NJ STATE BOARD OF MEDICAL EXAMINERS

OPEN DISCIPLINARY MINUTES

- MARCH 14, 2001

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, March 14, 2001 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor, Conference Center, Trenton, New Jersey for OPEN DISCIPLINARY MINUTES, open to the public. The meeting was called to order by William B. Harrer, M.D., B.L.D., Chairperson for Open Disciplinary Matters.

PRESENT

Present were Board Members Bradley, Danser, DiFerdinando, Haddad, Harrer, Patel, Reid, Ricketti, Robins, Rokosz, Trayner, Walsh and Wallace.

EXCUSED

Board Members Chen, Desmond, Farrell, Fernandez, Huston, Lucas, Perry and Weiss.

ALSO PRESENT

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

RATIFICATION OF MINUTES

The Minutes from the February 14, 2001 Board meeting were approved with clerical changes.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

WATSON, Jerrod C., Athletic Trainer (Counseling Deputy: FLANZMAN)
ASHLEY, Thomas R., Esq., for Respondent
RUBIN, Michael S., D.A.G., for Complainant

This matter was set down for hearing in the matter of Jerrod C. Watson, A.T. Enclosed for Board review was the February 20, 2001 Partial Initial Decision of ALJ Diana C. Sukovich. The matter was initiated based upon a Complaint filed September 24, 1999 alleging a conviction of a crime of moral turpitude and lack of good moral character. Enclosed were the September 24, 1999 Complaint, Respondent's Answer and Separate Defenses filed October 20, 1999; and the Attorney General's Exceptions filed February 28, 2001. To date, no Exceptions were filed by Respondent.

D.A.G. Kenny explained that this matter was back before the Board on the ALJ's initial decision against which the Attorney General's office filed exceptions. To date, no exceptions have been filed on behalf of respondent, Mr. Watson. The Attorney General was prepared to proceed today, however, the Attorney General's office was contacted by Attorney Ashley, attorney for Respondent, informing the Attorney General that he was going to be in criminal court today. Attorney Ashley requested an adjournment and forwarded to both the Board office and the Attorney General's office a certification from Mr. Watson indicating he will agree not to practice as an athletic trainer if this matter were adjourned. Although Attorney Asher represents that the Attorney General agreed to the adjournment, that is not the case. The Attorney General, in light of Mr. Watson's subsequent certification that he will not practice, will agree to

the adjournment provided that it be set down for hearing on April 20, 2001, with no further adjournments to be considered and whether or not Mr. Watson is available to appear.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ADJOURNMENT UNDER THE TERMS OUTLINED BY D.A.G. KENNY AND BASED ON THE CERTIFICATION BY MR. WATSON.

For the record, D.A.G. Flanzman stated that at this point, Respondent has not filed any papers of exceptions to the decision, nor has he responded to those filed by the Attorney General's office. D.A.G. Flanzman suggested that the Board consider setting a date certain for submission of any written papers by Mr. Watson given that the adjournment was granted.

The Board stated that all submissions should be submitted by March 30.

While the Attorney General's office recognized the Board's right to set a new date for a submission by the Respondent, D.A.G. Kenny reserved the Attorney General's right to object and attempt to suppress any late submissions.

CARAGINE, Paul, M.D. (Counseling Deputy: LEVINE)
KOZYRA, Barry A., Esq., for Respondent (Proceedings recorded by Marie Shea,
HARPER, Douglas J., D.A.G., for Complainant C.S.R., SILVER REPORTING SERVICES)

Matter set down for final hearing in the matter of Paul Caragine, M.D. Enclosed for Board review was the December 4, 2000 Initial Decision of ALJ Mumtaz Bari-Brown. The matter was initiated based upon a Verified Complaint filed November 18, 1998, and the following Complaints filed with the Office of Administrative Law which were a Verified Complaint (Amended) dated September 21, 1999 and Verified Complaint (Second Amended) filed January 14, 2000 charging Respondent with 12 counts of gross and repeated malpractice, negligence or incompetence in the performance of orthopedic examinations on 11 female patients. The Verified Complaint (Second Amended) was attached to D.A.G. Harper's response to Respondent's Exceptions. This Verified Complaint (Second Amended) included all the allegations the Judge ruled on and, therefore, the Verified Complaint and Verified Complaint (Amended) were not provided to the Board, but were available at the meeting.

Also enclosed for the Board's review were the Orders of Temporary Limitation of License filed December 7, 1998 and December 29, 1998; Respondent's Verified Answer filed December 1, 1998; Answer to Amended Complaint filed at O.A.L. October 22,

1999; Respondent's letter memorandum in lieu of a more formal brief to serve as Dr. Caragine's Exceptions and Objections to the Decision of ALJ Bari-Brown; Respondent's Brief in Opposition to the Application for the Suspension or Revocation of Dr. Caragine's license with Findings of Fact and Conclusions of Law; and Counsel for Dr. Caragine's July 14, 2000 letter to Judge Bari-Brown in reply to the Complainant's Brief on which Respondent also relies. Also enclosed for Board information were letters dated December 21, 2000 and January 25, 2001 from Executive Director Roeder concerning the scheduled appearance. In addition, enclosed were D.A.G. Harper's January 30, 2001 letter; D.A.G. Harper's Certification concerning the costs in this matter; and the Attorney General's brief and appendix in opposition to Respondent's exceptions to the Initial Decision of ALJ Bari-Brown. This matter was adjourned from the February 14, 2001 meeting.

