required a significant disciplinary sanction and penalties, most particularly because of unlicensed practice and expired medications. She submitted it was this Board's responsibility to look out for those patients.

When questioned concerning his retirement, Dr. Matkiwsky explained that he was retiring from performing surgery. He, however, had hoped to continue in some other form of the practice of medicine.

The Board voted to go into executive session for the penalty phase of this hearing. 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 members of the public present and announced the following motion:

THE BOARD HAS DETERMINED TO IMPOSE THE FOLLOWING SANCTIONS AND PENALTIES:

THE LICENSE OF DR. MATKIWSKY TO PRACTICE MEDICINE AND SURGERY IN NEW JERSEY SHALL BE REVOKED. A FINE OF \$25,000 IN AGGREGATE AND COSTS OF \$8,000 SHALL BE ASSESSED. IF DR. MATKIWSKY SEEKS REINSTATEMENT OF LICENSE, HE SHALL BE REQUIRED TO APPEAR BEFORE A PRELIMINARY EVALUATION COMMITTEE OF THE BOARD WHICH COMMITTEE WILL MAKE A RECOMMENDATION TO THE BOARD IF CAUSE EXISTS TO SUPPORT REINSTATEMENT AND, IF SO, WHETHER LIMITATIONS SHOULD BE PLACED ON ANY RECOMMENDED PRACTICE. ON THE DATE OF THE APPEARANCE, DR. MATKIWSKY SHALL DEMONSTRATE HE COMPLETED AN ETHICS COURSE ACCEPTABLE TO THE BOARD.

Doctors Moussa and Ricketti voted in opposition.

**ANDUJAR, Edward, M.D., License #52473 (Counseling D.A.G: DICK)
HERNANDEZ, Jose W., Esq., for Respondent (Without Appearance by Respondent)
HARPER, Douglas J., D.A.G., for Complainant**

(Proceedings Recorded by Tammy Lynn Ensana, C.S.R., GUY J. RENZI & ASSOCIATES)

Matter was set down for oral argument concerning the Order of Temporary Limitation of License issued by a Committee of the Board which heard the application for temporary suspension or other limitation of license on February 14, 2002.

The Committee ordered that Dr. Andujar may not practice medicine at the 516 Wood Avenue facility in Vineland, New Jersey or open or practice at any other facility or location in New Jersey unless and until he receives approval from the Board after an inspection by the Enforcement Bureau and a demonstration to the Board's satisfaction that the facility complies with all federal, state and local laws and regulations concerning the health, safety and welfare of New Jersey patients and is operated in a manner which ensures his practice will comport with public health, safety and welfare regarding the manner in which patients are to be treated. Enclosed were the

Order to Show Cause, Complaint with attachments and Certification of Enforcement Bureau Investigator Deborah Zuccarelli, R.N., filed February 13, 2002, and the Order of Temporary Limitation of License filed February 20, 2002.

The Board also received with its Supplemental Agenda a packet of information from Respondent which included a March 7, 2002 letter to the Committee Members of the Board requesting vacation of the Order of Temporary Limitation of License based on the allegations made regarding Dr. Andujar's maintenance of his medical office having been abated and a re-inspection by the Enforcement Bureau finding said premises safe for the treatment of medical patients. The packet also included D.A.G. Harper's March 7, 2002 letter to the Board Committee responding to Dr. Andujar's application to vacate the Order.

In addition, the Board received as a handout a copy of the manuscript of the temporary suspension hearing held before the Committee of the Board on February 14, 2002 in the matter of Dr. Andujar, along with the Order Modifying Temporary Limitations on License filed March 12, 2002.

D.A.G. Harper gave the background of this matter. Since the entry of the February 14, 2002 Order restricting Dr. Andujar's practice, substantial work was done on the premises, correcting of code violations and fire officials submitted reports to the Attorney General which was submitted to the Committee and followed by reinspection by the investigators. The inspection revealed that the conditions were abated. On the Sunday prior to the Board meeting, the Committee issued a verbal authorization resolving the prohibition of the practices from the premises. Before the Board was a copy of the Order modifying the prior restrictions. Additionally, the Attorney General filed a motion for clarification of a part of the Order which dealt with the administration of IV medications. An area of concern noted by the Committee, based upon observations during the inspections, was administering of IV without supervision. This Order makes it clear that only a licensed physician, a registered nurse, physician assistant or LPN who is separately qualified in intravenous medication and meets the guidelines with the Board of Nursing appended to the motion, may administer the IV. The physician's presence on the premises would be required for any LPN or RN. Motion was reviewed by Dr. Andujar's counsel and he did not raise any objections to the proposed clarification. D.A.G. Harper pointed out that this is an Interim Order. The Attorney General's complaint is still pending with regard to a final decision in prosecution.

The Board voted to go into executive session for consideration and advice of counsel. 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 announced the following motion:

THE BOARD, UPON MOTION MADE AND SECONDED, CONSIDERED AND DETERMINED TO RATIFY THE COMMITTEE DECISION REGARDING THE FEBRUARY 14, 2002 HEARING AND THEREFORE RATIFIED THE ORDER LIMITING THE LICENSE OF DR. ANDUJAR.

THE BOARD, UPON MOTION MADE AND SECONDED, CONSIDERED AND DETERMINED TO RATIFY THE COMMITTEE DECISION RATIFYING THE LIMITATIONS ON THE LICENSE OF DR. ANDUJAR AS ANNUNCIATED IN THE ORDER OF MARCH 12, 2002.

FURTHER, THE BOARD, UPON MOTION MADE AND SECONDED, CONSIDERED THE APPLICATION TO ACCEPT MODIFICATIONS TO THE COMMITTEE DECISION OF MARCH 11, 2002, AS SUGGESTED BY THE ATTORNEY GENERAL AND RESPONDENT, REGARDING I.V. ADMINISTRATION AND VOTED TO ACCEPT THOSE MODIFICATIONS.

A WRITTEN ORDER WILL FOLLOW.

WIJAYA, Don Henry, M.D. (Counseling Deputy: LEVINE)
KERN, Steven I., and WEIR, Bonnie M., Attorneys for Respondent
BERGER, Susan, D.A.G., for Complainant

(Proceedings Recorded by Linda L. Mancuso-Psyllos, C.S.R., GUY J. RENZI & ASSOCIATES)

Dr. Ricketti recused himself from discussion and vote in this matter and left the Board table.

