State Board of Medical Examiners
Open Disciplinary Minutes

April 9, 2003

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, April 9, 2003 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor, Conference Center, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by Mr. Farrell, Vice-Chairperson for Open Disciplinary Matters.

PRESENT

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

EXCUSED

Board Members Chen, Desmond, Harrer, and Lucas

ALSO PRESENT

Assistant Attorney General Joyce, Deputy Attorney Generals Dick, Ehrenkrantz, Flanzman, Gelber, Harper, Kenny, Levine, and Warhaftig and Medical Director Joseph Gluck.

RATIFICATION OF MINUTES

The Board Minutes from the March 05, 2003 and March 12, 2003 Open Disciplinary Minutes were approved with clerical changes.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

ZAHL, Kenneth, M.D. (Counseling Deputy: FLANZMAN)
JACKSON, John Zen, Esq. for Respondent
HARPER, DOUGLAS J., D.A.G. for Complainant

Dr. Perry was recused from this matter.

In the matter of Kenneth Zahl, enclosed were the Certification of Costs filed by the Attorney General dated March 7, 2003 and Certification of Costs (Supplemental) filed March 26, 2003. In accordance with the direction given at the conclusion of the Board hearing on March 12, 2003, enclosed was Mr. Jackson's March 24, 2003-letter with comments and concerns regarding both the initial certification of costs and the certification of costs (supplemental). Also enclosed was D.A.G. Harper's April 2, 2003-letter memorandum with attachments in support of the Administrative Law Judge's determination that costs in general be assessed; in opposition to Dr. Zahl's objections to date; and in support of the Attorney General's motion to adjourn the Board's ruling on the specific amount of costs to be assessed, to the Board's May meeting.

Also enclosed for consideration before the Board were Mr. Jackson's request for a stay of the Board's Order revoking Dr. Zahl's license and D.A.G. Harper's March 28, 2003 letter memorandum, on behalf of the Attorney General, in opposition of Dr. Zahl's application for a stay of the Board's order revoking his license and imposing other disciplinary sanctions. D.A.G. Harper notes in his March 28, 2003 memorandum that the application palpably fails to satisfy long established legal principles and should be

denied. Also, enclosed was the Board's Final Order filed April 3, 2003.

Time was set aside for a brief opportunity to address the Board on the pending motion for a stay of the Board Order filed April 3, 2003, affirming ALJ Klinger's decision and imposing the revocation of Dr. Zahl's license.

The Board voted to go into Executive Session to discuss the proceedings. Deputies, other than counseling staff, left the room, along with other members of the public present.

The Board returned to open session with all parties present.

At the request of Chairman Farrell, Counseling Deputy Attorney General Flanzman outlined the procedural history of this matter, reminding the Board that a hearing was held last month at which time the Board voted to adopt, with one modification, the proposed findings of fact and conclusions or law of ALJ Edith Klinger. The Board voted also to revoke Respondent Kenneth Zahl's license to practice medicine along with imposing some additional penalties, all of which are set out in the Final Order of the Board filed April 3, 2003. There were two matters that were pending before the Board. Initially, there was an application which was made by Dr. Zahl's Counsel for a stay of the Board's decision pending an opportunity to seek Appellate review of the Board's determination set forth in its Order of April 3, 2003. The Board was in receipt of a letter memorandum filed by Mr. Jackson dated March 24, 2003, as well as, a responding letter from DAG Harper dated March 28, 2003. The Board afforded argument to both parties on that application. Additionally, there was a pending issue regarding the amount of costs that would be assessed in this matter. Determination on that issue was reserved at last month's meeting to afford the parties additional time to provide submissions detailing the costs sought. DAG Harper made a motion for adjournment of consideration of that matter until this Board meeting along with a proposed schedule for submissions to the Board. DAG Flanzman met with both counsel and was advised that there were no objections on Dr. Zahl's part of the proposed schedule and the request for adjournment.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ADJOURN THE STATE'S APPLICATION FOR COSTS UNTIL THE BOARD'S MAY 14, 2003 MEETING.

Mr. Jackson appreciated the opportunity to appear before the Board with his request that the provision of the Board's Order concerning the revocation of Dr. Zahl's license be stayed while they pursue an appeal. He understood DAG Harper's position that Respondent must demonstrate a probability of success on appeal in order to obtain a stay. Mr. Jackson suggested that was the incorrect legal standard with this tribunal, sitting as it does as a quasi judicial body, with the inherent power to control its own actions. Mr. Jackson appreciated the fact that the Board gave Dr. Zahl time to wind down his practice, however, the Order does not address the issue of the right to take an appeal. He noted that history has shown that the Appellate Division and the Supreme Court have reversed the decisions of this Board. He argued if the Board did not exercise its discretion and sound judgement and stay the effect of the revocation, Dr. Zahl's practice would be dismantled, his professional corporation would dissolve and his patients would seek care with other practitioners. He reminded the Board about the patients that testified last month, as well as the written submissions, that all attested to the quality of care they have received from Dr. Zahl. Mr. Jackson also pointed out that the Board's own Order acknowledged that competencyy and quality of care provided by Dr. Zahl were not an issue, but it was about his fiscal dishonesty. Mr. Jackson believed that balancing the injury to Dr. Zahl, his practice, his patients, was far outweighed by any concern about Dr. Zahl's character. The Board's concerns could be handled, for example, by imposing a monitor to oversee Dr. Zahl's financial affairs. He suggested that imposing a stay with conditions would protect the public, while at the same time not dismantle Dr. Zahl's career pending an appeal which he believed would be successful.

In rebuttal, D.A.G. Harper noted Mr. Jackson neglected to address several basic issues. He referred the

Board to the Attorney General's submission which set forth the obligation on the part of the applicant for a stay to meet a four-part test. The critical parts of the test are: 1.) Is there a demonstration of a likelihood of success on the merits of any issue which has been raised? 2.) Where does the public interest lie and will the public's interest be harmed if a stay if granted? He noted that the key question before the Board is where does the public interest lie. He reminded the Board that based on all the evidence before it, the Board concluded that Dr. Zahl was a practitioner who had engaged in fraud, deception, misrepresentation and professional misconduct. He noted there were four distinct unlawful acts all of which had a common theme of dishonesty. D.A.G. Harper continued by arguing that the multiple acts of dishonesty demonstrate Dr. Zahl's fundamental disregard for truth which is ultimately inimical to the practice of medicine. Nothing presented in mitigation suggests the Dr. Zahl, according to D.A.G. Harper, understood the moral repugnancy of his multiple acts of dishonesty and deception. D.A.G. Harper urged the Board to conclude, based on the evidence of the entire case, that the public's interest would only be served by the immediate removal of the licensee form practice. He noted Mr. Jackson had every right to seek the relief from a court. He concluded by asking the Board to deny the application to stay.

In response, Mr. Jackson stated he was prepared to go to the Appellate Division if necessary, but submitted that this Board should exercise its discretion and judgement, taking into account the public interest and the potential, irreparable damage to Dr. Zahl. The Board voted to go into Executive Session for deliberations. Deputies, other than counseling staff, left the room, along with all other members of the public present.

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

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

Note: A form of Order was prepared by Mr. Jackson and entered by the Board reflecting the denial of the stay.

KAUL, Richard A., M.D. (Counseling Deputy: JOYCE)
VOLKERT, Susan E., Esq., for Respondent
WARHAFTIG, Jeri, D.A.G., for Complainant

This matter was set down for a hearing on December 11, 2002. At that time the Board voted to deny the motion to dismiss the Provisional Order of Discipline, to deny the motion to strike the Demand for Statement under Oath, and to deny the motion to strike the Attorney General's December 2, 2002 letter and underlying documents. Although the Board was ready to hear the matter at the December meeting, it determined to adjourn to allow for an opportunity to further exchange information between counsel. The Board granted the adjournment until the Board's January meeting, but it was then adjourned until the February 19, 2003 meeting because respondent's counsel was unavailable.