As a preliminary matter, the attorney for the Respondent, Mr. Kozyra, began by referring to his previous letter dated February 26, 2000 which clearly outlined Respondent's position to the exceptions and objections to ALJ Bari-Brown's decision. Attorney Kozyra informed the Board that he would be addressing the first two of the four points, and that Dr. Caragine would discuss the last two points.

Respondent's attorney urged the Board to focus on the events between January 14th and February 1st, since this is the time period in which serious flaws occurred at the hearing. He stressed that on January 26, 2000 --- only six days before the hearing, Respondent received additional material. Additionally significant,

Respondent learned at this time that one of his witnesses, a Board-certified orthopedic physician, was unable to appear and prepare a report as required by ALJ Bari-Brown due to personal reasons. Appearing before the Judge on two occasions requesting additional time, the Judge denied the requests and instructed Respondent to find another expert and work through the problem. By February 14, 2000, Respondent obtained a report from another orthopedist, however, the Judge barred this report as being untimely. Respondent argued that he was prejudiced because his independent expert was not allowed to testify or submit a report. Respondent acknowledged that Dr. Caragine was available and did testify, but that was not enough because he is viewed to be bias. There was no showing of what prejudice might have occurred by the State had the report been allowed. A deposition could have been taken. In light of the barring of the expert report and testimony, Respondent maintains that an incomplete record was being presented to the Board. Additionally, the ALJ's decision is flawed because it was rendered absent this expert testimony. Since the record is patently flawed, and for that reason alone, the Board should reject the decision and remand it for a new hearing before a different Judge.

D.A.G. Harper first addressed the manner in which Respondent has chosen to proceed. He pointed out that having the licensee, while represented by counsel, present the legal exceptions to the decision was unusual. The Attorney General, however, did not have any objections provided it was made clear that any presentation by Dr. Caragine is in the form of legal argument within the four corners of the exceptions filed and consistent with the direction of the Board's Executive Director's letter explaining this proceeding. He urged the Board to instruct Dr. Caragine that the proceeding was not the opportunity to present new testimony. The hearing is limited to argument in support of the exceptions already filed and before the Board. The Attorney General understood that some latitude must be accorded to a non-lawyer, however, it would object to any testimony offered by the Respondent.

The Attorney General began his argument by withdrawing the exception filed insofar as it related to seeking costs. In light of bankruptcy proceedings currently underway, any costs awarded would be discharged.

D.A.G. Harper continued by advocating that this case was decided over a 10-day hearing, which resulted in findings of fact and conclusions of law that should be adopted in their entirety by the Board. The Attorney General, however, maintains that there should be a modification of the Judge's decision in the assessment of $55,000 in penalties as a second offender. This is the second time Dr. Caragine has been before the Board and charged with serious conduct. In 1994, this Board took action on findings of indiscriminate prescribing of CDS, in which Dr. Caragine received a one-year active suspension and a one-year stayed suspension. This action now follows that.

D.A.G. Harper continued that the Judge listened and assessed the credibility of the testimony of 11 women before her. The women patients testified about the evaluations that were requested from New Jersey Disability Determinations in order to determine whether Social Security benefits were available. There were eight women from D.D.S. and three other women who were there for other evaluations. Those evaluations occurred between 1987 and 1998. There were 11 individuals over an extended period of time, all of which testified as to inappropriate vaginal area touches or breast touchings. The Administrative Law Judge listened to the testimony, made findings of fact and determined that those inappropriate and improper touches occurred. D.A.G. Harper noted that the nature of the breast touchings were not as the doctor suggested "inadvertent touchings", the testimony consistently indicated that they were performed with a cupping of both breasts with his palms on the nipples. Respondent alleged he was evaluating for costochondritis " an inflamation of the joints between one of the ribs and the sternum. Testimony revealed that one does not have to touch the breast in performing such an evaluation. In fact, Dr. Ratner testified he looked at every record, nothing was noted to substantiate these suggestions. He further testified that it is not a part of the routine evaluation of an orthopedic evaluation, or as a part of the disability determinations. In spite what Dr. Caragine said, the literature indicated the touches were appropriate. There was explicit testimony from two representatives of D.D.S. who went to Dr. Caragine and told him not to perform these touches. D.A.G. Harper pointed out that in the record there is a memorandum by one of the two individuals who went to Dr. Caragine's office, the written words of a D.D.S. individual, who in November 1996 instructed Dr. Caragine to cease from performing these examinations. The ALJ found that Dr. Caragine

knew of the D.D.S. directive in November and the records showed that several individual touches occurred one month after that up to a period of 6 months following. Dr. Caragine totally and willfully disregarded the D.D.S. directive. Also contained in the record was one of the two documents given to Dr. Caragine by D.D.S. which clearly stated in orthopedic examinations "[d]o not perform pelvic, rectal and breast exams until specifically requested". As if the improper touching isn't sufficient, D.A.G. Harper asked the Board to consider other behavior of Dr. Caragine. The record revealed that Dr. Caragine made verbal comments to women that included references to a woman's breasts as boobs, asked whether a women's job required brains, commented how lucky he was to have two such beautiful women, and asked another woman if she would like to do to him what Monica did to Bill.

