

**State Board of Medical Examiners
Open Disciplinary Minutes
April 8, 2009**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, April 8, 2009 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 Ms. Karen Criss, Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Criss, Criscito, Cheema, Ciechanowski, DeGregorio, Haddad, Jordan, Lambert, Lomazow, Reichman, Stanley, Mendelowitz, Nussbaum, Paul, Scott and Weiss.

EXCUSED

Board Member Walsh.

ALSO PRESENT

Deputy Attorneys General Warhaftig, Dick, Levine, Flanzman, Krier; Executive Director William V. Roeder and Mary Lou Mottola, Executive Director of the Medical Practitioner Review Panel.

HEARINGS, PLEAS, AND APPEARANCES

10 a.m TSAROUHAS, LOUIS, M.D.

Arnold C. Lakind, Esquire

Jerome A. Ballarott, Esquire

MANGIARACINA, Giacomo, M.D.

SHAFFER, Brian, M.D.

Alex Keosky, Esquire

DAG William Lim

The Attorney General filed a Motion for Summary Decision on the Complaint filed in this matter based on the Respondent's sentencing for the crime of federal tax evasion. The liability phase of the motion was to be heard before the Board.

The parties placed their appearances on the record.

Dr. Stanley recused from discussion and vote in this matter and left the meeting.

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

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

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT A SETTLEMENT OFFER OF A THREE MONTHS SUSPENSION, SIX MONTHS OF WHICH WILL BE SERVED AS AN ACTIVE PERIOD, THE REMAINING TO BE SERVED AS A PERIOD OF PROBATION. THE TERM OF ACTIVE SUSPENSION WILL COMMENCE IN THIRTY DAYS. ADDITIONALLY, THE BOARD ORDERED THAT THE PHYSICIANS BE ASSESSED PENALTIES AND COSTS IN THE AGGREGATE AMOUNT OF \$30,000 PER LICENSEE WHICH MAY BE PAID OUT OVER A PERIOD

OF TWO YEARS. EACH PHYSICIAN WILL BE REQUIRED TO TAKE AND SUCCESSFULLY COMPLETE A BOARD APPROVED ETHICS COURSE DURING THE SIX MONTH ACTIVE PERIOD OF SUSPENSION.

OLD BUSINESS

A. KELSEY, Alan, M.D.
Susan Fruchtman, Esquire
DAG Tara Ragone

Dr. Kelsey requested a modification to his Consent Order. Relevant documents, including a response from the Attorney General were considered at the April 8, 2009 Board meeting.

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

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

Returning to Open Session, the Board announced the following

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY DR. KELSEY'S REQUEST.

NEW BUSINESS

A. DARA, Parvez, M.D. 25MA03329200
Robert Conroy, Esquire
Siobhan Krier DAG Prosecuting
Debra Levine and Nancy Costello-Miller DA's G Counseling

The Attorney General filed an Order to Show Cause and Notice of Hearing seeking the Temporary Suspension of Dr. Dara's license. The Attorney General's application for the Temporary Suspension was premised on allegations that the licensee failed to maintain sanitary conditions or use basic infection control practices which failure may have caused and/or contributed to five patients becoming infected with hepatitis B. A Hearing Committee heard the matter on Friday, April 3, 2009. Its report and recommendations were before the Board. The Board was asked to accept, modify or reject the Hearing Committee's findings and conclusions of law.

Drs. Paul, Criscito, Ciechanowski, and Haddad were recused in this matter and did not participate in the proceedings. They left the table.

Ms. Criss began the hearing in this matter reminding the parties that the Board would be reviewing the Hearing Committee's determinations and recommendations concerning the temporary suspension of Dr. Dara. The attorneys placed their appearances on the record.

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

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

Returning to Open Session, the Board announced the following

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT DR. MENDELOWITZ' DECISION TO DENY THE REQUEST FOR A MITIGATION HEARING.

Motion made by Dr. Reichman and seconded by Mr. Weiss and the Board's vote was unanimous.

Mr. Conroy asked that Drs. Mendelowitz and Reichman be recused because they constituted the hearing committee and in fairness should be recused. The Attorney General said there should be no recusal. The Chair denied Mr. Conroy's requests for recusal.

Mr. Conroy opened by asking the Board to remember that this case is difficult. He noted that earlier that day he attended a prayer breakfast and in his small group, he acknowledged with empathy the difficulty that was facing the Board. The Attorney General was seeking to suspend the doctor, which ultimately will lead to the end of his practice. As a practical matter, he continued, that it will take at least eight or ten months before the matter is heard at the Office of Administrative Law. He posited that there was very little proof to sustain such a determination, yet the consequences were so drastic. He was not aware of any case that proceeded this far without the investigation being concluded. The only witness, Dr. Montanna, acknowledged that and she could not point to a single case that connected Dr. Dara to the Hepatitis B cases. She did confirm that there was a lot of raw data, but when pressed she could not substantiate her opinions with hard proof, other than patients were sick. He opined that there were less intrusive measures available that would still protect the public and not be as devastating to the doctor. Mr. Conroy continued with his argument by noting that the Department of Health and Senior Services (the "DHSS") wanted the doctor to admit that he was liable for the communication of Hepatitis B. When Dr. Dara questioned further, although he was cooperating with their investigation, he was referred to the Attorney General's office.