A Provisional Order of Discipline (POD) was filed September 20, 2002 in the matter of Dr. Kaul. At the request of counsel for Dr. Kaul, the Board, at its November 13, 2002 meeting, granted a hearing in this matter. Subsequent to that decision, Mr. LaBue further requested that the matter be heard before a Committee of the Board or transferred to the Office of Administrative Law (OAL). Dr. Harrer reviewed the request and denied it. Enclosed for Board consideration were the following documents the Board received for consideration at its February meeting: the POD filed September 20, 2002; Mr. LaBue's November 11, 2002 correspondence with attachment; D.A.G. Niedz' November 22, 2002 correspondence; and D.A.G. Niedz' December 4, 2002 letter providing the Board with a certification with attached exhibits which he intends to move into evidence; and D.A.G. Niedz' letter brief dated December 5, 2002.

The following documents were also enclosed which the Board had at its February meeting: Mr. LaBue's December 6, 2002 letter to Executive Director Roeder referencing the exhibits that were attached to D.A.G. Niedz' December 3, 2002 Certification which were not relied on when the Provisional Order of Discipline (POD) was issued, and further, were not noticed in Mr. Niedz' letter of November 22, 2002. Mr. LaBue requested that these documents be stricken from the material provided to the Board and stated that to utilize them would constitute unfair surprise and a denial of due process to Dr. Kaul's defense. Also included with the material the Board had in February, and at this time, was a December 6, 2002 letter from Mr. LaBue which included a Notice of Motion and Request for Oral Argument. Mr. LaBue requested that the Board strike Dr. Kaul's answers to the Board's Demand for Statement Under Oath, to strike D.A.G. Niedz' December 3, 2002 Certification and attached exhibits, and to dismiss with prejudice the September 20, 2002 POD concerning Dr. Richard Kaul.

The Board also received at its February 19, 2003 meeting the following enclosed documents: the Board's December 11, 2002 Open Disciplinary Minutes I/M/O Dr. Kaul; the Board's Scheduling Order filed December 20, 2002; D.A.G. Niedz' January 28, 2003 letter advising Ms. Volkert of the documents which he intends to move into evidence; and Ms. Volkert's February 4, 2003 letter outlining this matter and renewing their request to dismiss this matter for the reasons stated in their prior letters and brief submitted, or in the alternative, that a North Jersey Committee of the Board address the issues concerning Dr. Kaul. They anticipate that the hearing will last a few days. Also included with the February Board packet was D.A.G. Niedz' response and request for a Scheduling Order dated February 5, 2003.

In addition, a February 6, 2003 letter from D.A.G. Niedz included a Motion to file supplemental charges which contents are under seal and were provided to the Board in its Closed Agenda packet in February. The Board at its March 12, 2003 meeting, voted to grant the State's Motion to file the supplemental charges. Therefore the Verified Supplement to Charges Set Forth in Provisional Order of Discipline was filed April 1, 2003 and is enclosed. Copies of the sealed documents will be available at the meeting for distribution if the parties agree to certain portions being redacted.

Also included in February and at this time was a February 11, 2003 letter from Ms. Volkert requesting additional time to respond to D.A.G. Niedz' February 6, 2003 Motion and requesting a postponement of this matter until the Board's April 9, 2003 meeting.

Although the State had consented to the adjournment, Board President Harrer asked that time be set aside at the Board's February meeting to address any outstanding issues regarding the admissibility of evidence to be introduced.

Accordingly, at the February meeting, the Board requested that the parties introduce the evidence on which it would rely and to advance any objections to the evidence proffered. The Board wanted to render rulings on the admissibility of evidence to facilitate final decision-making at this meeting. The Board, at its February 19, 2003 meeting, voted to adjourn this matter until this meeting based on a Scheduling Order agreed to by the parties.

The Board received for review at its March 9, 2003 meeting and at this meeting the list of witnesses Respondent's counsel intends to have testify.

The Board, at a Special Board Meeting held on March 5, 2003, dealt with two particular issues which were announced at the Board's March 12, 2003 meeting.

The first matter before the Board was the State's Motion to file Supplemental Charges. The Board voted it would permit the filing of the Supplemental Charges in this matter, which was certainly within the Board's jurisdiction, and the Respondent had knowledge of it and had ample time to respond.

The Board's determination concerning the second issue with respect to the objections to the introduction of the State's documentary evidence which were advanced in Respondent's Attachment 2 is outlined in a March 21, 2003 letter (attached to D.A.G. Warhaftig's April 3, 2003 letter) sent to both counsel by A.A.G. Joyce. A.A.G. Joyce's letter was provided to the Board and also outlines the determination made by the Board at its March 12th meeting concerning the witness list.

A.A.G. Joyce reported to the Board at its March 9, 2003 meeting that Executive Director Roeder received the night before the meeting a 62-page document via fax from Respondent's attorney, Ms. Volkert. The Board voted to refer this document to the Executive Committee for its preliminary review along with any responses that may be received. This document is dated March 11, 2003 and was enclosed and renewed Dr. Kaul's December 6, 2002 request that the Board strike Dr. Kaul's answers to the Board's Demand for Statement Under Oath, strike D.A.G. Neidz' December 3, 2002 Certification and attached exhibits and dismiss with prejudice the September 20, 2002 Provisional Order of Discipline concerning Dr. Kaul and dismiss this action. In the alternative, it is requested that because there are numerous procedural and substantive issues, and because this matter involves numerous witnesses and expert testimony, the Board should refer this matter for a full plenary hearing to either an Administrative Law Judge or a Committee of the Board. Subsequent to the December hearing, the State submitted documents to the Board. Ms. Volkert noted in her March 11, 2003 letter that they also request that any and all documents relating to events arising from the void British criminal conviction of Dr. Kaul be stricken from the record. The Executive Committee preliminarily denied the motions at its March 25, 2003 meeting. Board ratification was requested.

Enclosed was a copy of the voluminous materials received by the Attorney General's Office in December 2002 from the General Medical Council in connection with the action taken by that office against Dr. Kaul. Also, enclosed for Board consideration were the following: Ms. Volkert's March 3, 2003 letter to Executive Director Roeder with Attachments 1 - 3; Mr. Niedz' letter brief dated March 4, 2003 concerning Supplement of Charges and two additional letters dated March 4, 2003 concerning Mr. Niedz' Response to Objections and Objections to Dr. Kaul Witnesses; and D.A.G. Warhaftig's March 24, 2003 letter to the Executive Committee responding to Ms. Volkert's March 11, 2003 letter.

In addition, also enclosed was a March 28, 2003 letter from Ms. Volkert addressed to Deputy Attorneys General Niedz and Warhaftig notifying them that respondent's witness, Dr. Paul Goldiner, had a conflict with appearing today and a videotaped deposition of Dr. Goldiner's testimony was being held on April 2nd in New York and they would present that video deposition to the Board today. Also enclosed was an April 2, 2003 letter with an attached Certification of Dr. Paul L. Goldiner, board certified anesthesiologist and dentist, noting their previous offer of the video deposition and that Dr. Goldiner would be available to the Board for any questions via telephone conference today. The D.A.G. objected to the arrangement. Ms. Volkert requested in her letter that the Board hear Dr. Goldiner's expert testimony on behalf of Dr. Kaul. Also enclosed is D.A.G. Warhaftig's April 3, 2003 letter with attachments responding to Ms. Volkert's letter of April 2, 2003, requesting that the Board bar the testimony of Dr. Goldiner based upon a rejection of the proffer attached to counsel's April 2, 2002 submission and applicable case law. Also enclosed was a letter from D.A.G. Dick dated April 3, 2003 addressed to Ms. Volkert and D.A.G. Warhaftig advising that Board President Harrer requested that Ms. Volkert provide details and documentation regarding the "conflict" which prevents Dr. Goldiner from being available on April 9th; Ms. Fruchtman's April 4, 2003 response with Dr. Goldiner's c.v.; and D.A.G. Dick's April 4, 2003 follow-up letter.