This matter was set down for hearing in the matter of Don Henry Wijaya, M.D. Enclosed for Board review was the December 18, 2001 Initial Decision of Administrative Law Judge Joseph F. Fidler. This matter was initiated based upon a two-Count Complaint filed March 6, 1997 alleging gross or repeated acts of malpractice; professional misconduct; conduct which evidences an incapacity of discharging the functions of a licensee in a manner consistent with the public's health, safety, and welfare; and/or demonstrates a failure to fulfill the ongoing statutory requirement of good moral character. Enclosed were the Complaint filed March 6, 1997; Respondent's Answer to the Complaint filed April 2, 1997; and the First Amended Complaint filed April 15, 1998.

Enclosed was D.A.G. Berger's January 22, 2002 letter to the Board filed January 24, 2002 recommending that the ALJ decision be adopted in its entirety. D.A.G. Berger's letter included copies of Executive Director Roeder's Affidavit of costs for transcripts; Certification of Costs for investigation from Mary Davison, R.N., Supervising Investigator; a Certification of Donna White regarding the fact witness costs (Laurie Schray); and D.A.G. Berger's January 24, 2002 letter to the Board providing documentation regarding expert fees paid by the Board for Marshall Swartzburg, M.D., in the amount of \$19,250.

Also enclosed was Respondent's Written Exceptions to the Initial Decision which included Exhibits A and B filed with the Board on January 24, 2002. Mr. Kern submitted with Respondent's Exceptions a January 24, 2002 letter (a copy of which the Board received) which was addressed to Executive Director Roeder requesting that the time for oral argument be increased from 20 minutes to 40 minutes since there were numerous issues to be addressed and his client was entitled to adequate time to present his position with respect to each issue.

In addition, enclosed were D.A.G. Berger's January 25, 2002 Motion with attachments to exclude photograph 12 in Respondent's Exceptions to the Initial Decision and Mr. Kern's January 29, 2002 response to the Motion. Photograph number 12 was removed from the Board packets.

On January 30, 2002, Board President Harrer considered Respondent's motion to allow 40 minutes rather than 20 minutes oral argument on Exceptions and decided to grant both parties 30 minutes for oral argument pending Board ratification, rejection or amendment. Board President Harrer also considered the State's motion to exclude photograph number 12 from Board review and retrieval of any copy of the photograph that may have been received by any Board member. Dr. Harrer decided to exclude photograph number 12 from review since it was not presented at the hearing before the OAL and therefore shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions. Dr. Harrer further ordered the parties not to describe, show or proffer to the Board photograph number 12 or the content of photograph number 12, and no reference to photograph number 12 is to be made by either party during oral arguments on Exceptions. The photographic copies of photograph number 12 is retained by William V. Roeder, Executive Director and custodian of the records, in a sealed envelope. Mr. Roeder had them present in the hearing room on the day of the hearing. Should the Board reject or amend Dr. Harrer's determination, photograph number 12 could be distributed to the Board Members for review prior to the commencement of the hearing on Exceptions. Enclosed was Executive Director Roeder's January 31, 2002 letter to the parties outlining Board President Harrer's decision on these two pre-hearing motions. Prior to the Board hearing oral arguments on the Exceptions to A.L.J. Fidler's Initial Decision, the Board was asked to consider all the prehearing motions on the papers and ratify, reject or amend Board President Harrer's decisions.

In addition, enclosed for Board consideration was the Attorney General's February 4, 2002 Reply to Respondent's Written Exceptions to the Initial Decision.

Also enclosed was Mr. Kern's February 6, 2002 prehearing motion (without attachments) for the Board to consider a polygraph report and a psychiatric evaluation of Respondent; D.A.G. Berger's February 8, 2002 letter objecting to the inclusion of any additional documentation during the Board's consideration of whether to adopt the liability findings in the Initial Decision, and Board President Harrer's February 11, 2002 letter to the parties finding that the two reports were not to be included in this proceeding, and finding that pursuant to N.J.A.C. 1:1-18.4(c), "Evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be

incorporated or referred to within exceptions". Board President Harrer ordered, by way of this letter, that the polygraph and psychological evaluation were not to be provided to Board Members or included in oral argument at the hearing, and they were not to be considered in the liability portion of the hearing. If the Board finds they speak to liability, they are not to be included in any mitigation phase that might be held. Board ratification of Board President Harrer's decision not to include the polygraph report and the psychiatric evaluation in this proceeding was requested. Also enclosed was Mr. Kern's February 28, 2002 letter objecting to Board President Harrer's February 11, 2002 decision and D.A.G. Berger's March 6, 2002 response to Mr. Kern's February 28, 2002 letter.

This matter was adjourned from the February 13, 2002 meeting until this meeting based on the following conditions which Respondent agreed to and which are contained in an Interim Order filed February 15, 2002 (a copy of which the Board received): Dr. Wijaya will refrain from seeing any routine non-emergent patients; may only see existing patients with emergent problems in the hospital setting; may renew prescriptions only for his existing patients who are maintained on long-term medication, provided an office visit is not necessary; his agreement to these voluntary restrictions will not be used against him in any application for a stay of any adverse final disposition ultimately taken by the Board; no further adjournments will be granted; and these voluntary conditions were effective immediately.

Mr. Farrell announced that the Board was to go into executive session for deliberation and advice of counsel concerning the various pre-hearing motions.

Mr. Kern attempted to address the Board concerning Exhibit 12 and D.A.G. Berger immediately objected. She reminded the Board that the notice sent to all parties informed them that the pre-hearing motions would be heard on the papers. Mr. Farrell permitted Mr. Kern two minutes to present why oral argument was necessary.

Mr. Kern argued that oral argument was necessary because important issues concerning the outcome of the case could hinge on Exhibit 12. He urged the Board to accept all information since the Board potentially could impose a sanction that would destroy the licensee's life, as well as the life of his family. Considering that this case was seven years old, he believed it was in the Board's best interest to obtain all the evidence.

Mr. Farrell thanked Mr. Kern and announced that the Board would now go into executive session for deliberation and advice of counsel with respect to oral argument. He further informed the parties that if the Board decided to entertain oral argument from counsel, the Board would return for oral argument. If oral argument is denied, the Board would remain in executive session and move into the deliberation stage with regard to the motions.

The Board returned to open session with all parties present and announced the following motion:

THE BOARD CONSIDERED RESPONDENT'S REQUEST FOR ORAL ARGUMENTS ON THE PRE-HEARING MOTIONS. THE BOARD MADE A DETERMINATION THAT IT HAS SUFFICIENT INFORMATION BEFORE IT. THEREFORE, THE BOARD, UPON MOTION MADE AND SECONDED, VOTED THAT THERE WAS NO NEED FOR ORAL ARGUMENTS AND PREHEARING MOTIONS WOULD BE DECIDED ON THE PAPERS.

