

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

April 10, 2002

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, April 10, 2002 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor, Conference Center, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by Glenn A. Farrell, Esq., Chairperson for Open Disciplinary Matters.

**PRESENT**

Present were Board Members Chen, Criss, Farrell, Haddad, Harrer, Huston, Moussa, Paul, Perry, Ricketti, Robins, Rokosz, Trayner, Walsh and Weiss.

**EXCUSED**

Board Members Desmond, Lucas, Patel and Wallace.

**ALSO PRESENT**

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

**RATIFICATION OF MINUTES**

The Board had received a request from Anthony F. LaBue, Esq., that the Board delay the ratification of the March 13, 2002 Minutes until after Dr. Matkiwsky's 11:00 a.m. appearance to allow the record to remain open, pending Dr. Matkiwsky's Motion for Stay of the Board revocation. The Board noted this request, rejected the request, and determined to approve and ratify the Minutes as submitted. The Board noted that regardless of whether it decides to grant or deny the motions Mr. LaBue has filed, the record of what happened on March 13, 2002 is what it is, and no Board action taken today will or could in any way affect or change the record of what happened on March 13, 2002. Therefore, the Board found no basis to accommodate this request.

The Minutes from the March 13, 2002 Board meeting were approved as submitted.

**HEARINGS, PLEAS, RETURN DATES, APPEARANCES**

**MATKIWSKY, Zenon, D.O. (Counseling Deputy: FLANZMAN)**

**FARBER, Zulima, Esq., for Respondent**

**GELBER, Joan D., D.A.G., for Complainant**

**(Proceedings Recorded by Karen DeLucia, C.S.R., GUY J. RENZI & ASSOCIATES)**

Doctors Robins and Rokosz are recused from this matter.

Matter set down for oral argument on a Motion for Stay of the Board's Final Order Revoking Licensure filed March 26, 2002 in the matter of Dr. Matkiwsky. The Board decided on this matter at its March 13, 2002 meeting, at which time Dr. Matkiwsky was represented by Joseph M. Gorrell, Esq. Mr. LaBue was retained as counsel for Dr. Matkiwsky and the Board was then advised at the time of this oral argument, that Dr. Matkiwsky is now represented by Ms. Farber.

On March 27, 2002, Board President Harrer held a conference call and entertained oral argument concerning Dr.

Matkiwsky's application for a stay of the Board's Order revoking his license. Dr. Harrer denied the application for stay in his capacity as Board President, however he offered Respondent the opportunity to seek consideration of his motion by the full Board by renewing his application for a stay at this meeting. On March 27, 2002, Mr. LaBue renewed his motion for a stay of the Board's Order. Mr. LaBue also requested that Dr. Matkiwsky be given an extension of time to pay the civil penalties and costs beyond the March 31, 2002 date set forth in the Board Order.

Enclosed for Board consideration were Mr. LaBue's March 22, 2002 letter to Board President Harrer advising him of his law firm's representation of Dr. Matkiwsky and requesting that the Board stay the revocation of Dr. Matkiwsky's license pending the submission of their request that the Board reconsider the penalty meted out on March 13, 2002; D.A.G. Gelber's March 22, 2002 response; the Final Order Revoking Licensure filed March 26, 2002; Board President Harrer's March 27, 2002 letter to the parties denying the stay of the Order; Mr. LaBue's March 27, 2002 letter renewing his motion for a stay of the Order and his April 2, 2002 letter requesting an extension of time for payment of the penalties and costs beyond the March 31, 2002 date; D.A.G. Gelber's April 3, 2002 response that the application for a stay of any part of the Order should be found without merit and should be denied, and the Board should reiterate the due date of return of licensure documents and all payments which are already overdue. Also enclosed were Mr. LaBue's April 3, 2002 letter brief in support of his application to seek the Board's reconsideration of the sanction issued March 13, 2002 and a stay of the Board's Order, and D.A.G. Gelber's April 5, 2002 response in opposition. In addition, the Board received as a handout Mr. LaBue's faxed letter dated April 8, 2002, requesting that the Board delay the ratification of the March 13, 2002 Minutes until after Dr. Matkiwsky's 11:00 a.m. appearance to allow the record to remain open, pending Dr. Matkiwsky's Motion for Stay of the Board revocation. This issue was dealt with by the Board during the ratification of the March 13, 2002 Open Disciplinary Minutes.