Also enclosed was D.A.G. Warhaftig's April 1, 2003 letter reiterating the Attorney General's objection to Dr. Goldiner, being called as a witness and reserving the right to challenge the admissibility of video tape testimony, and Ms. Volkert's April 1, 2003 response.

The Board voted to go into executive session to discuss the procedural setup for this matter. 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 Farrell noted there were voluminous and extensive submissions by the parties. The Board has requested that A.A.G. Joyce, counseling deputy, prepare a catalogue for what constitutes the record in this case. Chairman Farrell also noted that there was a problem with witness availability and that counsel for Respondent wished to take a witness out of turn.

In response to the Chair, Ms. Volkert stated that due to time constraints on the part of her witness, Mr. David Lundquist, the CEO of St. Clare's Hospital, she was requesting that the Board hear his testimony first. She noted that he was being offered as a witness as to Dr. Kaul's character. D.A.G. Warhaftig had no objection to taking the witness out of turn, if he is testifying in mitigation in the limited matter that Ms. Volkert had just described. Ms. Volkert assured the Board that he would not be testifying to any issues of liability and would just be testifying as to character. The Chair permitted the witness to testify out of order.

Board member Huston arrived during this portion of the meeting.

David W. Lundquist was sworn in and questioned by Ms. Volkert concerning his educational background and training. He is CEO of St. Clare's Hospital in Denville, New Jersey, with primary responsibility for oversight of the administrative functions of the hospital. Mr. Lundquist testified that he met Dr. Kaul several months ago when Dr. Kaul first began to practice with the anesthesia group at St. Clare's. He has worked with Dr. Kaul frequently over the past several months as Dr. Kaul has been instrumental in developing the pain management services. The pain management services have increased in both volume and quality of care with Dr. Kaul's assistance and Dr. Kaul has earned the respect of the medical staff. Mr. Lundquist also noted that the responses from the patients have been positive and very complimentary of Dr. Kaul's work. Mr. Lundquist is currently a patient of Dr. Kaul and has been treated for a chronic back problem by Dr. Kaul.

In response to further questioning by Ms. Volkert, Mr. Lundquist, stated Dr. Kaul did share with him why he was before the Board and explained to him the circumstances in the U.K. Mr. Lundquist noted they have a very thorough credentialing process and Dr. Kaul was very open from the onset of the application process. Dr. Kaul's credentials were reviewed very closely by their Medical staff.

Mr. Lundquist was cross-examined by D.A.G. Warhaftig concerning his familiarity with the application process for physicians seeking privileges at his institution. He acknowledged that the application asks the applicant to pledge that he or she will adhere to generally accepted principals of ethics, as well as those ethical and religious directives of catholic heath care services and agreed that a principal of ethics would be honesty. Mr. Lundquist testified he does not review every application, but is aware that the question of whether the applicant is under investigation by a state licensure board is on St. Clare's application. He explained that if someone under investigation denied the existence of that investigation in the application, it would be reason for additional follow-up, and possible denial of the application. Mr. Lundquist testified he personally was not aware of any specific efforts by St. Clare to request any information outside of the information shared by Dr. Kaul, but would have expected there would have been some additional follow-up.

A.A.G. Joyce, counsel to the Board, stated that she and Chairman Farrell met with Counsel prior to this proceeding and identified a number of procedural issues that would be addressed in an effort to facilitate the proceeding. The first of which related to the March 11, 2003 submission which was filed with the Board the evening before the March 12, 2003 meeting. At that meeting the Board determined to refer

that submission to the Executive Committee at its March 25, 2003 meeting. The Board Members present at that meeting reviewed the submission and made the determination that the relief sought be denied. That recommendation was conveyed to the parties by A.A.G. Joyce in a letter dated March 21, 2003. A.A.G. Joyce's March 21, 2003 letter to Counsel also conveyed the Board's March 12, 2003 determinations on three issues. There were, however, some issues that were preserved for argument pertaining to the confidentiality of certain materials. That March 21, 2003 letter also dealt with evidentiary rulings, and the evidence that the Board determined it would admit into evidence as announced on March 12, 2003, had been pre-marked. Ms. Volkert acknowledged that the State provided her with a list of all the exhibits.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RATIFY THE EXECUTIVE COMMITTEE'S RECOMMENDATION TO DENY THE RELIEF SOUGHT BY MS. VOLKERT IN HER MARCH 11, 2003 SUBMISSION AND AS OUTLINED IN A.A.G. JOYCE'S MARCH 21, 2003 LETTER TO COUNSEL.

The Board turned its attention to the issue concerning the admissibility of earlier submissions 6 & 7 relating to the confidentiality issue and 8 & 9 concerning the prosecution and defense exhibits arising out of England. There also was a question concerning the scope of the testimony that the Respondent wished to present. A.A.G. Joyce also noted that her March 21, 2003 letter also reaffirmed the Board's conclusion that the matter would not be transferred to OAL, nor would it be heard before a Committee.

D.A.G. Warhaftig noted it was anticipated that the arguments on the State's application for the admission of exhibits 6 & 7 would be reviewed by the Board in camera. Ms. Volkert objected to the admissibility of those items on the basis that they are confidential in nature.

The Board voted to go into closed session with the presence of counsel and the parties to discuss the matters of a confidential nature. 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. Dr. DiFernando was not present during this portion of the meeting.

Upon the Board's consideration of the arguments of counsel with regard to P6, P7 and P24,

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ADMIT INTO EVIDENCE P6 & P7 AND ORDERED THAT THESE EXHIBITS BE SEALED. SHOULD THE BOARD AT A LATER TIME, DECIDE TO PERMIT P6 TO BE UNSEALED, IT WOULD DO SO WITH REDACTIONS BEING MADE. THE BOARD FURTHER VOTED TO ADMIT INTO EVIDENCE P24, THE CERTIFICATION, FOR THE LIMITED PURPOSE OF ESTABLISHING THAT THE DOCUMENTS REFERENCED THEREIN, PURPORT TO BE WHAT THEY ARE REPRESENTED TO BE.

Chairman Farrell questioned whether it was Ms. Volkert's intention to seek to admit part of the Data Protection Act into evidence and decision was reserved until later in the proceeding to address items 8 & 9 which were the prosecution expert report and the defense expert reports and the proceedings in England. D.A.G. Warhaftig noted that during the pre-hearing conference, the chair saw a linkage between the issue of the admissibility of P8 & P9 and the Board's consideration of proposed testimony by Dr. Goldiner and Dr. Saubermann who are proposed by respondent and opposed by the Attorney General. D.A.G. Warhaftig informed the Board that P8 & P9 were provided to the AG's office by the GMC of England through Ms. Chrystie, their counsel. P8 & P9 consisted of materials prepared on behalf of the prosecution for the trial of this matter and materials prepared on behalf of the defense with regard to the criminal trial. D.A.G. Warhaftig stated Dr. Kaul seeks to put before the Board Drs. Goldiner and Saubermann, both of whom have provided proffers which indicated that they are nothing more than

newly retained experts in the field of medicine who have gone back and reviewed whatever Dr. Kaul has seen fit to provide them. D.A.G. Warhaftig argued the problem here was Mr. LaBue, in his original application, sought the Fanelli hearing in this matter, which requires the Board to review the core facts of the conviction. Based on that request, D.A.G. Warhaftig questioned why the sentencing transcript had not been provided. In essence, Respondent's request to have this excluded essentially asks the Board to ignore the prosecutor's case and only look at the defense presented. This would be the practical effect of excluding P8. She further argued the defense then goes one step further and secures different experts to re-look at the materials it gave to them. Based on their review, she anticipated that the new experts would argue that Dr. Kaul's underlying conduct was not an act that merited the conviction for gross negligence and manslaughter, and that it didn't merit the action of the GMC. D.A.G. Warhaftig proffered that it was the Board's function to weigh the underlying facts, not to retry the case.