The ALJ characterized Respondent's testimony as plagued with inconsistencies and totally lacking credibility. By way of example, the Judge had before her a letter that Dr. Caragine sent to D.D.S. after the initial complaint. In that letter he said something to the effect that nothing like this had ever occurred, when evidence in the record demonstrated that it had, one year before that letter, in which an identical complaint alleged sexual improper touchings and sexual abuse.

Addressing the issue of the lack of an expert report at the hearing, the Attorney General argued that the argument was without merit, and at best, was a "red herring". First, he noted that more than one year passed before the filing of the Complaint before the Board until the actual date of trial. It also was noted that Respondent had two experts at that time, Dr. Weinbaum and Dr. Vanroth. On January 12, at the request and motion of the Attorney General, a specific Order was entered by the ALJ saying all expert reports and experts were to be identified by January 24. On January 21, three days before that deadline, Dr. Caragine certified answers to interrogatories that a Dr. Copa would be available to testify regarding no standards of deviation of care. Shortly thereafter, Respondent informed the Court that the "new" expert was unavailable for personal reason. No explanation was ever offered; no indication was ever advanced as to why the individual would not be appearing. Then at the eleventh hour, (after the Attorney General listed his case; the judge heard five testimony days; all of the witnesses had testified including the experts on behalf of the Attorney General; and 13 or 14 witnesses testified on behalf of Dr. Caragine) and then, on February 14, midway through testimony, Mr. Kozyra asked for leave to produce an expert. The Attorney General objected and the judge denied the request. D.A.G. Harper stated that if this Board decides that the ALJ should have given an adjournment, the Board will be sending the message to an ALJ that under any circumstances, whether the request to produce an expert or report is timely and contrary to the ALJ's directives, would permit a serious protracting disruptive event to each of its cases. The Attorney General submitted that should not be the case, and Dr. Caragine had the right to get on the stand and offer his professional opinion, noting there were experts in that record and in support of his position. Even if respondent had another expert report, the Attorney General maintained that it would not have made a difference in this case for the simple reason that on the facts in this case, the Judge found that Dr. Caragine was told not to do the touchings, was told clearly, and he continued anyway. What the Board has before it is a fully developed record over an extended 10-day trial which was the subject of substantial submissions and adverse findings of fact and conclusions of law and serious findings adverse to Dr. Caragine. Respondent does not like them, but it does not mean that the ALJ's findings of fact and conclusions of law are riddled with error and should be rejected. To the contrary, the Attorney General urged the Board to accept the decision in its entirety.

Respondent took grave exception to the Attorney General's position and argued that the issue with respect to the lack of an expert was critical. While the Attorney General would have the Board believe that it was a ploy in order to wait for all the evidence, then make the expert unavailable is incredulous. He argued this was a simple case in which Judge Bari-Brown's decision to preclude Respondent's expert was prejudicial, unfair and a denial of due process rights of the Respondent. He argued further that D.A.G. Harper wanted the Board to believe that calender issues should not be considered. He failed, however, to accurately portray what happened was not the fault of the Respondent, yet he must suffer the consequences. Mr. Kozyra implored the Board to set aside the decision and remand the matter back so that Dr. Caragine could present his expert.

The Board voted to go into executive session for advice of counsel and deliberation. Deputies, other than counseling staff, left the room, along with all other members of the public present.

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

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO AFFIRM IN ITS ENTIRETY THE FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE ADMINISTRATIVE LAW JUDGE IN THIS MATTER.

Dr. DiFerdinando was not present for discussion and vote in this matter.

Chairman Harrer announced that the Board was prepared to start the hearing for mitigation and asked if the parties were prepared. Mr. Kozyra requested a ten-minute adjournment to speak to counsel. The Chair permitted the request.

In mitigation, Mr. Kozyra stated that he submitted to counsel the following: (1) Letter dated March 18, 2001 from Dr. Czarnicki, who served as Dr. Caragine's chaperone since December 1998, and explaining Dr. Caragine has fully complied with this Board's directive for the last 28 months; (2) Newspaper article of New Jersey Star Ledger dated December 14, 2000 dealing with the restrictions placed on Bernard Eisenstein who was accused of sexually assaulting two patients. According to that article, his continued practice with a chaperone until the case was decided was ordered by the Board; and (3) a January 20, 2000 New Jersey Star Ledger article dealing with this Board's desire to have changes made to current medical practice and offer re-training as an area where the Board placed great emphasis on doctors educated earlier. He pointed out a quote made by Director Mark Herr. Mr. Kozyra offered these three exhibits.