The Board was asked to make a decision on whether or not to stay the Order and whether it would permit an extension of time to pay the penalties and costs. The Board was then to decide whether or not it would consider the matter and, if so, the parameters that would be taken for reconsideration.

Ms. Farber, Attorney for the Respondent, thanked the Board for permitting her to appear on Dr. Matkiwsky's behalf. Due to a potential conflict concerning Mr. LaBue's ability to represent Dr. Matkiwsky, to avoid argument on the conflict issue, Dr. Matkiwsky decided to retain her firm for the purposes of the hearing. Although a formal motion for substitution of an attorney had not been filed, Ms. Farber expected to do so in the near future.

Turning to the substance of the case, Ms. Farber argued that the issue in this case could be reduced to whether or not at a mitigation hearing when the Board is going to decide penalty on a no contest plea of a complaint, whether the Attorney General is permitted to comment on the facts of the case.

At this point, D.A.G. Gelber raised an objection and requested that the Board clarify the rules for proceeding at the hearing. She opined that this was an application for reconsideration of the Board's decision and the substance of that motion should be decided first and then, depending on the Board's decision, then there may be a need for the Board to hear argument on the other issues.

The Board, through its chair, clarified that it would hear both Motions together and after argument, would decide the appropriate course of action in deciding the motions.

Ms. Farber continued by arguing that the issue in this matter was whether or not in any hearing on penalty of finding of guilt on a complaint or plea of no contest on a complaint, whether in mitigation of the penalty, the Respondent and the Attorney General are permitted to comment on the underlying facts which bring the Respondent before this Board. At the March 13, 2002 hearing, the Attorney General took the position that this was not permitted and that it was impermissible to comment on any underlying facts because Respondent entered a plea of no contest to the Complaint. In the Motion papers Mr. LaBue submitted, there is a comparison made between a proceeding before this Board and a criminal proceeding. While Respondent recognizes that this was not a criminal proceeding and that the rules are very different, Ms. Farber submitted that the underlying public policy was exactly the same because just like a proceeding in Superior Court whereas a Judge presides over a

criminal matter, this Board is here to protect the public, as well as to protect the rights and interests of the doctors of this State. The Attorney General's argument last month only emphasized the Board's responsibility as it related to protection of the public. Ms. Farber emphasized that there is also a concurrent responsibility to protect the rights of Respondent, and it is in the balancing of these rights that the Board discharges its duty to all of the people in this State.

Continuing on, Ms. Farber again referred to the criminal proceedings analogy. In a criminal proceeding, the defendant in mitigation is not restricted to his person, his character, or aspects of his life. The defendant is permitted to comment on what it is in the underlying facts in mitigation and to present facts to determine the aggravating factors to assess the appropriate penalties on a criminal defendant. Likewise, here, if the Board does not know the true underlying facts, she posited that the Board cannot reach a fair, just, reasonable decision on what the penalty should be. Information, according to Ms. Farber, that would assist the Board is whether the violation resulted in quality of care rendered to the patient or whether it was a pure violation of a regulation without any patient harm. In a charge as here that Dr. Matkiwsky permitted an unlicensed person to take x-rays, would not the Board want to know how long that practice took place. Would not the Board want to know one x-ray was taken a day or 100 x-rays taken a day. Just as Judge in a criminal proceeding wants to know in a murder whether one person or twelve were killed, the underlying facts in this case are equally important. Without the admission of the underlying facts, the Board is not only unfair to Respondent, but the Board risks losing the public's trust. She argued it was essential for this Board to know more than it did when it made its determination here.