THE BOARD HAS CONSIDERED AND DETERMINED THE PRE-HEARING MOTIONS AS FOLLOWS:

CONCERNING MR. KERN'S JANUARY 24, 2002 REQUEST FOR FORTY MINUTES TO ARGUE ON EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE FIDLER'S DECISION, THE BOARD, UPON MOTION MADE AND SECONDED DETERMINED TO GRANT AN EXTENSION OF TEN MORE MINUTES, GIVING EACH PARTY THIRTY MINUTES. THE BOARD GENERALLY PERMITS TWENTY MINUTES.

Dr. Rokosz voted in opposition.

THE BOARD HAS CONSIDERED AND DETERMINED D.A.G. BERGER'S MOTION TO EXCLUDE PHOTOGRAPH #12 ATTACHED TO RESPONDENT'S BRIEF ON EXCEPTIONS. THAT MOTION TO EXCLUDE IS GRANTED. IT WAS GRANTED IN THAT IT WILL NOT BE ADMITTED INTO EVIDENCE

PURSUANT TO N.J.A.C. 1:1-18.4(c) WHICH PROVIDES THAT NO NEW EVIDENCE IS TO BE PROVIDED OR CONSIDERED AT THE EXCEPTION STAGE.

THE BOARD HAS CONSIDERED AND DETERMINED MR. KERN'S FEBRUARY 6, 2002 PRE-HEARING MOTION TO CONSIDER A POLYGRAPH REPORT AND A PSYCHIATRIC REPORT. THE STATUTORY AMENDMENT CITED BY MR. KERN IS NOT RELEVANT BECAUSE THE AMENDMENT CREATES A MECHANISM FOR THE BOARD, NOT THE RESPONDENT, TO EMPLOY IN THE INVESTIGATION PHASE OF A MATTER. THE REPORTS WERE NOT IN EVIDENCE AT THE HEARING AS REQUIRED BY N.J.A.C. 1:1-18.4(c) AND POLYGRAPHS ARE NOT ADMISSIBLE IN NEW JERSEY COURTS WITHOUT THE CONSENT OF BOTH PARTIES.

THE BOARD ALSO NOTES RESPONDENT'S LETTER OBJECTING TO THE BOARD PRESIDENT DECIDING THE PRELIMINARY RULINGS AND THE BOARD AFFIRMED THE LONG-STANDING PRACTICE NECESSITATED BY THE EVIDENT AND PROPER HANDLING OF ADMINISTRATIVE DISCIPLINARY MATTERS BY AN AGENCY WITH A ONCE A MONTH MEETING SCHEDULE AS THE BOARD HAS. THE FULL BOARD HAD CONSIDERED ALL OF THE ARGUMENTS ON THE PAPERS, DELIBERATED IN EXECUTIVE SESSION FULLY ON THESE PRE-HEARING MOTIONS, AND MADE THE FINAL DETERMINATIONS.

Mr. Kern was asked to present his argument on the exceptions. Thirty minutes was allotted. Mr. Kern began by relating a story whereby he started off the day by attending a funeral of a friend and mentor who taught him how to practice law, "Judge Wolen". During the funeral, Mr. Kern thought how intolerant Sandy would have been to the Administrative Law Judge. In his opinion, this was the worse decision Mr. Kern had seen in twenty-five years of practice because it did not tell the reader why the ALJ decided as he did. As noted in the Deputy's brief, he stated it is the Board's obligation to reject, if not supported by sufficient credible evidence. He argued obviously, the decision was arbitrary because the Administrative Law Judge never explained or supported his conclusions with the evidence that is in the record. The Judge found certain evidence credible, but never articulated why other evidence was not deemed credible. He argued it lacked any support in terms of credible evidence.

In contrast, Mr. Kern directed the Board to Dr. Spade's report in which, as part of her evaluation which is part of the record, she found no evidence whatsoever to find any indication that Dr. Wijaya would engage in this type of behavior. He asked the Board to compare Dr. Wijaya to F.B. who suffered from a large psychiatric disorder and read Dr. Pedigo's (psychiatrist) report called by the Attorney General, who agreed F.B. possibly had a borderline personality, engaged in fantasy events and made inappropriate advances. He noted F.B. admitted seeing sharks in the bathroom, acknowledged performing self-mutilation, could not get out of the house or drive. She is dysfunctional according to Dr. Pedigo. Yet, Mr. Kern stated the Administrative Law Judge did not even report on Dr. Pedigo's testimony. He believed the Judge's decision was arbitrary and unreasonable.

Mr. Kern continued that there were also issues of unreasonableness in the decision. He stated that while F.B. claimed they had sex, she was unable to relate any of Dr. Wijaya's characteristics of his body. For example, F.B. claimed that Dr. Wijaya had almost no hair. Yet, when one examines the photographs admitted into evidence, one can easily see that his body is hairy. He noted the girlfriend Dr. Wijaya had at this time testified he had moles and discoloration. F.B. would not tell you anything about Dr. Wijaya's body that was covered with clothing. According to F.B., the sexual relationship began in 1983. It was the most wonderful relationship she ever had. By December 1994, she claimed that Dr. Wijaya withdrew and rejected her. So she continues seeing a psychiatrist. Mr. Kern noted that this same person, however, had to be hospitalized earlier because she was so emotionally distraught when her boyfriend claimed to break up with her. He argued this was a case which came down to common sense and a reading of the decision and the conclusions drawn are far from being based on common sense. Mr. Kern gave another example that did not make sense, nor was it supported by the evidence, was testimony that in 1987 and the early 1990's, Dr. Wijaya urged the patient to see another psychiatrist. Mr. Kern asked would Dr. Wijaya suggest another psychiatrist if he was engaged in a sexual relationship with her. He argued this inconsistency was not even reported in the decision.

Mr. Kern continued by addressing the times that Dr. Wijaya apparently frequented F.B.'s apartment. Dr. Wijaya

admitted he went to her apartment to pay her for a toy for his child which he could not get. She was able to find it. He went in, paid her, stayed, had dessert and left. He argued what the deputy said in her brief was untrue. The testimony was by the two daughters, one said I saw doctor in mother's apartment, one saw him and left. The second daughter testified that she saw him at the apartment also only once. However, on that night, the one daughter was told to go to her room with her sister while supposedly F.B. and Dr. Wijaya spent the night having sex in the adjoining room. She saw them kissing and went back and told her sister. Mr. Kern noted the ALJ found both sisters credible. One says they were and one says they were not and asked how they could be credible. He stated the neighbor claimed to be outside on another occasion when she saw Dr. Wijaya coming into the apartment. Dr. Wijaya says there was a neighbor. That same time the mother said she came to the apartment. According to the Attorney General's brief, Dr. Wijaya came to the apartment and two neighbors were at dinner. Mr. Kern argued that representation was not true and Dr. Wijaya said the patient introduced him to one of the neighbors in the evening and that the two daughters were in and out.