D.A.G. Harper objected to the introduction of R-1. With regard to R-2 and R-3, D.A.G. Harper pointed out that it was inappropriate to try cases based on newspaper articles whose reporting may or may not be correct. He stated the Board could look at the facts of the case of Eisenstein as contained in its records. The third submission, according to the Attorney General, seemed to be unrelated to the facts of this case since the article dealt with corrective medical education, that is, gaps in medical knowledge.

Chairman Harrer over-ruled D.A.G. Harper's objection and ruled that the Board will review all three exhibits.

Counsel for Respondent began by asking the Board to consider that Dr. Caragine has been a doctor for many, many years and has practiced under restrictions as directed by the Board without any incident whatsoever. He further noted that he was not reported to the Board by any patient complaint indicating harm or any type of problem whatsoever. Judge Bari-Brown recommended revocation of license. Judge Bari-Brown, however, did not think about rehabilitating Dr. Caragine. Respondent has submitted in the papers an alternative to revocation by having the doctor agree to refrain from examining any female patient, except in the case of an emergency. Dr. Caragine was prepared to make that a condition of his practice, as well as to stipulate to no examinations for costochondritis or cauda equina syndrome. He further noted that D.A.G. Harper thought this case had nothing to do with CME for someone out of step with the times. To the contrary, Mr. Kozyra stated that one of the witnesses called to testify stated that Dr. Caragine was "way out of touch with the times" and that what was appropriate in the time in which he was trained is not appropriate today. Dr. Caragine did undergo CME under the Board's direction and not a further incident of any type has been reported.

Counsel asked that the Board consider Respondent's long history of commitment to his patients and to the community. The alleged conduct involved here is not likely to recur. Dr. Caragine is willing to accept the limitations on his practice and these would allow him to continue productively. He would accept whatever education the Board mandates. Counsel stressed that this is a case that is appropriate for re-education, not revocation. He reminded the Board of other decisions made by the Board and asked that the ruling in this matter be consistent with its prior decisions. Dr. Caragine has showed himself as amendable to corrective actions by this Board. Revocation is the end of a license for someone his age and is truly the end. Dr.

Caragine successfully complied with the rehabilitation the Board imposed. Mr. Kozyra concluded by stressing that Dr. Caragine is willing to accept whatever limitations the Board has to be rehabilitated.

D.A.G. Harper began by pointing out that characterizing Dr. Caragine's behavior as "out of step with the times" is in other words asking the Board to decide that it doesn't matter what Respondent did because maybe with the appropriate restrictions, he will behave himself in the future. Respondent is asking the Board to look at what he did, recognize that the Board required a chaperone and the chaperone says everything is okay. D.A.G. Harper stated that while it is true that there have been no subsequent complaints, as the Board well knows, a preliminary limitation of licensure is for one reason only, the status quo has to be maintained and individualized balancing of competing considerations at a preliminary point in time until a record can be developed. The record has been developed, and the Board has determined that the findings of fact and conclusions of law are correct.

D.A.G. Harper stated that counsel for Respondent was really saying Dr. Caragine should be given another chance. D.A.G. Harper reminded the Board that Dr. Caragine was given a second chance already after hearing in 1984 when the Board imposed a limited disciplinary action. He stated everyone is aware chaperones do not always work. He asked that the Board look at the nature of the conduct in this case involving 11 women within 10 years. The conduct all occurred in the context of examinations with women, most of which were for DDS determination. The patients were captives and had a vested interest in being quiet. His examination would not be to their benefit. There were no complaints until DDS said something was wrong. D.A.G. Harper noted that the Board has now determined twice that this practitioner is guilty in multiple instances of patient misconduct and patient abuse. That conduct effects basic standards of professionalism and disrespect of patient dignity. He argued there is a disregard in this case for individual rights, a demonstration that the conduct was done and evidenced an intent to abuse not only the individual patient, but the fundamental nature of the physician/patient relationship. He referenced the Board to various examples in the record in which there was patient abuse and harm. He concluded by reminding the Board of its long history of taking strong stands with physicians who violate patient rights and respect. He believed that occurred here, and the law provides the sanction of revocation and penalties under these circumstances.

Dr. Caragine was sworn and made remarks to the Board. He expressed his disappointment with the conclusions reached by the Board and asked the record to reflect that he honestly and sincerely did not intend any harm and that he had no sexual motivation or interest since his beautiful wife who in his view is much more attractive than the ladies in this matter. He testified that he fell down in 2 areas. He stated he should have warned and told these people ahead of time what he was going to do. Dr. Caragine testified that he went to medical school in 1960's and he wasn't as sensitive then as now to patients feelings. He attempted to make jokes and humor believing this would help to comfort the patients and make them chuckle. He admitted, however, that this was wrong and that he screwed up. He asked the Board to recognize that he has changed and he has tried to be more business-like and changed the way he does things. Dr. Caragine asked the Board to allow him to continue to work. He has been in bankruptcy from 1994 since DEA never returned his card until two weeks ago. He has not had normal work for seven and a half years. He is broke and wants to go back to work and continue to save his home which is already in foreclosure.