Ms. Farber offered the following examples to the Board: Dr. Matkiwsky was not only facing the ten Counts in the Complaint, but an allegation that the Board picked up that he was trying to argue that a physician on the premises at all times was really the Medical Director. Ms. Farber noted that D.A.G. Gelber objected and the Board did not permit any more argument in that regard. The Board furthermore refused to take into consideration the two letters in support. Now, in fact, D.A.G. Gelber had in her file a report of the investigator who went to the premises dated March 31st of the investigation conducted on March 29, 1999, by Anthony McMann, Investigator of the Department of Environmental Protection, who inspected the clinic in 1999, accompanied by a Nurse, Linda Beverage of the Consumer Affairs, Enforcement Bureau. Mr. McMann filed his report two days after the visit. She referred to page 5 of the report noting that at about 3:15 in the afternoon (the inspection started at 11:00 and they were there until 4:00) they spoke to Dr. Calamari who informed them that he was employed since 1998 as Medical Director. But, during the mitigation hearing, Dr. Matkiwsky was not permitted to say to the Board that he was responsible because he was the owner and whether or not he had the title, ultimately, it was his responsibility. He was not at the clinic on March 29th, so no one had an opportunity to prepare for this visit. Dr. Calamari stated he was the medical director since November 1998. At the March 13th hearing, D.A.G. Gelber objected to any statement by Dr. Matkiwsky that he had not acted as Medical Director, that is, that he was not there on a day-to-day basis. He hired a full-time licensed physician to do that. Ms. Farber stated that Mrs. Gelber presented to the Board at that hearing a card that the investigator had taken on March 29 which had Dr. Matkiwsky listed as Medical Director and had a little map on the back. D.A.G. Gelber had argued that Dr. Matkiwsky was being dishonest to this Board when he tried to say that during the visit, Dr. Calamari was really in charge and he was not permitted to further explain that the medical director before that, the full-time physician at the facility before Dr. Calamari, had left in late 1998, before Dr. Calamari. Dr. Rodgers had been there 4 to 5 years before Dr. Calamari arrived. It took a while for Dr. Rodgers, due to personal reasons, to decide whether or not he was returning to the clinic. In the intervening time, someone had to be in charge. Dr. Matkiwsky stepped in and shortly thereafter, Dr. Calamari was hired. She questioned why the Board should not know that when the Board is making a penalty determination. She suggested that with the explanation of the underlying facts, revocation was not the appropriate penalty.

Similarly, Ms. Farber agreed that if someone had an unlicensed person giving injections or positioning patients for x-rays for eleven years that revocation might be appropriate. But she was quick to point out that it was not what happened here. Had the Board permitted information concerning the underlying facts to his plea of no contest, the Board would have learned from Dr. Matkiwsky that it did not occur for an eleven-year period. According to the investigator's report, a technician was employed until January 1999. The report continues by reporting that there was a technician there and when that technician left, that was when the medical assistant, who

was not registered and should not be permitted to take x-rays, began to perform the x-rays. When questioned, Biondi said I was doing the x-rays quite some time ago when one of the physicians, Doctors Rodgers or Billings, asked me to position the patient and help him. She puffed up her responsibilities. Rodgers said I took the x-rays. On the day of the visit, the investigator met 14 patients and he asked did you have x-rays, are you here for x-rays, none were there for x-rays. This clinic was not open to take x-rays. But the revocation speaks to that, it is as is this whole clinic was just a sham. That is not true. She argued if the Board were to read the report of Nurse Beverage, there is no resemblance to what was in the Complaint, what was presented to the Board and what was in the report. The assistant believed she could do this as long as a physician was on the premises. Nothing was being hidden --- the assistant kept a record, a log of all the injections she gave. Ms. Farber acknowledged that these were grave errors, but it absolutely was not malicious.