Mr. Kern noted another area of factual dispute was the evidence concerning the hotel in Princeton and the 800 answering number. He stated Dr. Wijaya has an alphanumeric pager and it prints out and displays the messages he receives. Mr. Kern stated Dr. Wijaya does not call and questioned why would he call the number. Dr. Wijaya did not. He noted the D.A.G. suggested: 1) perhaps he forgot beeper, left office to go to motel according to F.B. or that 2) maybe it was out of range, which Mr. Kern believed was pure speculation. Mr. Kern offered that the answer was simple. F.B., in 1993, began becoming neurotic, got his beeper pin number because it was displayed in his office and that it was F.B. who started to call the number to find out what he was doing and what was going on. He argued there was no other explanation and the ALJ did not address this issue at all. Mr. Kern stated F.B. is a textbook borderline personality case.

He concluded by reminding the Board that it was being asked to impose the worst possible penalty on a physician. He urged the Board to reject the ALJ's decision outright, or at a minimum, return the matter to the ALJ to determine why he did not consider this and if he did, why was it rejected. He stated the Board could only make a reasonable decision with these answers. Considering the type of sanction that could be imposed, Mr. Kern believed it was the only option available to the Board.

D.A.G. Berger opened by arguing that Judge Fidler clearly found Dr. Wijaya engaged in a sexual relationship with his patient, F.B. The Attorney General asked the Board to affirm the decision. She argued that F.B., the psychiatric patient, testified in detail that she engaged in an intimate sexual relationship with Dr. Wijaya after beginning treatment September 1991: In 1993, the doctor said he would come to her home for dinner and that she should not tell anyone. She did not listen. She told everyone. She was excited --- she cleaned house, picked a new outfit and did not wear underwear because she thought he was coming for only dinner. She walked down and met him. He said to her do you want to do it. She understood and she knew. She was available. They engaged in a sexual relationship. D.A.G. Berger stated that F.B. then continued in treatment and over the next year and a half, Dr. Wijaya came to her house several times and engaged in sex on at least four occasions. Her daughter saw them hugging and kissing. On another occasion, the other daughter saw them together. While counsel for the Respondent sees the two daughters' testimony as inconsistent, D.A.G. Berger proffered that the daughters' stories are not the same because they saw him on different dates. On a separate occasion, her mother saw Dr. Wijaya enter the apartment. They exchanged gifts at Christmas: he gave her a watch and she gave him an afghan and some shirts. They did not have sex. Shortly after, he said he was returning to his wife. In 1993, F.B. was married. F.B. stated she was alone during 1993 to 1994. She never testified she was in a relationship with Dr. Wijaya, only that she had sex with Dr. Wijaya. D.A.G. Berger continued that around 1987, F.B.'s daughter had a problem and became pregnant, and F.B. wanted Dr. Wijaya to treat her. Dr. Wijaya did not want to have both as a patient and her daughter became his patient. After treatment, F.B. still had lots of feelings for Dr. Wijaya. So in 1993, she called Dr. Wijaya and met at the Palmer Inn and engaged in sexual relationship. Throughout 1994, they continued to meet in the hotel. D.A.G. Berger stated the case was simple. The Board needed only to answer two questions: Whether Dr. Wijaya engaged in a sexual relationship with his psychiatric patient, F.B., and whether such actions constituted gross malpractice and repeated acts of negligence. D.A.G. Berger noted that following 22 days of trial in which Judge Fidler observed the demeanor of the witness, the manner testified and the extent of cooperation, Judge Fidler found Dr. Wijaya engaged in a sexual relationship with F.B., and that it constituted gross malpractice and/or repeated acts of negligence. Upon examination of the evidence, D.A.G. Berger respectfully

requested the Board find the same.

Concerning the Respondent's argument about the inability of F.B. to identify the amount of hair and/or distinguishing marks on his body, D.A.G. Berger argued that it was a red herring argument. First, it must be noted that only one person testified concerning marks on his body, and that was Dr. Wijaya. He presented photographs taken five years after the last time F.B. saw his body. D.A.G. Berger argued that although Respondent admitted he lived with three different women, none testified about different marks. In fact, one said no distinguishing marks. The ALJ observed the photographs and heard the victim's testimony, concluding F.B. was truthful and consistent. D.A.G. Berger noted that similarly, Respondent alleges that F.B.'s testimony is a result of fantasy. This too was rejected by the ALJ and supported by the victim's three treating professionals who said she was in touch with reality. She noted this is further corroborated by Marshall Schwertzberg who was treating the victim.

D.A.G. Berger countered Respondent's argument that the hotel incident was fabricated by F.B. and basically was a set up of Dr. Wijaya. She continued by reminding the Board that F.B. testified that she always paid for the hotel room and he paid her back the money. D.A.G. Berger stated Judge Fidler correctly rejected this theory as well. Respondent's theory is based on the testimony of Dr. Spade, Respondent's expert, which the Judge rejected accordingly.

The Attorney General went on to argue that when a psychiatrist allows boundary violations to occur, the licensee sends a message to the patient that advances are welcome and encourages the patient to change from professional to personal. The therapist is the one required to maintain control, it is not the patient's responsibility. She argued Respondent failed to recognize the significance when she enrolled her child in the same parochial school Dr. Wijaya's child attended. Failed to recognize the significance of a clad picture Dr. Wijaya sent to her (P-33). Failed to recognize the significance that F.B. was fantasizing about men, was expected to recognize she was presenting severe problems, and Dr. Wijaya should have referred her to another therapist; his failure to do so deviated from acceptable care. The relationship was more than a professional one. He accepted her numerous gifts. He allowed his children to accept gifts from F.B. He visited F.B.'s family members when in the hospital. He gave F.B. a watch.

D.A.G. Berger argued to reject the ALJ's findings would be terrible as it would relate to public safety and that F.B.'s allegations were not vague with respect to general periods of time. Her testimony was corroborated by her daughter saying she saw the kissing and mother and neighbor saw him at F.B.'s apartment on at least three separate occasions. F.B.'s testimony is further corroborated by the testimony of her friends and her treating therapist. In contrast, D.A.G. Berger stated the testimony of Dr. Wijaya lacked corroboration, was riddled with inconsistencies, and his testimony was not credible. D.A.G. Berger requested that the Board adopt all the findings in Judge Fidler's decision, including revocation and the assessment of civil penalties and costs.