Ms. Volkert clarified that the verdict was negligent manslaughter, not gross and asked that this hearing be fair and accurate to Dr. Kaul.

Chairman Farrell noted that the Board did have the underlying materials.

D.A.G. Warhaftig pointed out the Judgement of Conviction was in evidence before the Board and spoke for itself. P8 and P9, however, are the underlying facts that led to that conviction. Because the Board is not retrying the case, P8 and P9 should be excluded, Additionally, any testimony from new experts in the case as it related to the underlying facts also should be excluded. The proposed testimony of Drs. Goldiner and Subermann, she continued, would be irrelevant and outside the requirements of the Fanelli decision. The Board had the Judge's summing up, his remarks, the transcripts and the orders of the GMC. She argued that not only should P8 & P9 not be admitted, but the Attorney General objected to Doctors Goldiner and Saubermann testifying at this proceeding because their testimony would be irrelevant, had nothing to do with the prior events, and would be outside of what is contemplated by the Fanelli decision, or other decisions of the Board.

Ms. Volkert argued that this matter was not just about Fanelli and was an issue of first impression. The United Kingdom has far different laws and what would be medical malpractice here, they treat as a criminal matter. The Attorney General is taking the position that a conviction anywhere in the world is a conviction here. She urged the Board to permit the two experts to testify because the Board should be reviewing the underlying facts. She also noted the experts were going to be subject to cross-examination, and the Attorney General would have the opportunity to cross-exam.

Ms. Volkert had some other issues she wanted addressed. She stated the GMC is a licensure agency and has nothing to do with the conviction and took action after there was a conviction under UK law. She reserved any comments that she would have on the statute itself because she tried not to get into prolonged argument on the legality, but reserved and renewed her request that the matter be dismissed on those grounds.

D.A.G. Warhaftig responded that it was a matter of first impression only insofar as the Board would have to determine what weight it would give to a conviction that has arisen in a foreign jurisdiction. Contrary to Ms. Volkert's argument, however, D.A.G. Warhaftig argued that to decide whether testimony by subsequent experts should be admitted in order to re-open the underlying facts was not a matter of first impression. Throughout the proposed exhibits 8 and 9, there is ample testimony concerning the appropriate standard of care.

D.A.G. Warhaftig also argued that although Ms. Volkert said the GMC is "just" a licensure agency, the Attorney General's office maintained that the GMC is an agency that has taken action against Dr. Kaul's license and under N.J.S.A.45:1-21G, the doctor had his authority to engage in the practice of medicine revoked by another agency. This action, therefore, is one in which the Board can take action against as

well. D.A.G. Warhaftig explained that after the conviction, the GMC met, it requested additional information such as the judge's summing up and materials that had been submitted by Dr. Kaul, which included his statements about what happened which were in evidence in a sealed document in P6, his CV and testimonials. Therefore, the GMC had more before it than merely a conviction. It did not retry this case. It brought its expertise to bear in exactly the way this Board typically does it in evaluating actions by other entities. D.A.G. Warhaftig argued Dr. Kaul's conduct is detailed in the records and it is debated between the two sets of experts' reports. The experts don't agree and it was assessed by a sister agency. This Board does not need, nor should it accept, this notion of a new trial on the underlying matter.

Ms. Volkert believed the term "conviction" was being used loosely and noted the Board already denied the motions she made. She argued that according to the US Law, as well as NJ Law, there was no conviction. First, there was no crime, and there is no equivalent here, and second there was no conviction as defined by the US laws. She stated sister is used in the Uniform Acts and refers to our own sister-states and it does not appear that it was contemplated to refer to the laws or actions of a foreign jurisdiction. She asked the Board to hear the two experts on this matter that have been schooled in this country and who could shed light on the weight that the action taken in the UK should be afforded.

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:

WITH REGARD TO ITEMS 8 AND 9, THE EXPERT REPORTS, THE BOARD, UPON MOTION MADE AND SECONDED, VOTED THAT THEY BE ADMITTED. REGARDING THE EXPERT TESTIMONY OF DOCTORS' GOLDINER AND SAUBERMANN, THE BOARD, HAVING CONSIDERED THE ARGUMENTS PRESENTED, DECLINED TO PERMIT THE TESTIMONY OF DRS. GOLDINER AND SAUBERMANN IN RESPECT TO THE STANDARD OF CARE AND WILL RELY ON THE EVIDENCE ALREADY ADMITTED FROM DEVELOPMENT AND UNDERSTANDING OF THE CORE FACTS IN THIS MATTER. MS. VOLKERT HAS INDICATED THAT DR. SAUBERMANN IS FAMILIAR WITH DR. KAUL AND HAS KNOWN HIM FOR MANY YEARS AND TO THE EXTENT THAT HE MAY WISH TO OFFER CHARACTER EVIDENCE IN MITIGATION HE WILL CERTAINLY BE PERMITTED TO TESTIFY.

A.A.G. Joyce clarified that consistent with the approach that was taken with respect to the issue the Board went into closed session earlier, that to the extent that there are additional arguments or discussion of those issues in the case in chief the Board would similarly entertain the motion to go into closed session for purposes of discussion of those issues. Ms. Volkert's understanding was the Board was going to go into closed session first and address that particular issue and then go through openings. She requested that because the issues that they were addressing in closed sessions pertain to the rest of the AG's argument, the Board should go into closed session first and address those issues, make a decision on them, and then they would be clear with respect to all the other issues.

The Board voted to go into closed session with the presence of counsel and the parties for Ms. Volkert to explain in more detail what she was referring to and for argument as to why she believed that further discussion was necessary. 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.

P6 and P7, which remained sealed, were distributed to the Board members.

D.A.G. Warhaftig, in her opening remarks, reminded the Board that this matter was before it based on events that occurred back in March of 1999 when Dr. Kaul was the anesthesiologist for a dental procedure on a patient named Mrs. Bangura. Sometime during this procedure, according to the pathologist who testified at trial, Mrs. Bangura experienced hypoxic brain injury as a result of a systolic cardiac arrest. She was treated by Dr. Kaul on the scene and transported to a hospital where she ultimately died. Dr. Kaul was criminally charged as a result of that patient's death and ultimately, was convicted under English Law of the crime of negligent manslaughter and she acknowledged, unlike in America, that was a criminally chargeable act. And while those criminal charges were pending, several Orders were entered by the English Licensing Authorities. Ultimately, Dr. Kaul was convicted after a jury trial on February 22, 2001. In March, 2001, the GMC (the licensing authority in England), suspended Dr. Kaul's license while the matter was under review and subsequently, the GMC found that Dr. Kaul had engaged in grossly negligent conduct. They entered an Order of Erasure - which is the equivalent of an Order of Revocation in this State. After his license was subject to restrictions and after he was charged in England, but before the conviction, Dr. Kaul submitted his New Jersey biennial renewal application in September of 2000. On that application he was dishonest in his answers to questions about the pending criminal charges, the suspension of his hospital privileges in England and about other issues which the Board discussed in closed session. After his conviction and while suspended, but before the GMC ordered the Erasure, he filled out the application for privileges at Hackensack Hospital and filled out the application for CDS registration. D.A.G. Warhaftig argued that the proofs would show that Dr. Kaul lied on those documents about his criminal status and about his medical privileges in England. The Attorney General asserted that the case fit into two discrete categories: One which arises from events in England pertaining to the conviction by an English jury of a crime in England and his license erasure by a sister licensing authority. The other arises out of Dr. Kaul's dishonesty and misrepresentation on multiple occasions on applications. D.A.G. Warhaftig reserved the bulk of her comments for closing, but told the Board that at the onset, this was a simple case that revolved around bad medicine and dishonesty.

Ms. Volkert waived her opening remarks.