Ms. Farber noted there also was a charge to which the doctor pleaded no contest that on March 29th, the two investigators found expired medication. The Board, however, during the mitigation hearing, did not permit any further explanation of the charge. Ms. Farber suggested that it would be important to learn whether or not any of the expired medication was administered to patients. Taken in a vacuum, the investigators' report said hundreds and hundreds of samples and a few were expired. She asked would not the Board want to know before it makes a decision on the right penalty to protect the public and be fair to Dr. Matkiwsky the extent to which the expired medications were used or not used.

Ms. Farber suggested that error existed because the Board did not consider any of the mitigating circumstances prior to making its decision. She then went on to remind the Board that there may be other cases where the Complaint charges certain violations, but by the time of the hearing, there is a lot of evidence of aggravating or for that matter, mitigating circumstances with the underlying facts of the Complaint that influences the final decision. She argued if the Attorney General would not permit the Board to hear these facts, then the Board is not making a fully informed decision. It can't be argued that this prejudices the Attorney General's case. Quite to the contrary, she offered, the Attorney General could argue the underlying facts in helping shape the appropriate remedy one way or the other. Logically it flows, that if two individuals were charged with the same offenses, and the circumstances were different, the Board would take that into consideration and fashion the remedy that was appropriate for each individual.

Ms. Farber also raised the issue that the Board heard last month concerning Dr. Matkiwsky's resignation. Specifically, a Board member questioned Dr. Matkiwsky and the doctor clarified that he wanted to resign from surgery, but that he did want to do something in medicine. D.A.G. Gelber said he could not practice medicine because he had no malpractice, but the Board was not permitted to know why. According to Ms. Farber, the doctor resigned his license, made the representation that he sold his clinic and indicated that he would not practice medicine anymore. She went on, however, to inform the Board that this was not what he believed he was agreeing to and clarified this to the Board at its last meeting that he would like to continue to practice medicine, not surgery, but medicine. Trying to put this into context for the Board, she argued that if all the violations related to the clinic and the doctor has no interest in a clinic-type practice, and considering that the doctor had over a 30-year brilliant career at the hospital where there was no question about his responsibilities or ethics, would the public be harmed if the Board restricted his ability to practice to no surgery and practicing within in the hospital.

When confronted with the Interim Agreement signed by Dr. Matkiwsky in which it specifically stated that he was retiring from the practice of medicine, Ms. Farber attempted to explain the discrepancy between his current position and that as indicted in the Agreement as a misunderstanding between Dr. Matkiwsky and his former counsel, Mr. Gorrell. At the last Board meeting, Dr. Matkiwsky attempted to clarify the point. He wants to do something in medicine. He has a family to support, a career to finish and that is what he is fighting for. It is not his intention to work at a clinic, but rather to work in the hospital setting where he did very, very well for over 30 years at Union Hospital.

Finally, Ms. Farber addressed the goal and purpose of setting penalties for deterrence of Dr. Matkiwsky, others and patients. It was Ms. Farber's position that others will learn from the example of what the Board says. She submitted, however, that a lesson can be learned by the ordeal that Dr. Matkiwsky had been through for the past three years, in his relinquishing of his clinical practice which he created and from which he derived

administration from others, having lost that weighed against his performance at the hospital. She maintained that protection to the public could be achieved by restricting his license to the hospital setting. Ms. Farber argued that the restricted license, not a revocation, would be a much better resolution which this Board could have considered had it had the true facts before it. She believed that an injustice had been done because the Board did not consider all the facts in deciding the penalty. She urged the Board to stay the Order entered on March 13th, reconsider hearing all the mitigating facts, and reconsider its decision of revocation. In this manner, according to Ms. Farber, the public will be protected and justice can be rendered to Dr. Matkiwsky.