Mr. Conroy continued that at the bottom of this, there was a grievous problem with the health system and in the state's surveillance system. The system that is to protect the public from this type of outbreak failed. Ocean County knew about five cases, but did not know about an additional five cases. The patients were diagnosed by a hospital and yet, the facility isn't being questioned why they did not report them. DHSS became aware of it from Dr. Dara's former employee that stole money from him and wrote a letter to DHSS about Dr. Dara.

Mr. Conroy also asked the Board to put the case into context and that the Attorney General redacted the evidence by removing the name of the complainant. This is important because the DHSS wove a different story. That omission did not help Dr. Dara to mount a proper defense. Mr. Conroy asked that the Board consider what is appropriate under these circumstances.

Mr. Conroy also reported that the physician community had told him that their perception is that this happened because the doctor cooperated. Mr. Conroy had the members of Dr. Dara's hospital staff stand up to show their support. Mr. Conroy also noted that they have signed an endorsement letter about Dr. Dara attesting to the quality of medicine that he provides. The letter also asked the Board to recognize that this decision was wrong. Mr. Conroy also noted that there are more than 600 patients that have signed a petition requesting that he be permitted to continue his practice. Additionally, the patients attest to the quality of care that he provided.

In summary, Mr. Conroy reminded that Board that less severe methods were available to protect the public. Dr. Dara offered to have a full time monitor particularly because there has not been any question about his quality of practice. He could continue to have a hospital practice. He might have a practice monitor that would permit one to monitor the sanitary conditions of his office. DHSS even gave clearance for him to open his office as long as he did not perform any invasive or procedures with blood borne pathogens. His patients need him to continue to practice. Mr. Conroy asked the Board to do the right thing and let Dr. Dara's patients continue to be treated by their doctor.

To the contrary, DAG Krier urged the Board to ratify the Order that was put in place by the Hearing Committee after nine hours of listening to testimony of explicit detail about the investigation that has taken place thus far in the matter. She strongly urged the Board to ratify that Order.

She reminded the Board that the Hearing Committee found that Dr. Dara's continued practice endangered the health safety and welfare of the people. The doctor showed chronic disregard for the cleanliness and

sanitary conditions of his office. The Committee also reviewed pictures of his office which demonstrated a danger to the public that could not be remedied by a practice monitor or severe cleaning. The Committee assessed the credibility of the witnesses and determined that nothing short of the temporary suspension was protective of the public.

For example, DAG Krier continued, Dr. Dara's own testimony showed that he failed to understand the multiple breeches of his office concerning the necessary sterile conditions needed in an office. There were various open containers, syringes of sterile wrappers, inappropriate use of single dose vials and reusing a single use chemotherapy bag. The Committee was correct in not permitting the continued practice in a setting where medications were mixed in the same room where blood was being processed or where the staff went into the refrigerator for vials with gloves that had blood on them; failed to wash their hands or washed them in sinks that were contaminated. She further noted that Hepatitis B is a strong virus that can survive several days under these conditions. In spite of all this, Dr. Dara was surprised that Hepatitis B could be contracted by his patients. Dr. Dara supplied contradictory testimony about Hepatitis B and the vulnerability of his patients. She acknowledged that Dr. Dara did obtain a correctional plan, however, even with such an extensive plan of clean up, Dr. Dara could not recognize the severity and potential exposure he exposed his patients to.

DAG Krier also reminded the Board that Dr. Dara was cited in the past for similar conditions. For example, OSHA charged Dr. Dara for ignoring its rules on at least two prior occasions.

While Mr. Conroy believed that the causal connection is at best tenuous, the DAG asked the Board to concentrate on the facts that Dr. Dara's office was found to be in unsanitary condition. It further discovered a cluster of Hepatitis B patients all of whom were Dr. Dara's patients who had invasive procedures by Dr. Dara. The other risk factors were not present in this group. Evidence also connected these patients with the reuse of saline bags while undergoing procedures at Dr. Dara's office.

DAG Krier also addressed the issue about the map used by the DHSS. DAG Krier informed the Board that neither party was given a copy of the map until after it was discussed at the hearing and the allegation that the Attorney General withheld the evidence was not true.

In closing, DAG Krier argued that the evidence overwhelmingly demonstrated a palpable demonstration that Dr. Dara's continued practice presented an imminent danger.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MOVE INTO MOTION MADE TO MOVE INTO CLOSED SESSION.

Closed session motion made by Dr. Jordan and seconded by Mr. Weiss.

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

Returning to open session the Board announced the following decision.

THE BOARD, HAVING FULLY CONSIDERED ALL EVIDENCE IN THIS MATTER, UPON MOTION MADE AND SECONDED, VOTED TO RATIFY THE HEARING COMMITTEE'S ORDER FILED IN THIS MATTER FOR ALL THE REASONS SET FORTH THEREIN. THE BOARD WAS SATISFIED THAT THE ORDER REFLECTED THE CONSIDERED JUDGMENT OF THE BOARD.

Motion by Mr. Weiss and seconded by Dr. Scott. The motion was unanimously passed by the Board.

Mr. Conroy made a motion for stay of the suspension pending appellate review. That motion was denied.

Mr. Conroy asked for a written order. The Chair informed him that an Order would be available within one hour.

Mr. Conroy also asked that the matter be transferred to the Office of Administrative Law before the end of the day. The Chair informed him that the case would be transferred before the close of business the following day. Due to the religious holidays, Mr. Conroy asked that the matter be closed by Noon. Ms. Criss informed him that we would do our best to transfer it as quickly as possible.

Respectfully submitted,

Karen Criss, R.N., C.N.M., Chairperson
For Open Disciplinary Minutes