Prior to presenting her case, D.A.G. Warhaftig identified the items circulated to the Board as follows: Medical Act of 1983; P-1 & P-2 Medical Council Rules; P-3 Memorandum of Conviction from the Criminal Court; P-4 Sentencing Remarks; P-5 Statement of Detective Patricia Furguson Gallan; P-6 & P-7 are in evidence and sealed. These items were discussed in closed session; P-8 Prosecution Material from Criminal trial; P-9 Defense materials from the Criminal trial; P-10 transcript of a police interview with Dr. Kaul; P-11 Judge's summing up; P-12 Mrs. Bangura's dental and hospital patient records; P-13 relates to the dental center to where Mrs. Bangura was treated; P-14 is documents from Dr. Kaul; P-15 transcript of a Committee of the GMC on January 11, 2002; P-16 letter from Dr. Kaul dated May 2, 2002; P-18 signed Consent Order entered in this matter March 4, 2002; P-19 Order of the Administrative Court dated March 12, 2002; P-20 Certification of DAG Niedz which is in evidence for the purposes of Attachments A through H which are broken out as follows: P-20a Order of Erasure entered in England; P-20b Dr. Kaul's response to a Demand for Statement in Writing under Oath served on him by the AG in the Summer of 2002; P-20c Dr. Kaul's application for privileges at Hackensack Hospital on April, 2001; P-20d Dr. Kaul's CDS application in April, 2001; P-20e transcript of the proceedings of the GMC with regard to Dr. Kaul from May 2002; P-20f Certificate of Conviction on the charges of manslaughter; there is no P-20g because it was not accepted by the Board in an earlier application; and P-20h statement submitted by Dr. Kaul for consideration by the Professional Conduct Committee of the GMC; P-22 documents pertaining to the biennial renewal application of 9/29/2000 which was exhibit B to the Supplemental Charges; and P-24 the Chrystie Certification. P-23 biennial renewal application from April/May 2001 was the only item at this juncture that D.A.G.Warhaftig asked be moved into evidence. Ms. Volkert objected because the copy she had was a faxed copy which was difficult to read. Additionally, Ms. Volkert was unclear as to source of the document. She further argued that it served no purpose, nor was it discussed at any prior discussion. In response to the Chair as to whether the State

had a clean copy that was not faxed, D.A.G. Warhaftig stated the State had the copies which were faxed and pointed out that they were photo copies of the newest form of biennial renewal which are on the data cards. All the information is at the top of the page. The majority of each page is blank and she sought to introduce this as P-23 in evidence.

Ms. Volkert objected to the introduction of P-23 and D.A.G. Warhaftig stated this was a document which is Dr. Kaul's own submission to the Board and was no surprise, since presumably he answered the questions and signed the document. Ms. Volkert again objected. Chairman Farrell stated the Board was fully aware of what the biennial renewal registration is and all the doctors on the Board have prepared it themselves. In response to the Chair, D. A.G. Warhaftig clarified that P-22 and P-23 are different biennial renewals and the State will prove with this document a pattern of conduct that is at issue in this case. She noted this is a document in the Board's file and that she faxed a copy to Ms. Volkert when she received it. It was Chairman Farrell's inclination to not permit the entry of this document into the record at this juncture. However, if facts developed during the course of the proceeding so that it becomes relevant, the Chair would entertain argument on a request to admit it. D.A.G. Warhaftig noted the State's case in chief was entirely a documentary case and, obviously, she would argue that the documents be admissible in closed session.

Richard Kaul, M.D. was sworn and questioned by Ms. Volkert. He testified that he went to medical school at the University of London graduating in 1988. He undertook his internship in the UK (6 months medicine, 6 months surgery). In his final year of medical school, he made a decision to undergo postgraduate training in the States. He took the ECFMG exam, passed and made application for residency training in the States. He undertook a six-month surgical residency in Jamaica, Queens. He spent significant amounts of time in the intensive care unit and moved to anesthesia. He applied for residency training at Montefiore Albert Einstein for a 3-year training program and completed it in July 1995. He was on a J1VISA with a limitation that at end of the training, he had to return to the UK for 2 years before coming back to the U.S. In the last year of his residency, he was interested in pain management and applied for pain management program at Bristol Infirmary in September 1995. He prepared to return to the UK and took board examinations for anesthesiology and passed (October, 1996). Just prior to taking the boards, he was licensed in NJ in 1996. Dr. Kaul testified that his intentions were to do another year in England before returning to the United States. He made application to have his U.S. training acknowledged in the UK. He submitted an application to the Royal College which was reviewed and because he was trained in the U.S., he was deemed inadequately trained for the UK system. They felt he needed 18 more months of training. He rushed an appeal. The appeal date was set for 1997 and then kept getting put back because of opinions of legal teams. His appeal was held February, 1999. Dr. Kaul testified that the Royal College was never challenged on this issue and they took great offense and it received a fair amount of press attention. He had the support of his Chairman of Montefiore. He testified that they upheld the decision that he needed 18 additional months of residency training.

Dr. Kaul described what happened on March 1999 in his treatment of Mrs. Bangura. He testified she was the last patient on the list that day because she was very scared of undergoing dental work without anesthesia. She was scheduled for dental fillings and wisdom teeth extractions. Dr. Kaul interviewed Mrs. Bangura pre-procedurally, took a history, did the appropriate examination, went through the normal procedure, which was to explain the risks and the benefits and what she would be experiencing. She sat down in the dental chair and EKG, blood pressure, pulse readings and monitors were applied and she had a nasal oxygen mask and was given the sedation. The dentist then proceeded to inject her gums with a combination of lanacaine and adrenaline and commenced the procedure. The procedure lasted approximately 15 minutes, during which time there were no events or incidents. At the end of the procedure, the dentist removed the dental pack, stood up, went downstairs to get a prescription and returned a couple of minutes later. Upon entering the room, the pulse sensor monitor began to beep,

the digital read out on the screen disappeared, and at that precise moment, Dr. Kaul felt the patient's readial pulse on the right wrist felt very weak. He also recalled that the EKG tracing went from sinus rhythm into asystolic, and then he felt her carotid pulse and she was asystolic. At that point he made a diagnosis of cardiac arrest and instituted CPR. With the assistance of the dentist, they resuscitated her and he instructed one of the staff members to call an ambulance and she was taken to Homerton Hospital, which was the closest hospital at that time. He testified that HHS has a severe problem with bed shortage and they had no ICU beds available. They transferred her later that evening to St. Batholomew's Hospital where she was admitted to the Intensive Care Unit.

In response to Ms. Volkert, Dr. Kaul stated he did not accompany Mrs. Bangura in the ambulance to the hospital because when the paramedics arrived and transported her from the surgery into the ambulance he asked if they wanted him to come along and they said they had the situation under control. Mrs. Bangura was admitted into the ICU at St. Bartholomew's Hospital and, in between her leaving the surgery and arriving at St. Bartholomew's, Dr. Kaul spoke to the ER doctor at Homerton Hospital. He also spoke to the patient's daughter, as well as the physician who had transferred her from Homerton. The responses that he received from the physicians were that they were running tests to see what possibly could have caused her cardiac arrest. She stayed in the hospital for six days in ICU. Every day Dr. Kaul was in contact with Mrs. Bangura's physicians in charge of her care. He testified the responses he received on a daily basis were that her cardio espiratree was stable, nothing was changing, and that she showed few signs of neurological improvement. On March 15, 1999, Dr. Kaul was informed that Mrs. Bangura passed away.

Dr. Kaul testified that Mrs. Bangura suffered the cardiac arrest on Tuesday, March 9th, and on Friday, March 12th, he received a call from one of the dental nurses, that police officers raided the dental surgery office and asked everybody to leave, and it was taped up and turned into a crime scene. Dr. Kaul explained the events that took place concerning the police investigation up until he was informed Mrs. Bangura passed away, which included showing them around the dental surgery office and being interviewed at the police station for approximately two hours.