Dr. Caragine was questioned by D.A.G. Harper concerning whether he acknowledged any responsibility for the inappropriate touchings as found by the Judge. Dr. Caragine stated it was never his intent. If he did anything wrong, he was sorry it was interpreted that way.

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 and announced the following decision:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REVOKE THE LICENSE OF PAUL J. CARAGINE, JR., M.D., EFFECTIVE MARCH 21, 2001. THE BOARD WILL NOT CONSIDER

AN APPLICATION FOR REINSTATEMENT OF LICENSE FOR A MINIMUM OF 5 YEARS FROM THE DATE OF THIS ORDER. THE BOARD IMPOSED A CIVIL PENALTY OF $55,000 WITH NO COST BEING ASSESSED. A DETAILED WRITTEN ORDER WILL FOLLOW.

Dr. DiFerdinando was not present for discussion and vote in this matter.

Mr. Kozyra asked that the Board consider a stay of the decision pending any appeal Dr. Caragine may have.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY A STAY OF THE BOARD'S DECISION.

Dr. DiFerdinando was not present for discussion and vote in this matter.

OLD BUSINESS

1. GANGEMI, Frederick, M.D.

In accordance with the Consent Order filed November 9, 2000, Dr. Gangemi shall successfully undertake 200 hours of community service in a non-medical capacity in a position approved by the Board. Said hours must be completed within 12 months of the entry of the Order. Enclosed for Board consideration were the November 9, 2000 Consent Order and a February 21, 2001 letter submitted by Michael Festa, Ph.d., CADC, Health Officer, County of Essex, Department of Health, through the Medical Society, agreeing to arrange for Dr. Gangemi to complete his community service through their Department, noting that they will notify Dr. Baxter of Dr. Gangemi's hours and type of service on a weekly basis as they have done with others who have been assigned to their Department. He further stated in his letter that the Department also works closely with the Second Chance Program run through the Essex County Sheriffs Department. The Board also received a clarification letter dated February 21, 2001 that Dr. Gangemi would not be doing any hands on work. In addition, enclosed was D.A.G. Warhaftig's February 27, 2001 letter to Dr. Baxter outlining the information typically required by the Board in assessing an appropriate community service plan. The Administrative Office contacted the PHP for additional information concerning the community service. The Board received as a handout a March 12, 2001 letter from Dr. Festa advising the Board that Dr. Gangemi would be doing lectures at Turning Point on "Drug and Alcohol Abuse" and lecturing at the Essex County Police Academy on the same topic. Dr. Festa notes in his letter that these lectures will in no way involve Dr. Gangemi giving medical care/advice as they are pre-structured lectures which are given on a routine basis and the outline is prepared and Dr. Gangemi will simply be following an outline. In addition, Dr. Gangemi would be doing filing and other routine office work. Dr. Festa has set a schedule for Dr. Gangemi for 4 hours each Tuesday, and Dr. Gangemi is aware that this schedule is subject to change depending on Dr. Festa's office's schedule.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO TABLE DECISION AND REQUEST ADDITIONAL INFORMATION SPECIFIC TO WHAT DR. GANGEMI'S ROLE WOULD BE AND WHETHER HE WOULD DISCLOSE HIS STATUS AS A RECOVERING ADDICT AND THAT THE PRESENTATION WAS FROM THAT PERSPECTIVE AND NOT AS A LICENSEE.

ANNOUNCEMENT

1. FEDERATION MEETING

Dr. Wallace will be able to go to the Federation and will not be present at the April Board Meeting and will not be able to attend the Guadalajara visit. It was also noted that Dr. Gluck may also have an interest in attending.

THE BOARD, UPON MADE AND SECONDED, VOTED TO APPROVE DR. WALLACE AND DR.

GLUCK'S ATTENDANCE ON BEHALF OF THE BOARD AND ADMINISTRATIVE OFFICE AT THE FEDERATION MEETING.

BOARD MEMBER ITEMS NOT ON AGENDA

1. STATUS OF NEWSLETTER

Executive Director Roeder informed the Board that the information has been forwarded to the media section of the Division. The articles will be reviewed and set up as a prototype. It will be returned to the Administrative Office for review. He also pointed out that the person who handled this in the past has resigned, so the Division is short a person.

2. BOARD ATTENDANCE AT MEETINGS

Dr. Rokosz again reminded the Board members of the importance of attendance at Board meetings, noting that the Board must have a good turn out in April. If anyone cannot make it, they must have a good reason. For the April 20th Board meeting, it was noted that closed session would be done in the morning, followed by the Open Board meeting and concluding with the Open Disciplinary.

REPORT OF NEW COMPLAINTS FILED

1. HIRSCHBERG, Stephen, D.P.M., License #MD875 (Hackensack, NJ)

Complaint filed February 26, 2001 based on alleged Violation of and failure to comply with conditions of Consent Order filed June 25, 1998.

2. TABOTABO, Armando, M.D., License #32015 (Keyport, NJ)

Second-Amended Verified Complaint filed February 28, 2001 alleging that Respondent wilfully violated the Board's prior Order and compromised the public health, safety and welfare by providing medical services to patients outside the presence of the Board-ordered monitor and thwarting efforts on behalf of the practice monitors to ascertain the full extent of the unmonitored practice. The Second-Amended Verified Complaint further alleges that Respondent was practicing medicine without medical malpractice liability insurance coverage.