In rebuttal, Mr. Kern vehemently disagreed that the Judge's decision was based on the Deputy's claims that F.B.'s testimony was remarkably consistent. He argued F.B. spent a year drafting a journal in detail over a course of a year. She wrote a novel, then testified about her novel. Whether the testimony was consistent, Mr. Kern stated only to the consistency of a novel. Mr. Kern noted that the Deputy argues that Dr. Wijaya was unable to corroborate his story. He asked the Board to consider how one corroborates a story that is a nonexistent event, noting one cannot prove the negative. He further noted the Deputy said Respondent's theory was that F.B. was unable to distinguish fantasy from reality. To the contrary, Respondent maintained that F.B. just fantasized over reality. F.B. intentionally sought to do harm to Dr. Wijaya in her vengeance and anger and role in borderline personality.

Mr. Kern referred the Board to the testimony of 6/25/99 of Cathy Bergman where she admitted Dr. Wijaya had moles and discoloration and was aware of it. Mr. Kern noted this was before F.B. had the alleged sexual encounter. Ms. Bergmann remembered and testified to it. Mr. Kern argued these are not the marks of an aging man because Dr. Wijaya was 36 years old. To suggest as the ALJ suggested a woman would not recognize these, Mr. Kern asked how does the ALJ know that and when was the last time he was a woman. Mr. Kern questioned why, if F.B. was telling the truth, she would not know it. Mr. Kern further noted the D.A.G. claimed the daughters saw Dr. Wijaya on two different nights. Mr. Kern asked how could that be when they say they were at

the same place and one left. He argued one person cannot be at point A and also at point B. Concerning the Deputy's argument that F.B. never claimed she was in a relationship, but that it was simply about sex, Mr. Kern argued was fallacious and F.B. testified that mentally she was deeply in love with him and thought they would spend the rest of their lives together.

In conclusion, Mr. Kern reminded the Board that this case was too important for this man's family insofar as Dr. Wijaya's life could be destroyed and condemned on 54% of the evidence. He urged the Board to consider the additional evidence on the scale, and when it did so, that scale could not possibly weigh in favor of the Attorney General, but overwhelmingly weigh on Dr. Wijaya's innocence. Mr. Kern stated F.B. planned this for a long time and wrote about it. He argued that if she had an ounce of proof, it would not be difficult for her to save a fingerprint, DNA or a video camera if it happened. Mr. Kern argued F.B. was unable to produce direct evidence because there never was any.

In sur-rebuttal, D.A.G. Berger stated that the law is very clear on what burden of proof is. In regard to Polk, preponderance of the evidence is the standard of proof and Board is required to determine the case on a preponderance of the evidence. She stated this Board is required by Statute to adhere to credibility findings by the ALJ unless the Board determines that the findings were arbitrary and capricious. She submitted that in looking at all the evidence presented and the ALJ's decision, the Board would not conclude such. Accordingly, she stated the Board should adopt the findings of the ALJ.

The Board voted to go into executive session for deliberation. 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 announced the following motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT IN ITS ENTIRETY THE FINDINGS OF FACT AND THE CONCLUSIONS OF LAW OF ADMINISTRATIVE LAW JUDGE FIDLER'S DECISION. A WRITTEN ORDER WITH AN EXPLANATION WILL FOLLOW.

In mitigation, Ms. Weir presented five witnesses: Dr. Wijaya, his wife, Dr. Louis Fares, Dr. Iqbal and Dr. Susan Fuchs.

Dr. Louis Fares was sworn and reviewed his educational background. He testified he has known Dr. Wijaya for over twenty years and has referred patients to him. Additionally, Dr. Wijaya rented office space from him. In addition to the private patients he has referred, Dr. Fares also has referred patients from the Department of Corrections. He even referred his own daughter on an emergency basis, as well as his brother-in-law. Dr. Fares believed that Dr. Wijaya has a unique talent and bedside manner in handling people and has the knack for guidance. He described the work Dr. Wijaya provided to the inmates. In the event that the Board were to place restrictions on Dr. Wijaya's license, Dr. Fares stated that personally, as a very concerned citizen, he would be very upset. He stated there is a shortage of psychiatrists that are competent. Dr. Fares was at a loss as to what would happen to the patients from the Department of Corrections or those that are treated by Dr. Wijaya at St. Francis Hospital.

Dr. Rie Iqbal was sworn and testified that he is in private practice specializing in internal medicine. He has hospital privileges at Hamilton Hospital, where he was the Department Chairman for seventeen years. He testified that for the past four years, he has served as the Chief of Medical Staff at Robert Wood Johnson, they do not have a Department of Psychiatry and Dr. Wijaya belongs to the Department of Medicine. Dr. Iqbal has Boards in Risk Management and serves as Speciality Chairman of the Committee on the Hospital and has reviewed Dr. Wijaya's credentials in recredentialing him at the hospital. The witness has known and has worked with Dr. Wijaya for over 20 years. He went on to describe the type of work Dr. Wijaya does at the hospital and the care he provides to the patients. He described his work as outstanding, gentle with the patients, and overall a very impressive practice. He testified there has never been any adverse issue that has been reviewed by the Peer Review Committee or Risk Management or Credentials Committee. Dr. Iqbal stated Dr. Wijaya comes to the hospital on a daily basis and treats the patients from the medical clinic and geriatric patients with psychiatric problems. He opined that any restrictions placed on Dr. Wijaya's license would have a very serious affect on the

hospital because it would not be able to accept some patients in the emergency room and would have to transfer them to another institution. He stated it would be a serious, serious problem.

The third witness, Dr. Susan Fuchs, was sworn and testified that she has been the Chairman of the Department of St. Francis in Psychiatry since 1984. She first met Dr. Wijaya when she became Chairman of the Department as he was the staff psychiatrist under her supervision in her department. Her responsibilities include the review of risk management and quality improvement for all doctors' performances. This includes the review of the use of psychotropic medications, care rendered to patients, and the guidelines in treating major psychiatric disorders to make sure the psychiatrist is following them appropriately. As Director of Psychiatry at St. Francis, she has assessed Dr. Wijaya's work. She reported that he is a very esteemed physician by his fellow psychiatrists, the nursing staff and his patients. In her opinion, Dr. Wijaya has a good grasp of psychopharmacology and has always acted in a very professional manner. She has never received any complaints about him over the past seventeen years. If a second opinion is needed, Dr. Fuchs testified that she was extremely comfortable in referring the patient to him since she considers his judgment to be excellent. She stated this would also include his knowledge and use of psychopharmacology. She considers Dr. Wijaya to be an "expert" in geriatric psychiatry. Dr. Wijaya personally informed her of the allegations that he engaged in a sexual relationship with a patient. Even after learning of the allegations, she had no apprehension in referring patients to him.