Dr. Kaul testified GMC did not take any action from the start of the investigation up until the time he was charged, which was October 15, 1999. Dr. Kaul testified that the police started a very thorough investigation (took seven months) of everything that had happened that day and everything about him and his practice in London. It came to his attention that the police were contacted by Professor Struden to investigate. The patient was under his care at the hospital. The expert witnesses who were provided to help the police investigate the case were from Professor Struden's department. As a consequence, his reputation and his professional standing in London took a turn for the worse. Dr. Kaul testified that from March 9th through and during that time he was employed, there was never an incident with any patient, nor any prior to March 9th. During this period of time, GMC did not limit his practice. He continued to work from March through October with no restrictions at all. During this period of time he did not return to the U.S. and could not recall if he filled out any forms. Dr. Kaul testified he was formally charged with manslaughter in October of 1999. The preliminary hearing date was in December 1999. The formal hearing, originally scheduled for May 2000, did not take place because the defense team that was working on his case had consulted several experts in the field in the UK who worked with the Royal College who essentially cleared him and said the course of this woman's demise was not due to any lack of care on the part of Dr. Kaul. They thought it was due to her potassium imbalance. These reports were handed to the prosecution on the morning of the start of the trial. The prosecution team asked for an adjournment to consult with their experts. As a consequence, the trial was adjourned until January 2001. The trial was held at the Central Criminal Court, which is the main court in London where high profile crimes are tried. The trial lasted five weeks. Dr. Kaul testified that the prosecution put forth a theory that Mrs. Bangura's cardiac arrest was because he was on a mobile phone, not paying attention to the patient and she was subsequently deprived of oxygen which led to her cardiac arrest. The

defense team managed to get the telephone records from the mobile phone for outgoing and incoming calls and proved that the phone was not in use, that he was not on the telephone, and that the demise was more likely due to an underlying potassium abnormality which led to the asystolic arrest. At the conclusion, the jury of lay people was discharged. After two days, they could not agree. They finally reached a verdict. Dr. Kaul's attorneys had informed him that if he were found guilty he could expect to be sent away for anywhere between five to seven years, and this was a huge stress.

At this point, Ms. Volkert requested that the Board go into Closed Session.

The Board voted to go into Closed Session with the presence of counsel and the parties. 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.

Upon further questioning, Dr. Kaul did not believe that there was anything that he should have done, or for that matter should not have done, which caused Mrs. Bangura's heart attack. As he recalled, the dental procedure lasted approximately 15 minutes and Mrs. Bangura was awake during the procedure, with conscious sedation. She was squeezing his hand with her right hand and squeezed his hand to indicate that she was in pain. Toward the end of the procedure, as the anesthesia was wearing off, she indicated to him that she started to feel the dentist working on her mouth. He reassured her that the procedure was coming close to the end. He did not give her any more medication. Mrs. Bangura had a nasal mask on the entire time during the operation.

The Board voted to go into closed session with the presence of counsel and the parties to address privileged areas and for D.A.G. Warhaftig to cross-examine Dr. Kaul in closed session.

The Board returned to open session with all parties present.

When questioned by Board members, Dr. Kaul admitted that he was familiar with the ASA classification system and believed that the patient would have been a two in light of the fact that she had arthritis. He explained that in the United Kingdom the screening procedures differ in so far as there is not pre-operative or pre-procedural testing performed. Basically, the patients come straight to the dental surgery from the referring dentist. According to Dr. Kaul, a history and physical is performed, however, no EKGs are ever done. In the event that during the pre-evaluation something is detected that is contraindicated, then the patient is referred back to the referring dentist. When the patient experienced the first arrest, Dr. Kaul recalled that he intubated the patient with a rubber intro-tracheal tube, which was cuffed and reusable. He further explained that the NHS dental surgeries are not well funded and the equipment provided tends to be of the "reusable" nature. Dr. Kaul also recalled that the patient had a pulse oximeter, EKG, monitor for the blood pressure and a nasal oxygen mask on during the procedure. The witness admitted that during the procedure, he instructed a staff member to turn off the alarm system on the monitoring equipment. This occurred after the patient had moved her finger and caused the pulse oximeter alarm to go off. Dr. Kaul stated that had an apnea monitor been available, he would have used it. Prior to the procedure, Dr. Kaul instructed the patient to squeeze his finger if she was experiencing any difficulty with her respiratory rate. Although it was not documented in the chart, Dr. Kaul acknowledged that he did monitor the breathing rate and witnessed the patient's chest moving up and down. In the United States, Dr. Kaul testified that he always monitors the respiratory rates, but that the standard in the UK was different.

Dr. Kaul testified that he had never really determined why the patient arrested. The defense theory was that the patient suffered from hypokemia, but Dr.Kaul could not definitely say that it was because of the potassium levels.

Responding to Ms. Volkert on direct, Dr. Kaul informed the Board that after leaving Hackensack Hospital, he made an application to Columbus Hospital for privileges. At that time, because of the experience at Hackensack, he made full disclosure of the issues that occurred in England. The hospital granted him privileges and he worked out of Columbus from about February until August. Subsequently, he received an offer from St. Clare's, was granted privileges and has worked there since November. Again, he stated that during the application process at St. Clare's he made full disclosure of the dental case and the manslaughter charge. In fact, according to Dr. Kaul, he provided them with approximately three hundred pages of information, which was reviewed by the Board of Directors at St. Clare's. Currently at St. Clare's, Dr. Kaul is the director of a pain management center in which approximately 60 to 70% of the practice is dedicated to patients with chronic back pain.

He admitted that he did not seek counsel and answered the questions on his own when he filled out his biennial renewal form. In returning the renewal, Dr. Kaul stated that he also submitted documents which would have included transcripts, the judge's summing up comments, the sentencing comments, copies of the prosecution and defense expert reports, copies of the GMC's communications, and letters of support. Dr. Kaul clarified his testimony and stated that the documents he submitted were part of the Demand for Statement Under Oath he had received, not the biennial renewal application.

Dr. Kaul estimated that he had delivered approximately 44,000 anesthetics during his career. Other than the incident with Mrs. Bangura, he has never had any other patient incident. Additionally, other than the erasure of the GMC, no action has ever been taken on his license. New Jersey is the only jurisdiction in the United States in which Dr. Kaul holds a license.

On cross-examination, D.A.G.Warhaftig questioned Dr. Kaul concerning his responses to the biennial renewal application which he signed on September 29, 2000. Dr.Kaul admitted that if he had to answer those questions (i.e., have you been arrested, indicted or convicted of a crime or offense in any jurisdiction....and are there any criminal charges against you now pending), he would still respond "no." Dr. Kaul continued by explaining that when he answered the questions, he honestly believed that it was restricted to the United States. He again stated that since he learned from Hackensack Hospital sometime in November 2002, that the information concerning the incident in England should be disclosed, he has disclosed it in all subsequent applications for privileges. When shown a document which was signed on September 11, 2002 in which he responded "no" to the question "Are you aware of any action pending against you or any investigation progressed by the State Licensing Board, Dr. Kaul admitted answering no, but also pointed out that the accompanying documents sent with the application made it clear that the State was investigating him. The doctor also pointed out that many of the questions were answered by referring them to the 300 documents submitted with the application, the same documents which were forwarded to the Board as a response to the Demand for Statement Under Oath.

Dr. Kaul acknowledged that he filled out a biennial renewal form in April and May 2001, although he could not recall why both dates are on the form. On the part of the form dated May 3, 2001,Dr. Kaul conceded that he answered "no" to the questions "Have you been convicted of a crime" and "Has your professional license been revoked or suspended, whether active or stayed, by any licensing board." The answers were provided on the form subsequent to the interim suspension by the GMC and subsequent to his conviction.