REPORT OF INTERIM AND FINAL ORDERS FILED WITH THE BOARD

1. BASSO, Nicholas V., Jr., D.O., License #MB28583 (Marlton, NJ)

CONSENT ORDER OF VOLUNTARY SURRENDER OF LICENSURE filed February28, 2001. The Board recently received information that Dr. Basso had admitted a relapse into a prior substance abuse problem. This information was developed by investigators from the Enforcement Bureau of the Division of Consumer Affairs in the course of their investigation into allegations that Dr. Basso misappropriated and forged prescription blanks belonging to his physician employer. Dr. Basso has been ineligible to practice medicine in the State of New Jersey since September 1999 having voluntarily agreed to the indefinite suspension of his license in a Consent Order entered at that time. The Board has granted Dr. Basso leave to immediately surrender his license to practice medicine and surgery in the State of New Jersey. Prior to any restoration of license, he must appear before a Committee of the Board to discuss his readiness to reenter the practice of medicine and provide evidence that he is capable of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare and that he is not then suffering from any impairment or limitation resulting from the use of controlled dangerous substances which could affect his practice. EFFECTIVE DATE: February 28, 2001

2. BYRNE, Rodolfo, M.D., License #41381 (Brooklyn, NY)

FINAL ORDER OF DISCIPLINE filed February 26, 2001. In December 1999, Dr. Byrne entered into a Consent Order with the New York Board of Professional Medical Conduct in which he admitted to seven charges of professional misconduct. Specifically, he admitted to practicing medicine with incompetence on more than one occasion by inadequately evaluating, diagnosing and treating six patients. He failed to keep adequate documentation of physical examinations and follow-up treatment of six patients and either failed to obtain or failed to document the medical history of six patients. The New York Board suspended his license to practice medicine in that State for five years. The suspension was stayed to be served as probation under supervision of a practice monitor. A Provisional Order was filed with the NewJersey Board October 4, 2000 containing the Findings of Fact. Dr. Byrne's response to the Provisional Order was reviewed by the Board which determined further proceedings were not necessary in that no material discrepancies had been raised. The Board ordered that Dr. Byrne's license to practice medicine in the State of New Jersey is suspended for five years. Prior to resuming active practice in New Jersey, he will be required to appear before a Committee of the Board to demonstrate his fitness to resume practice. Any practice in this State prior to formal reinstatement of license by the Board will constitute grounds for a charge of unlicensed practice. The Board reserves the right to place restrictions on his license should it be reinstated. EFFECTIVE DATE: February 26, 2001

3. CARIDEO, Ida, M.D., License #58093 (Wayside, NJ)

FINAL ORDER OF REVOCATION filed February 14, 2001. The matter was opened to the Board upon the filing of a one-Count Administrative Complaint on August 30, 1999 alleging that on March 29, 1999, Dr. Carideo was convicted of mail fraud conspiracy in the United States District Court, Eastern District of New York, after a jury trial. The Complaint additionally alleged that on or about March 29, 1999, Dr. Carideo also pled guilty to receiving Medicare kickbacks. After the jury trial, she was found guilty of conspiracy to commit mail fraud in billing and receiving payment from Empire Blue Cross/Blue Shield for tests and procedures rendered to herself and her husband by registering as a provider with her maiden name and billing for herself and spouse as patients using their married names. She was sentenced in United States District Court for the Eastern District of New York to serve fifteen months in prison and three years probation, and also ordered to pay $20,000 restitution to Medicare and $8,390.60 to Empire Blue Cross/Blue Shield plus a $100 special assessment. During the hearing, Board members questioned Dr. Carideo extensively but were not able to elicit any sense of remorse or recognition that she is responsible for the conduct underlying the convictions. The Board considered that Dr. Carideo pled guilty to one criminal count thereby foreclosing action on remaining criminal allegations and later claimed to this Board she did not perform the acts which she previously swore she did indeed perform. The Board ordered Dr. Carideo's license to practice medicine and surgery in the State of New Jersey be immediately revoked. The Board will not consider an application for reinstatement of licensure prior to October 1, 2003. Prior to consideration of reinstatement of license, she must demonstrate to the Board's satisfaction: a) satisfactory completion of a Board-approved ethics course; b) satisfactory completion of a Board-approved compliance course, including a billing and coding component; c) payment of $2,500 fine; d) payment of costs to be determined by a certification of costs; e) demonstration of current clinical competence. EFFECTIVE DATE: February 14, 2001