If the Board placed limitations on Dr. Wijaya's license, Dr. Fuchs was at a loss as to how the patients would receive treatment. She estimated that he sees about twelve hundred patients a month, and it is doubtful that this number of patients could be absorbed by the medical psychiatric community. Further complicating this absorption problem is because St. Francis is an inner city hospital and largely serves the underprivileged and elderly patients, which most psychiatrists are reluctant to see, noting these are acutely ill patients. In the past month, she testified Dr. Wijaya asked for some time off and it was impossible to continue for the care of the inpatients. She stated most had to be referred out to other facilities, and the hospital was not able to provide adequate or comprehensive care. They had to refer patients out and the care was not as comprehensive as it had been.

Joan Wijaya, Dr. Wijaya's wife, was sworn and testified that she first met her husband in 1980 while she was working as a staff nurse at St. Francis on the 8th Floor, inpatient psychiatric unit. They began a personal relationship in 1983, which included sexual relations. Sometime in 1984, they began living together and have been together ever since. They were married in 1988. She acknowledged that she was aware of the allegations prior to the marriage, but she believed them to be false. They have a son who is two. Currently, the witness is employed as the Director of Clinical Services, Director of Nursing at Hampton Hospital. She continued by informing the Board that he is highly regarded in the community and well respected by colleagues, nurses, and his patients.

Mrs. Wijaya opined that if her husband is not able to work for any period of time, the effect would be devastating on their family. She would not be able to support the family on her salary alone. She described their life as less than extravagant, not taking vacations or spending money needlessly. It is an average life that they lead. She estimated that their house was approximately 2700 square feet and had a value of approximately \$350,000. In addition to the financial difficulties it would create, Mrs. Wijaya also addressed the emotional devastation it would create.

Dr. Wijaya was sworn and testified that he has practiced psychiatry for the last 31 years. There has never been a complaint against him or any claim of malpractice. He loves his work and is dedicated to his patients, almost to the neglect of his family. He begged for mercy from the Board. He respectfully requested that he be permitted to continue seeing patients and to continue with his charity work. He asked the Board to consider that he has a two-year-old son and if they were to take away his license, to further consider the impact that would have on him, as well as his family, both financially and emotionally. He also asked the Board to withhold its decision and honor his request for further evaluation. It was his intention to continue to work and prove to the Board that he is worthy of practicing medicine. He told the Board that he has 200 active patients and did not know who would be able to continue their care. He has closed his office, pursuant to the Consent Order, but continues to treat two kinds of patients - emergency room consultations and those that are admitted to the hospital when he has been on call. These have always been seen solely in the hospital setting in the last month. He also confirmed that he has

written prescription renewals for his existing patients.

There was some confusion as to whether the practice as described by Dr. Wijaya over the past month was consistent with the Order. Dr. Wijaya understood it to mean that he could see any patient as long as it was in the hospital setting. The Attorney General argued that the Consent Order was clear and that Dr. Wijaya was only permitted to see patients with emergency problems in a hospital setting and existing patients. Mr. Kern advised the Board that Dr. Wijaya's practice over the past month was conducted as Mr. Kern counseled him. This counsel was based on Mr. Kern's understanding of the Consent Order language. He requested that the Board not hold it against Dr. Wijaya, if Mr. Kern's interpretation of the Order was incorrect.

Mr. Kern then went on to argue that the Board should take advantage of the new bill which permits the Board to require additional evaluations. He asked that the Board require that in this case prior to rendering a final decision as to the penalty. He also reminded the Board that back in 1995, about the time the Complaint in this case was filed, the Board decided another case. Mr. Kern stated the allegations were merely identical but more severe in Tricarico and the ALJ found him guilty. During the Board's hearing, the Board invoked a penalty that was then stayed pending receipt and review of a psychiatric evaluation. He recognized that the Board was faced with making a decision that could mean life or death for another human being. He was of the opinion that the Board owed it to Dr. Wijaya and his family, and to the individual Board members, to make sure that the right decision is made. He reminded the Board that these allegations were made over nineteen years ago, that the case was over seven years old, and that in the intervening time, no new complaints of any kind have been brought to the Board's attention. He strongly urged the Board to have the evaluation done prior to making any decision. Interestingly, Mr. Kern noted, that when Dr. Tricarico was further evaluated, a polygraph was taken, and based on that, Dr. Tricarico ultimately admitted he had sex and that he lied during the hearing. Based upon that, the Board imposed a three-year suspension, stayed one of the three years. Mr. Kern stated that if after Dr. Wijaya's evaluation, the Board received similar findings, the Board could impose the same penalty in this case. On the other hand, unlike Tricarico, if the evaluation revealed no evidence similar to that found in the Tricarico case, then the Board could tailor the punishment more in keeping with those findings. In the interim, Mr. Kern noted there is a hospital system that is in dire need of Dr. Wijaya's services and a community in dire need of his services. He further assured the Board that this is not a scenario where there is any likelihood whatsoever where Dr. Wijaya will engage in any wrongdoing pending additional testing. In furtherance of this request, Mr. Kern asked the Board to consider the preliminary evaluation and testing that has already been done. He concluded by stating that the Board has the vehicle, the law, to order more evaluations, the opportunity, the willingness of Dr. Wijaya, and the ability to assure itself that the Board is performing its responsibilities to both Dr. Wijaya and the public in the appropriate manner.

A break was taken at 6:40 p.m.

In her closing argument, D.A.G. Berger reminded the Board that the Supreme Court of New Jersey has set forth the types of issues to be considered in mitigation, one of which is the victimization of the patient during treatment and the continued victimization thereafter. She suggested that the Board consider the five days of deposition questioning and the trial testimony was a continued victimization of F.B. D.A.G. Berger stated another factor to be considered was the failure to acknowledge any wrongdoing and that throughout these proceedings, Dr. Wijaya has been steadfast in maintaining he did nothing wrong. Additionally, he continued to blame the witnesses and claimed they were all lying. Similarly, she stated Dr. Wijaya has shown no remorse, no contrition or offered any admission of wrongdoing. This Board has found that there were at least eleven incidents of sexual intercourse between them. D.A.G. Berger cited several cases as precedent for revocation in this case.

Addressing the issue that the Board should order an evaluation and wait to make a decision, D.A.G. Berger argued that in the Tricarico case, there was no doubt that the decision was a suspension, the only question that remained was how long. If the Board determines that an assessment is necessary, she contended that this could be done after Dr. Wijaya was revoked or suspended.

In response, Mr. Kern pointed out that in Tricarico, the Board suspended the license and stayed the suspension pending evaluation. There was no active suspension. The Board, after finding him guilty, voted to actively

suspend. At that time he testified to having sex. Mr. Kern argued there were no differences from Tricarico and this case.