Dr. Kaul testified that he appeared before the Credentials Committee of Hackensack Hospital at which time, he was questioned about the incidents in England. After the meeting, Dr. Kaul also admitted that he wrote the Committee a letter further explaining the interim order in England. That order related to a requirement that he needed an additional 18 months of residency training. The interim order, continued Dr. Kaul, was placed on him in December 1999 and was part of the case of the Royal College against him concerning his training. He opined that the interim order was imposed because according to the

Royal College, he had not been adequately trained in the UK standards. As he explained to Hackensack, Dr. Kaul believed that part of the motivation for the GMC charges related to his appeal of this earlier interim order concerning his training. According to Dr. Kaul, he believed that the GMC action was, in part, politically motivated. Dr. Kaul acknowledged that this was part of his explanation offered at the Credential Committee meeting at Hackensack.

D.A.G. Warhaftig wished to address some issues concerning a document that had been previously sealed and the Board voted to move into closed session.

Upon returning to open session, D.A.G. Warhaftig moved to have Dr. Kaul's biennial renewal application executed by him on April 18 into evidence. Ms. Volkert requested additional time to review the document. The Board, therefore, reserved decision until after a review could take place.

Concerning the issue about the delay in calling the ambulance, Dr. Kaul explained that the delay was due to the fact that he was in the process of resuscitating Mrs. Bangura and recalled calling out for someone to call an ambulance. There were several people in the room and no one realized it was directed to them. Dr. Kaul admitted that he should have given the instruction to a particular person.

The witness also stated that the signs of hypokarema might be a widening of the curis complex, or a slowing of the rate, or an inversion of the t-waves, or significant changes in the EKG. Hypercalemia, according to Dr. Kaul, can be detected either with a quickening of the rate or a shortening of the curis complex. He again pointed out that the equipment used and supplied by the NHS is not as sophisticated as here in the United States and such subtleties may not always be detected. He recalled that when the digital display for the pulse oximeter disappeared from the screen, he believed that her regular pulse was weak. All indicators demonstrated that she was stable until the point where the digital display disappeared. The doctor further recalled that he administered 100 micrograms of phentanol and 6 milograms of radazalene. He also instantly instituted AOA breathing and circulation. Mrs. Bangura also received adrenaline to assist the heart.

D.A.G. Warhaftig began her closing by reminding the Board that the Attorney General brought this complaint based primarily on two allegations. First, the gross negligent conduct in the treatment of Mrs. Bangura and secondly, Dr.Kaul's repeated dishonesty and his lack of good moral character in so far as he has repeatedly lied to the Board, as well as on various applications to the hospitals at which he applied for privileges. She urged the Board to pay close attention to the chronology of events because it answered the questions as to what the obligation of Dr. Kaul was to answer the various questions concerning his loss of license and/or criminal charges. Dr. Kaul would have the Board believe that he did answer correctly because he believed that the question only applied to actions within the four corners of the United States. When Dr. Kaul applied to Hackensack and when he submitted his biennial renewal form, Dr. Kaul already had been arrested and charged, the GMC had placed restrictions on his license, as well as experienced the issues discussed in Closed Session. Yet in answering the questions, he responded in the negative as to convictions and restrictions or suspensions to his license. Why? D.A.G. Warhaftig believed the only way to answer the question is that he lied.

Turning the Board's attention to the "Acceptance of Full Responsibility", D.A.G. Warhaftig reminded the Board that Dr. Kaul admitted that he had a duty to care for the patient and that he breached that duty. He goes further, continued D.A.G. Warhaftig, by admitting that the breach was gross and that he accepts total responsibility for his actions. Dr. Kaul now comes before the Board and offers tortured explanations of the meaning of his words. So the Attorney General's office postulated that the evidence and even Dr. Kaul's testimony demonstrated a pattern of dishonest behavior. The Attorney General asserted that the liability in this case was clear. Dr. Kaul engaged in violations of the statute and regulations governing the practice of medicine and surgery in this State. Through his repeated acts of dishonesty and his gross practice of medicine with Mrs. Bangura, she urged the Board to deal

appropriately with Dr. Kaul.

Ms.Volkert countered by asserting that this case is anything but clear. She proffered that this was an unusual case that was very complicated with varying legal issues. First, she believed the Board would agree that in the United States a different system is in place. Here, one cannot be criminally convicted for an act of malpractice. She posited that one of the major complaints with the public is that a U.S. physician will never admit (s)he is wrong. Here, Dr. Kaul, in an attempt to convey to the family his regret, might be disciplined because of such an admission. Most telling, perhaps, is that he wrote these words on the advice of counsel. The Attorney General would have you believe that Dr. Kaul said "I caused her death." To the contrary, Ms. Volkert asserted that the statement simply meant he took responsibility. Respondent's counsel also asked the Board to focus on the fact that he wanted to go in the ambulance and that he phoned every day while Mrs. Bangura was in the hospital. She also urged the Board to not confuse the two legal systems and what might have been the basis for conviction in England would not be anything more than a malpractice case here in the U.S.

Mrs.Volkert then requested that the Board move into closed session. The Board, upon motion made and seconded, moved into closed session with the presence of counsel and the parties.

The Board returned to open session with all parties present.

In closing, Ms. Volkert urged the Board to take into consideration that Dr. Kaul is a caring and competent doctor. She believed that the citizens of New Jersey deserve to have him continue in practice in the State. Dr. Kaul, concluded counsel, is not a liar as the State would have you believe. Yes, he made some mistakes, but perhaps the biggest mistake he made was not seeking counsel.

D.A.G. Warhaftig requested that the Board move into closed session. The Board, upon motion made and seconded, voted to move into closed session.

The Board returned to open session with all parties present.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MOVE INTO EXECUTIVE SESSION FOR DELIBERATIONS. ALL PARTIES, EXCEPT COUNSELING DEPUTIES, LEFT THE ROOM.

The Board returned to open session and announced the following motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED THAT AFTER DUE CONSIDERATION OF THE DOCUMENTS THAT HAVE BEEN INTRODUCED INTO EVIDENCE AND THE PRESENTATIONS, THE BOARD FINDS THAT THERE IS A BASIS FOR DISCIPLINE PURSUANT TO N.J.S.A. 45:1-21b AND FINDS THAT THERE TO BE MULTIPLE MISREPRESENTATIONS MADE BY THE DOCTOR IN THE CONTEXT OF A VARIETY OF APPLICATIONS THAT HE HAD EXECUTED. IN ADDITION, THE BOARD FINDS BASIS FOR DISCIPLINE PURSUANT TO N.J.S.A. 45:1-21G GROUNDED UPON THE ACTION OF THE GMC AS ANOTHER AUTHORITY REGULATING THE PRACTICE OF MEDICINE IN SO FAR AS THE GMC'S DETERMINATION WAS GROUNDED UPON A JURY FINDING OF GROSS MALPRACTICE, AND MOST IMPORTANTLY FOR THIS BOARD, THE DOCTOR'S OWN ADMISSION WITH REGARD TO HIS DUTY OF CARE AND HIS BREECHES THEREOF. HAVING MADE THOSE FINDINGS, THE BOARD HAS DETERMINED THAT IT IS UNNECESSARY TO ADDRESS WHETHER IT CAN RELY ON A CONVICTION BY LESS THAN AN UNANIMOUS JURY ENTERED IN THE UNITED KINGDOM AND THUS, DISMISSES THE CHARGES PURSUANT TO N.J.S.A. 45:1-21F.

ADDITIONALLY, THE BOARD HAS WITH RESPECT TO P-6, WHICH IS PRESENTLY A SEALED

DOCUMENT BEFORE THE BOARD, THE BOARD HAS DETERMINED THAT THERE ARE PORTIONS OF THE DOCUMENT WHICH NEED TO BE REDACTED AND ONCE REDACTED WILL BE MADE PART OF THE OPEN RECORD. The Board then heard testimony in mitigation.

Prior to presenting her first witness, Ms. Volkert put on the record that she had planned on presenting a number of other witnesses in mitigation, but due to the hour, those witnesses had to leave.