4. FANELLI, Andrew T., D.O., License #24557 (Brick Town, NJ)

FINAL ORDER OF DISCIPLINE filed January 23, 2001. On or about December 19, 1998, Dr. Fanelli signed a Guilty Plea Agreement in the US District Court for the Eastern District of Pennsylvania in which he pled guilty to an indictment charging him with conspiracy to unlawfully abstract and convert to his own use funds of an employee benefit plan, and to a second indictment charging him with engaging in a monetary transaction in property derived from specified unlawful activity. The indictments charged that he and Angela S. Fanelli conspired to embezzle funds from pension and profit-sharing plans which were established for employees of Regional Gastroenterological Associates, of which he was a partner and Ms. Fanelli was a business administrator. They were charged with withdrawing funds from accounts and depositing the funds into the accounts of RGA for their own use and for the use of others, creating losses to

the Plans of at least $1,000,000.00. A Provisional Order of Discipline was filed with the Board which allowed Dr. Fanelli the opportunity to respond to the Findings of Fact. Dr. Fanelli did respond. The Board reviewed his submissions and determined further proceedings were not necessary. His conviction of a crime involving moral turpitude and relating adversely to the practice of medicine provided grounds for the suspension or revocation of his New Jersey license. The Board ordered that his license to practice medicine and surgery in the State of New Jersey be revoked. EFFECTIVE DATE: January 23, 2001

5. FLEISHER, Paul R., M.D., License #18684 (Old Lyme/New London, CT)

FINAL ORDER OF DISCIPLINE filed February 26, 2001. On or about April 24, 2000, Dr. Fleisher entered into a Voluntary Surrender of License and Agreement Not to Renew or Reinstate his license to practice medicine in the State of Connecticut. The Statements of Charges were based upon Dr. Fleisher's having prescribed controlled dangerous substances on more than one occasion to an undercover agent absent a proper medical purpose. In addition, he forcibly attempted to kiss the undercover Detective against her will. A Provisional Order of Discipline was filed with this Board containing the Findings of Fact. Although the record reflects that the Provisional Order was served upon Dr. Fleisher, no response was received. The Board considered the matter and determined no further proceedings were necessary and the Provisional Order should be made final. The Board ordered that Respondent's license to practice medicine and surgery in the State of NewJersey is revoked. EFFECTIVE DATE: February 26, 2001

6. HOSMER, Stephan B., D.O., License #43059 (Stratford, NJ)

CONSENT ORDER filed February 2, 2001. The matter was opened to the Board upon receipt of a complaint concerning the death of Dr. Hosmer's patient, K.W., during hysteroscopic surgery for the removal of benign fibroid tumors of the uterus. Dr. Hosmer appeared twice before a Committee of the Board. Based on the Board's review of the materials, it appears that Dr. Hosmer was the surgeon responsible for the hysteroscopic surgery of this patient. During the surgery, laparoscopic tubing was used instead of the appropriate hysteroscopic tubing. An operating room technician had prepared the equipment for Dr. Hosmer's use. The equipment that introduced the distension medium of nitrogen, used to aid visualization during the surgical procedure, failed and as a result, nitrogen and some fluid were introduced into the uterine cavity. Dr. Hosmer was unaware that the equipment had failed and that nitrogen had entered the uterine cavity. The patient suffered an air embolism and died as a result of the use of incorrect tubing and defective equipment. This was Dr. Hosmer's first experience performing an operative hysteroscopy, and although an experienced hysteroscopic surgeon was present in the operating room to provide supervision, he was not scrubbed. As the operating surgeon, Dr. Hosmer recognized his responsibility in the events leading up to the patient's death. The Board ordered that Dr. Hosmer be reprimanded for negligence in his care of this patient. He must cease and desist from performing hysteroscopic procedures pending further Order of the Board. He was assessed a $2,500 penalty and investigative costs in the amount of $4,194.82 to be paid within 12 months of entry of this Order. EFFECTIVE DATE: February 2, 2001

7. JASMIN, Frantz, M.D., License #48880 (Bronx, NY)

FINAL ORDER OF DISCIPLINE filed February 26, 2001. On January 27, 2000, Dr. Jasmin was convicted of the crime of Mail Fraud in the US District Court, Southern District of New York, in that he submitted false medical insurance claims to various insurance carriers through the US Postal Service. He was sentenced to five months imprisonment and two years supervision upon his release. He was ordered to pay $10,336.99 restitution. Based on this conviction, the New York Board of Professional Medical Conduct suspended his license to practice medicine for two years with three months active and the remainder stayed to be served as probation. The New York Board also required he complete 200 hours of community service. A Provisional Order was filed with this Board containing the above listed Findings of Fact. Dr. Jasmin submitted a response to the Provisional Order in which he argued he pled guilty to the charges of mail fraud to avoid the cost of defending the case. The Board was not persuaded that the submitted materials merited further consideration as Dr. Jasmin did not dispute the Findings of Fact or Conclusions of Law. The Board ordered that Dr. Jasmin's license to practice medicine and surgery in the State of New Jersey will

be suspended for two years or until such time he is able to demonstrate he has fully complied with the terms of the New York Order. Prior to any New Jersey practice, he must appear before a Committee of the Board to demonstrate his fitness to practice. Any practice prior to such appearance will constitute grounds for a charge of unlicensed practice. The Board reserves the right to place restrictions on his license should it be reinstated. EFFECTIVE DATE: February 26, 2001