D.A.G. Gelber countered by arguing that in any case brought before the Board there are two ways in which to handle the litigation procedure. In the first, a full plenary hearing is conducted. In this case, had Dr. Matkiwsky elected to take that route, which was before him to begin March 4 of this year, testimony of many witnesses putting an entirely different interpretation of the allegations would have been conducted. There would have been testimony from fact witness employees. Although Ms. Farber suggested to the Board that the Attorney General's Office had the information and prevented the Board from considering it, D.A.G. Gelber directed the Board to Counts I and II of the Complaint. In those counts, allegations during an extended period of eleven years, approximately 1998 through mid-March 1999 (with one brief intervening gap) and then the rest goes on to allege unlicensed practice of radiology and negligent performance of procedures. Had there been a full trial, it could have been expected that testimony from Ruth Gordon would have indicated that she would have said that she was the first licensed person to be employed in that office and when she left she was not replaced. There also might have been testimony that employees begged for a replacement licensed technologist and they finally did so by urging that the person be hired. There may have been information concerning the Department of Environmental Protection's inspection as well. Instead of this material being developed at trial, D.A.G. Gelber continued, Dr. Matkiwsky elected, two weeks before trial, not to go further and plead no contest. She stated as the Board Order correctly identifies, when a no contest pleading occurs, it is not considered either an admission or a denial. Simply put, the person is stating that he or she does not contest the allegations of the Complaint, which means the judging entity has the authority to treat the allegations and treat the liability as a whole against the allegations as if they were proven. Based on this longstanding principle, the Attorney General's Office objected from the attempt to present underlying facts during the mitigation hearing. She reminded the Board that as an Administrative Agency, it has limited time, so Dr. Matkiwsky submitted his letters, had character witnesses, and contrary to what Ms. Farber would have the Board believe, no one precluded him from submitting anything. Additionally, no witnesses were precluded from speaking. The Attorney General maintains that due process was observed at every stage. For the Board to now have a hearing where only bits and pieces of uncorroborated information will be received, with no opportunity for cross-examination, she argued would be patently unfair. She proffered that if that is the type of hearing that Dr. Matkiwsky wanted, he should have gone to trial. To the contrary, he knowingly decided not to go to trial and pled no contest to the allegations. She urged the Board to deny the motion for reconsideration and the stay that was before it.

D.A.G. Gelber also argued that the doctor's assertion that he didn't realize that he was agreeing to resign from practice was fallacious. She argued he read the agreement, discussed it with counsel and signed it. If his counsel offered him unsound legal advice, which D.A.G. Gelber believed was highly doubtful, then that was a matter between Dr. Matkiwsky and his former counsel and she submitted it was not a matter for the Board.

In rebuttal, Ms. Farber stated that D.A.G. Gelber argued that first he pled no contest to avoid trial and now is coming forward saying he wants a trial. Ms. Farber believed that was a mis-characterization, clarifying that Dr. Matkiwsky is only requesting that the Board consider the mitigating, underlying facts prior to imposing its penalty. For example, Ms. Farber maintained that she did not believe that the Board would have revoked his license simply because the corporation was an LLC rather than a PC, or because he failed (which is a violation) to declare his interest in an MRI facility and X-ray facility. She admitted that these were major violations, but asked the Board to consider that they were technical in nature. The allegations indicated that this occurred over a period of eleven years, although D.A.G. Gelber seemed to indicate in her earlier argument that it was for a shorter period of time. Whatever it was, she argued, is what the Board should be considering. All Ms. Farber was asking the Board was to hear all the evidence prior to making its decision.

D.A.G. Gelber reminded the Board that in its Order, the Board gave Dr. Matkiwsky an opportunity to come back

in the future. The Order mandates that if he ever applies for reinstatement, he should take an ethics course and submit a petition for reinstatement, and Board will consider the rehabilitation. The Board built in that allowance for a future return should it find that appropriate.