The suggestion that Dr. Wijaya ought to be punished because he did not show his remorse, according to Mr. Kern, was absurd. He argued to follow that logic to its ultimate conclusion would require someone who is actually innocent had to admit he is guilty in order to achieve justice. Mr. Kern argued this would require someone to perjure himself. Mr. Kern suggested that the Attorney General had not provided the Board with any reason why Tricarico should not be followed. Although the Deputy cited cases where other penalties were imposed, she has not distinguished the Tricarico case sufficiently to convince the Board that the same penalty is inappropriate here.

D.A.G. Berger responded by explaining that the report of Dr. Kafka is flawed. Dr. Kafka only saw Dr. Wijaya on one occasion, for a seventy-five minute interview. He failed to review all the materials, including the report of Schwartzberg and Dr. Wijaya's testimony. The report includes no diagnosis, sorrow or plan of treatment. With all the inherent flaws, D.A.G. Berger believed the report offered no insight to help the Board make its determination. As for the polygraph, D.A.G. Berger contended that on its face it was not reliable or admissible in the proceeding. In contrast, Mr. Kern asked the Board to consider the polygraph report as something to assist the Board in its deliberation. Additionally, the psychological report is offered to convince the Board that additional evaluation would be fruitful. He suggested that the Board select its own evaluator and let that evaluator assist the Board in determining whether there were any underlying issues, just as it did in the Tricarico matter.

Mr. Farrell announced that after considering the arguments of both parties, the Board will not permit the polygraph report into evidence, but would accept Dr. Kafka's report solely for purposes of mitigation and will give that report its appropriate weight.

The Board voted to go into executive session. 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 announced the following motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED THAT DR. WIJAYA'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN NEW JERSEY BE REVOKED. DR. WIJAYA IS ASSESSED COSTS IN THE AMOUNT OF \$38,529.41 AND A CIVIL PENALTY OF \$10,000. IN ORDER TO ALLOW THE SAFE TRANSFER OF PATIENTS TO OTHER LOCATIONS, EFFECTIVE 30 DAYS FROM TODAY. DURING THAT PERIOD OF TIME, THERE WILL BE NO NEW PATIENTS IN ANY SETTING AND DR. WIJAYA SHALL NOT TAKE ANY HOSPITAL SERVICE ASSIGNMENT AND SHALL NOTIFY PATIENTS HE WILL NO LONGER BE AVAILABLE FOR THEIR CARE.

Mr. Kern made an oral motion requesting that the Order be stayed for a period of 14 days to permit the processing of papers to the Appellate Division.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE REQUEST FOR A STAY.

D.A.G. ITEMS NOT ON AGENDA

1. ALMAHAYNI, Rania, M.D., License #MA57196 (Without Appearance) WARHAFTIG, Jeri, D.A.G.

D.A.G. Warhaftig reported to the Board that she was present in the Doctor's absence to present a settlement proposal which more appropriately should be considered in closed session. However, prior to presenting the settlement proposal, the Attorney General's Office requested that the exhibits to the Certification in this matter be sealed from the public record. This matter will be before the Board for hearing, but due to privacy concerns, the exhibits should be sealed even though the application itself should be a public record.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO SEAL THE EXHIBITS ATTACHED

TO THE CERTIFICATION.

The Board voted to go into executive session to hear a settlement offer in this matter.

**2. ISIDRO, Godofredo S., Jr., M.D. (Counseling Deputy: DICK)
JOHNSON, William T., Jr., Esq., for Respondent
LEVINE, Debra W., D.A.G.**

D.A.G. Levine left the room while the Board discussed and deliberated on this matter.

The Board received as a handout D.A.G. Levine's March 12, 2002 letter to the Board; Mr. Johnson's March 11, 2002 letter with attachments; and the Provisional Order of Denial of Residency Training Permit filed February 28, 2002.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FINALIZE THE PROVISIONAL ORDER WITH A FINAL ORDER OF DENIAL OF DR. ISIDRO'S RESIDENCY TRAINING PERMIT.

REPORT OF INTERIM AND FINAL ORDERS FILED WITH THE BOARD

1. ANDUJAR, Edward, M.D., License #MA52473 (Vineland, NJ)

ORDER OF TEMPORARY LIMITATION OF LICENSURE filed February 20, 2002 with an effective date nunc pro tunc February 14, 2002. The matter was opened to the Board on application for temporary suspension or other limitation of Dr. Andujar's license to practice medicine. The application alleged that Dr. Andujar's maintenance of an unsafe and unsanitary practice location he controlled, and his providing and permitting others to provide medical care and services from that practice location, constituted gross and repeated acts of malpractice, negligence, incompetence, professional misconduct and failure to maintain drugs in a sanitary manner, in accord with standard pharmaceutical practices and in appropriate storage conditions. It alleged seven counts of unsanitary premises for the practice of medicine, violation of a prior Board Order prohibiting him from treating patients for Lyme disease, and submitting billing to Medicaid for not less than 148 claims for Lyme disease diagnosis and treatment, failure to divest majority ownership interest in corporate practice entity in violation of prior Board Order, operation of an unregistered narcotic treatment program utilizing methadone and the use of buprenorphine in treatment of narcotic addiction in violation of federal law. It was ordered that Dr. Andujar may not practice medicine at the 516 East Wood Avenue facility in Vineland, New Jersey or open or practice at any other facility or location in New Jersey unless and until he receives approval from the Board after an inspection by the Enforcement Bureau and a demonstration to the Board's satisfaction that the facility complies with all federal, state and local laws and regulations concerning the health, safety and welfare of New Jersey patients and is operated in a manner which ensures his practice will comport with public health, safety and welfare regarding the manner in which patients are to be treated. This Order is effective NUNC PRO TUNC, February 14, 2002, the date on which an oral order was entered on the record, and shall be effective pending consideration of the Committee's action by the Board at its next meeting on March 13, 2002. EFFECTIVE DATE: February 14, 2002

3. KOTTURI, Shiva K., M.D., License #MA59794 (Edison, NJ)

FINAL ORDER filed February 21, 2002. The Findings of Fact and Conclusions of Law set forth in the Initial Decision issued by Administrative Law Judge Edith Klinger dated November 26, 2001, are adopted in their entirety, with the exception that the finding that Dr. Kotturi provided services at Healthways for three years is modified to a finding that he provided services at Healthways for a minimum period of twenty months (February 1996 to October 1997). Judge Klinger found that Dr. Kotturi ordered and repeatedly ordered unnecessary and unjustified immunological tests and spirometry tests, provided treatment which constituted gross negligence and gross malpractice, maintained incomplete and grossly inadequate patient records, and was employed by a non-physician who was allowed to control his practice of medicine. The Board ordered his license be suspended for five years, commencing on February 25, 2002. The first two years shall be an active suspension, the remaining three years stayed to be served as probation contingent upon his compliance with all terms and conditions of this Order. Assessed a penalty of \$52,500 and \$6,832.07 costs to be paid in full within 30 days. He may apply for

installment payments, which will include interest, and payments must not exceed the five-year period of suspension. During the period of active suspension, he must take and successfully complete Board-approved courses in medical recordkeeping and medical ethics. Prior to resuming any practice of medicine during the period of probation, he must appear before a Committee of the Board to prove his compliance with the conditions of this Order and demonstrate to the Board's satisfaction he is competent to resume the practice of medicine. The Board reserves the right to place restrictions or limitations on any resumed practice of medicine or order retraining or additional education if he cannot demonstrate his competence. EFFECTIVE DATE: February 25, 2002