8. LERNER, Marvin H., M.D., License #46693 (New York, NY)

ORDER filed January 24, 2001. By motion filed December 11, 2000, the Attorney General sought from the Board an Order returning the matter from the Office of Administrative Law (OAL) to the Board for full plenary hearing and an Order revoking Dr. Lerner's license based on his failure to have obtained the neuropsychological testing required by the Board's May Order. Dr. Lerner filed a letter of response reflecting his understanding that he was not required to obtain the evaluation if he was not going back into practice and reaffirming his surrender of license. He did not acknowledge the underlying conduct at issue in this case. In light of Dr. Lerner's position with respect to the charges, the case is no more amenable to a Board proceeding now than it was when it was initially transferred to the Office of Administrative Law. The OAL trial is scheduled to begin in June 2001. Although highly unlikely this matter will be resolved without the neuropsychological testing, Dr. Lerner's interpretation of the subsequent language was not unreasonable. The Board declined to predicate any sanction on the failure to have obtained the required report. However, the surrender of Dr. Lerner's license does not conclude the case. The Board has ordered that the Attorney General's motion to return the matter from the Office of Administrative Law to the Board for a full plenary hearing be denied. The Attorney General's motion to impose sanctions arising out of Dr. Lerner's failure to submit the required report is denied. He shall continue to be barred from engaging in the practice of medicine. In light of his continued denial of the charges that render him subject to monetary penalties and costs for past misconducts, the Board expressly asserts its continued jurisdiction to ultimately decide this matter. EFFECTIVE DATE: January 24, 2001

9. MACKUSE, Donna A., D.O., License MB57531 (Somers Point, NJ)

ORDER GRANTING UNRESTRICTED LICENSURE filed October 24, 2000. On February18, 1999, Dr. Mackuse entered into a Consent Order with the Board which allowed her to return to the practice of medicine and surgery in the State of New Jersey subject to the conditions set forth in that Order. In March 2000, Dr. Mackuse testified before a Preliminary Evaluation Committee of the Board in conjunction with her petition for an unrestricted license. Dr. Mackuse was accompanied by a representative of the Physicians' Health Program (PHP) who supported her petition for unrestricted licensure. The Board ordered that Dr. Mackuse be granted an unrestricted license to practice medicine and surgery in the State of New Jersey. EFFECTIVE DATE: October24, 2000

10. SAUL, Stephen L., D.P.M., License #2479 (Somers Point, NJ)

CONSENT ORDER OF VOLUNTARY SURRENDER OF LICENSE filed February 22, 2001. The Board received information that Dr. Saul had tested positive for cocaine while under supervision of the Physicians' Health Program (PHP) of the Medical Society of New Jersey and in violation of a Consent Order entered into on August 18, 2000 in which he agreed to abstain absolutely from all psychoactive substances unless prescribed by a treating physician. Further, the PHP reported to the Board that he has been arrested twice for drug-related criminal offenses based on two separate incidents which occurred just prior to entry of the August 18, 2000 Consent Order. The Board ordered that Dr. Saul be granted leave to immediately surrender his license for a minimum of six months from entry of this Order. Prior to any restoration of license, Dr. Saul shall appear before a Committee of the Board to determine his fitness to re-enter practice and provide proof that he is not then suffering from any impairment or limitation which could affect his practice. This Order is without prejudice to further action by this Board or other law enforcement entities resulting from Dr. Saul's conduct prior to application for reinstatement of licensure. Dr. Saul explicitly consents to the use of information derived from his entry into, and participation in, the Pretrial Intervention Program and agrees that any expungement of a criminal offense at issue in this matter shall

not be a bar to Board action. EFFECTIVE DATE: February 22, 2001

11. TABOTABO, Armando, M.D., License #32015 (Keyport, NJ)

ORDER GRANTING EMERGENT RELIEF AND LEAVE TO FILE A SECOND AMENDED COMPLAINT filed February 16, 2001. On February 9, 2001, the Attorney General filed a Notice of Motion for Emergent Relief and Leave to File a Second Amended Complaint. The State alleged that Dr. Tabotabo wilfully violated the Board's prior Order and compromised the public health, safety and welfare by providing medical services to patients outside the presence of the Board-ordered monitor and thwarting efforts on behalf of the practice monitors to ascertain the full extent of the unmonitored practice. Additionally, it was alleged that he was practicing medicine without medical malpractice liability insurance coverage. A hearing was held on February 14, 2001. Dr. Tabotabo did not appear. The Board found that the Deputy Attorney General presented clear, convincing proofs that Dr. Tabotabo practiced medicine in violation of the Board Order which required monitoring. The Board ordered that Dr. Tabotabo's license to practice medicine and surgery in the State of New Jersey be temporarily suspended until final disposition of this matter by the Board. This Order is effective immediately. The State is granted leave to file a Second Amended Complaint. EFFECTIVE DATE: February 16, 2001

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

There being no further business of the Board concerning OPEN DISCIPLINARY MINUTES in open session, the Board voted to continue with the meeting concerning Matters Pending Litigation and Disciplinary Action in closed session.

Respectfully submitted,

William B. Harrer, M.D., B.L.D., Chairperson for Open Disciplinary Matters