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 members of the public present, and announced the following motion:

THE BOARD, UPON MOTION MADE AND SECONDED, RESERVED DECISION ON THE PENDING MOTION FOR RECONSIDERATION. THIS MOTION WILL BE DECIDED AT THE NEXT MEETING OF THIS BOARD SCHEDULED FOR MAY 8, 2002, AT WHICH TIME ALL MEMBERS OF THE BOARD PARTICIPATING SHALL HAVE AVAILABLE A TRANSCRIPT OF THE HEARING HELD MARCH 13, 2002. UNTIL A DECISION IS MADE ON THE MOTION FOR RECONSIDERATION, THE PRIOR FILED ORDER OF THIS BOARD ENTERED MARCH 26, 2002 IS STAYED.

Mr. Walsh voted in opposition.

## **OLD BUSINESS**

### **1. DAUITO, Ralph, M.D., License #51448 (Without Appearance) MANTEL, Donna Lee, Esq., for Respondent BERGER, Susan, D.A.G.**

In accordance with the Consent Order filed December 13, 2001 (a copy of which the Board received), Dr. Dauito must successfully complete a Board-approved course in the performance of angiographies on or before June 1, 2002. Enclosed was Ms. Mantel's March 22, 2002 letter submitting the description of the "9th Annual Interventional Radiology and Vascular Imaging" program given from May 6 - 10, 2002 at the University of Pennsylvania. Ms. Mantel requests that the cited course be approved by the Board so that Dr. Dauito can complete this program, enrich his knowledge-base and satisfy the continuing education portion of the requirements of the Consent Order. Board President Harrer has reviewed the course information and has provisionally approved it.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE AND RATIFY DR. HARRER'S DECISION TO APPROVE DR. DAUITO TAKING THE COURSE ENTITLED "9th ANNUAL INTERVENTIONAL RADIOLOGY AND VASCULAR IMAGING" PROGRAM GIVEN FROM MAY 6 - 10, 2002 AT THE UNIVERSITY OF PENNSYLVANIA IN ACCORDANCE WITH THE BOARD ORDER.

### **2. KIM, Jae Jin, M.D., License #49469 (Without Appearance) ALBERTSON, B. Michelle, D.A.G.**

A Provisional Order of Discipline (POD) was filed December 13, 2001 which would reprimand the above physician and upon his return to active practice in New Jersey, he shall be placed on probation for one year. Enclosed for Board consideration were D.A.G. Albertson's February 28, 2002 letter to the Board; Dr. Kim's response dated January 8, 2002 with attachments; and the POD with attachments filed December 13, 2001.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FINALIZE THE PROVISIONAL ORDER OF DISCIPLINE WITH A FINAL ORDER OF DISCIPLINE.

### **3. NWANNA, Romanus O., M.D. (Without Appearance) MANDEL, Pamela, Esq.**

In accordance with the August 24, 2000 Consent Order (a copy of which the Board received), Dr. Nwanna must satisfactorily complete, within the two years of his suspension, 48 hours of continuing medical education courses in high-risk pregnancy. These courses must be approved by the Board. Dr. Nwanna has thus far taken courses

approved by the Board which totaled 36 credit hours. Dr. Nwana still needs at least nine additional credit hours. Enclosed was Ms. Mandel's March 20, 2002 letter with attachments requesting Board-approval of a High-Risk Obstetrics continuing education course entitled \*Antepartum & Intrapartum Management for Dr. Nwana.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE DR. NWANNA TAKING THIS COURSE IN ACCORDANCE WITH THE AUGUST 24, 2000 CONSENT ORDER, CONTINGENT UPON BOARD MEMBER WALLACE@S APPROVAL.