Mr. Anthony Kopf, Hamburg, New Jersey, was the first witness presented in mitigation. He testified that he came to know Dr. Kaul as a result of a referral by his orthopedic surgeon who could no longer provide him with any help as to the pain he experienced as a result of back surgery. Since November of last year when he first started seeing Dr. Kaul, the witness stated that he has never felt better. The quality of life, according to Mr. Kopf, has improved tremendously. Mr. Kopf stated that he appreciated the amount of time that Dr. Kaul spends with him and he has always found Dr. Kaul to be a compassionate and caring physician.

Mr. Robert Gordon then testified on the doctor's behalf. He is currently employed at the Morrisview Nursing Home where he has worked for the last thirty years as the chief engineer of the facility. According to Mr. Gordon, he came to know Dr. Kaul when he went to the pain management center at St. Clare's where Dr. Kaul works. Previously he had two major surgeries and had been in a lot of pain. Dr. Kaul, according to the witness, is unlike any other doctor that he has seen in his life. Mr. Gordon stated that he can't believe how much time Dr. Kaul takes to listen to him and Dr. Kaul has improved his quality of life more so than any other doctor. Even knowing about this case, Mr. Gordon implicitly trusts Dr. Kaul and in fact, he informed the Board that Dr. Kaul would be performing surgery on him the following day.

Ms. Volkert in her closing argument to the penalty phase realized with all due respect that the Board has found that Dr. Kaul should be punished. But she asked the Board to take into consideration the fact that he has been punished already and that the actions taken in England were more than sufficient punishment. He has stated to the Board that he has learned his lesson. The biggest mistake that Dr. Kaul made, according to his counsel, was the fact that he did not hire or seek legal advice upon returning to the United States as he was trying to put his life back in order. Ms.Volkert wished that the Board had the opportunity to hear the various witnesses that had waited all day to testify on Dr. Kaul's behalf. The Board would have heard that Dr. Kaul is an upstanding physician and is well respected within his community. Dr. Kaul has admitted that he is sorry and in some ways that fact that he is sorry is being held against him. He wanted to convey his regret and sorrow to Mrs. Bangura's family and now that is being used as the basis for disciplining him. Nothing will be served by taking away a period of time from his practice, Ms.Volkert continued, no matter how short a time. She closed by imploring that the Board take a serious look at the matter and urged the Board to conclude that it happened many years ago. It was an isolated incident that never happened before and has not happened since.

D.A.G Warhaftig accepted that there were some very attentive and dedicated mitigation witnesses who wished to appear before the Board. The Attorney General further recognized that if they had been called to testify, they would have echoed the appreciations expressed by the witnesses that testified about Dr. Kaul's medical ability. D.A.G. Warhaftig, however, did not believe that any of that was germane. The issue, according to D.A.G. Warhaftig, was the fact that he repeatedly lied in a manner to deceive the Board and Hackensack Hospital. The Board has found that Dr. Kaul engaged in multiple acts of misrepresentations here. For those misrepresentations, he should be punished with significant time out of practice.

She concluded by reserving the right to submit an application for costs in this matter.

The Board moved to go into Executive Session for deliberations and advice of counsel. All parties,

except counseling staff, left the room.

The Board returned to open session and announced the following motion.

AFTER DUE CONSIDERATION OF THE MATTER, INCLUDING THE MITIGATION PRESENTATION, THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO SUSPEND DR. KAUL'S NEW JERSEY LICENSE FOR A PERIOD OF TWO YEARS, THE FIRST SIX MONTHS OF WHICH WILL BE ACTIVE, AND THE REMAINDER TO BE SERVED AS A PERIOD OF PROBATION WITH THE PROVISION THAT NO PERIOD OF THE ACTIVE SIX MONTHS SHALL COUNT TOWARD COMPLETION UNLESS HE REFRAINS FROM PRACTICE IN ALL JURISDICTIONS. ADDITIONALLY, DR. KAUL SHALL PAY A PENALTY IN THE AMOUNT OF $10,000 AND COSTS, TO INCLUDE ATTORNEYS FEES, TO BE SUPPLIED BY CERTIFICATION FROM THE ATTORNEY GENERAL'S OFFICE, AND TO BE DECIDED ON THE PAPERS. DR. KAUL IS ALSO ORDERED TO TAKE AN ETHICS COURSE APPROVED BY THE BOARD. THE BOARD, ON ITS OWN MOTION, MADE THE EFFECTIVE DATE OF THE SUSPENSION THIRTY DAYS FROM THE HEARING IN ORDER TO AFFORD DR. KAUL SUFFICIENT TIME TO TRANSFER HIS PATIENTS.

OLD BUSINESS

1. ANDUJAR, Edward, M.D. (License #MA52473)
HERNANDEZ, Jose W., Esq. for Respondent
HARPER, Douglas J., D.A.G. for Complainant

Dr. Huston was recused from this matter.

In accordance with the Final Order filed December 12, 2002, attached was the March 13, 2003 letter from Respondent's attorney, Mr. Jose Hernandez, providing the Board with the name of the LPN who would be assisting Dr. Andujar in performing intravenous infusions at his office.

The LPN's name is Dianna E. Slattery. Ms. Slattery has a valid Board of Nursing license from June 11, 2002 to May 31, 2004. Enclosed is a true and correct copy of Ms. Slattery's license/certification. On February 25, 2003, Ms. Slattery successfully completed a four-hour course of instruction in peripheral intravenous therapy by the South Jersey Hospital in Bridgeton, NewJersey. Enclosed is a copy of the Certificate issued by South Jersey Hospital. Also attached was a Certificate issued on August 1, 2001 stating that Ms. Slattery completed the national cognitive and skills evaluations in accordance with the curriculum of the American Heart Association for the BLS for Healthcare Providers Program. Mr. Hernandez believes that Ms. Slattery is duly qualified to perform the intravenous infusions at Dr. Andujar's medical office. Board approval was requested.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE REQUEST.

2. JAMES, Darren, D.P.M.
KENNY, Paul R., D.A.G.

The Board reviewed the March 26, 2003 South Jersey PEC Minutes concerning the matter of Dr. James and voted to report its motion in Open Session as follows:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT THE COMMITTEE'S RECOMMENDATION TO ISSUE AND ORDER DENYING DR. JAMES' APPLICATION FOR REINSTATEMENT AT THIS TIME BASED ON THE REASONS ARTICULATED IN THE MINUTES AS WELL AS THE REASONS GIVEN BY DR. RICKETTI AFTER HIS REVIEW.

NEW BUSINESS

1. MANZE, Patrick, M.D.
KEATING, Michael J., Esq. for Respondent
BAUDRY, Adriana E., D.A.G. for Complainant

Dr. Wallace was recused from this matter.

Enclosed was D.A.G. Adriana E. Baudry's March 25, 2003 memo to the Board. The enclosed Consent Order filed December 11, 2002 stated among other things, that Dr. Manze refrains from practicing medicine and surgery as a solo practitioner and only practice in a group of physicians in which at least one (1) of the other licensed physicians agrees to act as a monitor for him. Respondent's counsel, Mr. Keating, requested that the Board consider a modification of this Consent Order. He requested that the Order be modified to allow Dr. Manze to be in a solo practice and presents, for Board approval, Charles F. Rilli, M.D. who practices urology in an suite adjacent to Dr. Manze's office, to serve as Dr. Manze's monitor.

The modification request alters the Consent Order in that Dr. Manze would not be practicing under constant supervision by a Board approved monitor. Board guidance was requested.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT PROPOSED MODIFICATIONS TO THE CONSENT ORDER THAT DR. MANZE WOULD NOT BE PRACTICING UNDER CONSTANT SUPERVISION BY A BOARD APPROVED MONITOR.

The Meeting was adjourned at 9:30 p.m.

Respectfully submitted,

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

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