4. MILLER, Debbie L, D.O., License #MB60463 (Toms River, NJ)

CONSENT ORDER OF VOLUNTARY SURRENDER OF LICENSURE filed February 13, 2002. The Board received information from the Physicians' Health Program of the NJ Medical Society that Dr. Miller admitted a relapse into the abuse of controlled dangerous substances and had entered an in-patient treatment program on or about December 21, 2001. Dr. Miller sought to surrender her license without prejudice. The Board ordered she be granted leave to surrender her license to practice medicine and surgery in the State of New Jersey for a minimum period of six months from entry of this Order. Prior to any restoration of her license, she must appear before a Committee of the Board to demonstrate her fitness to re-enter the practice of medicine and that she is not then suffering any impairment or limitation which would affect her ability to practice. EFFECTIVE DATE: February 13, 2002

5. NARANJO, Percy, M.D., License #35780 (81/Lapsed) (Huntington Park, CA)

FINAL ORDER OF DISCIPLINE filed February 19, 2002. Dr. Naranjo's license to practice medicine and surgery in the State of New Jersey is revoked. The New Jersey Board's action was based on the stayed-revocation of his California license and his being placed on probation for two years after admitting to every allegation of gross negligence, repeated negligent acts, incompetence, prescribing without medical indication and excessive prescribing. Dr. Naranjo's license to practice medicine in the State of New York was also revoked based on the California action. EFFECTIVE DATE: February 19, 2002

6. REITER, Raymond D., M.D., License #MA54583 (East Rutherford, NJ)

FINAL ORDER filed February 22, 2002 with an effective date of October 10, 2001, the date of the oral announcement of this Order on the record. On December 28, 1999, Dr. Reiter entered into an Interim Consent Order with the Board wherein he surrendered his license to practice medicine and surgery in the State of New Jersey. His surrender based on his arrest in Bergen County on December 3, 1999 and again on December 9, 1999 on charges of sexual assault and criminal sexual contact with four patients. On September 12, 2001, the Attorney General filed a motion to amend the Verified Complaint to add Dr. Reiter's conviction of one Count of Criminal Sexual Assault in the second degree, four Counts of Criminal Sexual Assault in the fourth degree and the withdrawal of Counts II and III of the Verified Complaint. The motion also sought Summary Decision on all remaining counts of the newly amended Verified Complaint. The Board found that the conviction constituted a conviction of crimes of moral turpitude and demonstrated he had engaged in gross and repeated acts of malpractice, professional misconduct and was incapable of discharging the functions of a licensee in a manner consistent with the public health, safety and welfare. The Board ordered that Dr. Reiter's license to practice medicine and surgery in the State of New Jersey be revoked as of the oral announcement of this Order on the record on October 10, 2001. No application for reinstatement of licensure will be considered for five years from the date of revocation. Prior to any reinstatement, he must appear before a Committee of the Board. Assessed a \$25,000.00 penalty and investigative costs of \$4,433.49. EFFECTIVE DATE: October 10, 2001

7. SCOTT, Gerald Alan, M.D., License #MA21274 (Edison, NJ)

CONSENT ORDER filed March 4, 2002. An Administrative Complaint was filed alleging in a single Count that Dr. Scott, throughout his care and treatment of patient M.A., over an eight-year period, engaged in gross or repeated acts of negligence and inadequate recordkeeping practices. Dr. Scott has made representation to the Board that he will no longer perform cheek implant surgery or brow lift surgery in an office setting. The Board

ordered that he be reprimanded for inadequate recordkeeping in his treatment of patient M.A. He must successfully complete a Board-approved recordkeeping course within six months of entry of this Order and pay investigate costs of \$4,983.40. EFFECTIVE DATE: March 4, 2002.

8. SMITH, Alphonso L., M.D., License #MA35815 (Woodbury, NJ)

FINAL ORDER SUSPENSION OF LICENSE filed February 13, 2002. Dr. Smith's license to practice medicine and surgery in the State of New Jersey is suspended for five years, the first two years to be an active suspension and the remainder stayed to be served as probation, contingent upon his compliance with all other provisions of this Order. Assessed \$13,000 costs and penalties. He must immediately arrange for dissolution of all professional service corporations and withdraw from all general business corporations in which he holds a financial interest offering any form of health care service. He must forego any attempt to bill or collect for services and withdraw all claims for payment of such alleged services. Prior to any petition for reinstatement of his license, he must submit proof to the Board of completion of the financial assessment and proof of satisfactory completion of all other remedial requirements set forth in this Order. Action based on the Board's finding that he violated the laws and regulations of this Board in ordering and/or performing unnecessary medical testing, personally or at his direction and/or with direct or indirect approval allowed misrepresented patient treatment dates on insurance claim forms, did not prepare and maintain truthful patient records and failed to implement procedures for the professional management of a medical office. EFFECTIVE DATE: February 13, 2002

9. WESLEY, Joseph W., M.D., License #MA36493 (Woodcliff Lake, NJ)

FINAL DECISION AND ORDER filed February 13, 2002 with an effective date NUNC PRO TUNC of December 12, 2001 when orally announced on the record at the December 12, 2001 Board meeting. Dr. Wesley's license is revoked. He may not apply for reinstatement for two years. Prior to any reinstatement, he must submit to a complete neuropsychiatric and psychometric evaluation by a Board-approved evaluator to determine his fitness to resume the functions of a licensee. He must also successfully pass a Board-approved ethics course and appear before a Committee of the Board. Assessed a \$5,000 penalty and costs to be determined. He must cease and desist from engaging in the practice of medicine. Any continued practice shall be deemed unlicensed practice and render him subject to enhanced penalties. EFFECTIVE DATE: December 12, 2001

Additional matters which are not considered public reports were filed with the Board Office.

The meeting adjourned at 8:25 p.m.

Respectfully submitted,

David M. Wallace, M.D., Chairperson
for Open Disciplinary Matters

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