**4. SHAFER, Nathaniel, M.D., License #43273 (Without Appearance)  
KELTON, Michael S., Esq., and ANOLIK, Irving, Esq., for Respondent  
ALBERTSON, B. Michelle, D.A.G.**

A Provisional Order of Discipline (POD) was filed December 13, 2001 which would suspend the above physician's license for six months and prior to active practice, he would be required to successfully complete a Board-approved ethics course. Enclosed for Board consideration were D.A.G. Albertson's February 28, 2002 letter to the Board; Mr. Kelton's response dated January 8, 2002 with attachments; and the POD with attachments filed December 13, 2001.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE PROVISIONAL ORDER OF DISCIPLINE TO BECOME A FINAL ORDER OF DISCIPLINE.

**D.A.G. ITEMS NOT ON AGENDA**

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

D.A.G. Kenny reported that Dr. Wijaya applied for leave in the Appellate Division, Superior Court. The Attorney General's Office drafted a brief opposing this on the grounds there was little likelihood on success of the merits. It is an application for a stay based on letters from hospital directors at Hamilton Hospital and St. Francis Hospital, the hardships raised before the Board last month and that he suffered reputable harm in that he was revoked. The Attorney General believed it made forceful arguments in support of the denial, however, it appeared that the Appellate Panel focused on the hardships of the hospitals, the hardship caused to Dr. Wijaya and that there were no other instances since 1994. The Appellate Panel authorized the stay. The Attorney General's Office could have moved for an emergent appeal to the Supreme Court. The Attorney General's Office instead filed a motion for accelerated appeal on the basis that all the transcripts are in place. If that motion is granted, Respondent will have four weeks to submit their reply. D.A.G. Kenny emphasized that the grant of the stay gives no indication that the Appellate Division is likely to overturn the Board's decision.

**REPORT OF INTERIM AND FINAL ORDERS FILED WITH THE BOARD**

**1. ANDUJAR, Edward, M.D., License #52473 (Vineland, NJ)**

ORDER MODIFYING TEMPORARY LIMITATIONS OF LICENSE filed March 12, 2002 with an effective date and time of March 10, 2002 at 6:00 P.M., the date and time the Order was orally communicated to Dr. Andujar's counsel and shall be effective pending ratification, modification or rejection of the Committee's action by the Board at its meeting on March 13, 2002. Dr. Andujar applied for vacation of the temporary limitations previously placed on his license to practice medicine and surgery in the State of New Jersey. The parties appear to agree that upon reinspection on March 6, 2002, the front office areas of the 516 Wood Avenue premises were in a safe and sanitary condition, fit for the practice of medicine. The Board has ordered that Dr. Andujar may practice medicine in the "front" portion of the premises at 516 Wood Avenue in Vineland, New Jersey. He may not practice in the rear of the premises or open or practice at any other facility or location in New Jersey unless and until he receives approval from the Board after an inspection by the Enforcement Bureau and a demonstration to the Board's satisfaction that the facility complies with all federal, state and local laws and regulations concerning the health, safety and welfare of New Jersey patients, is operated in a manner which ensures his practice will comport with public health, safety and welfare regarding the manner in which patients are to be treated and that

the lab on the premises complies with all CLIA requirements. EFFECTIVE DATE: March 10, 2002

ORDER OF TEMPORARY LIMITATION OF LICENSE filed March 28, 2002 with an effective date nunc pro tunc March 13, 2002. Dr. Andujar may practice medicine in the "front" portion of the premises of 516 Wood Avenue, Vineland, NJ. He may not practice in the rear premises or open or practice in any other facility or location in New Jersey unless and until he receives approval from the Board after an inspection by the Enforcement Bureau and a demonstration to the Board's satisfaction that the facility complies with all federal, state and local laws and regulations concerning the health, safety and welfare of New Jersey patients. His practice is to be conducted in a safe and sanitary manner to ensure patients and personnel are not unnecessarily exposed to blood and body fluids; only appropriate licensed personnel will have access to any controlled substance on the premises; and that his practice complies in all respects with state, federal and local laws relating to the practice of medicine, including that the lab on the premises complies with all CLIA requirements. Treatment shall be initiated, monitored and terminated only by the licensees specified in this Order. His facility shall be accessible for inspection by representatives of the Division of Consumer Affairs' Enforcement Bureau. This Order is effective March 13, 2002, the date on which it was orally announced by the Board on the record. It shall remain in effect pending disposition of the charges in the Administrative Complaint. EFFECTIVE DATE: March 13, 2002

## **2. BLAIR, Georgia Rose, CNM, License #325 (Shrewsbury, NJ)**

FINAL ORDER LIFTING RESTRICTIONS filed March 1, 2002. Ms. Blair appeared before a Committee of the Board seeking relief of the restrictions placed on her CNM practice by prior Board orders. Based on her progress, compliance and the substantial positive changes she has made in her practice, the Board ordered that the restrictions placed on her license to practice nurse midwifery in the State of New Jersey be lifted. Her license is fully restored. EFFECTIVE DATE: March 1, 2002

## **3. CAVALLI, John, D.P.M., License #MD002456 (Trenton, NJ)**

SETTLEMENT AGREEMENT LETTER filed December 11, 2001. A complaint was received alleging Dr. Cavalli advertised for "free" initial consultation and subsequently billed Medicare for an office outpatient visit. The Board reviewed the complaint and copies of his advertisements. Investigation disclosed that he advertised that the patient's initial consultation was free, but he billed Medicare for the patient's first visit and was reimbursed by Medicare for the visit. At a 7/26/00 appearance before a Committee of the Board, he testified that the "free" part of the initial visit was a "tour" through the suite, but when the patient entered his actual office and was "evaluated", he charged for his time. The Board found this practice false and deceptive and in violation of N.J.S.A. 45:1-21(b), misrepresentation and N.J.S.A. 45:1-21, professional misconduct. The Board reprimanded Dr. Cavalli for said violations. Dr. Cavalli agreed to cease and desist from advertising "free" initial consultation, successfully complete a Board-approved course in medical ethics, and pay a \$5,000.00 penalty and \$2,305.82 in investigative costs. EFFECTIVE DATE: December 11, 2001

## **4. CORTES, Miguel A., M.D., License #37873 (Atlantic City, NJ)**

INTERIM CONSENT ORDER filed January 23, 2002. The Consent Order filed August 29, 2001 required a weekly review of Dr. Cortes' patient records by the Medical Director of the Board. Weekly review is no longer required. This Order will revise the existing review schedule. No other provisions of the August 2001 Order are effected. The Board ordered that ten patient charts of examinations conducted on behalf of the INS shall be subject to review every three weeks by the New Jersey licensed physician identified to the Board by Dr. Cortes and approved in advance of such practice by the Board. Such physician shall deliver reports every three weeks to the Board's Medical Director. As an alternative, if Dr. Cortes is unable to identify a physician-reviewer for such chart review, he may make arrangements with the Medical Director to conduct such chart reviews on an interim basis. He must adhere to all of the requirements of the Interim Consent Order filed August 29, 2001 with the exception of the review schedule of patient charts. EFFECTIVE DATE: January 23, 2002

## **5. KAHN, Simon J., M.D., License #MA043165 (Englewood, NJ)**

CONSENT ORDER filed March 13, 2002. An investigation was initiated after the Medical Practitioner Review Panel received notice from Englewood Hospital that the hospital privileges of Simon J. Kahn, M.D. had been summarily suspended for a 24-hour period based on their determination that Dr. Kahn had improperly backdated medical record notes in connection with treatment of patient T.S. The Panel reviewed both the original record and the revised record (which included approximately twelve undated additions to the original record) which had been prepared by Dr. Kahn. The additions were made in a manner that (but for the fact that a copy of the record had been made following the patient's death) would not have alerted a reader of the records that additions had been made to the record. In altering the medical records, Dr. Kahn violated N.J.A.C. 13:35-6.5 (b) (2) and committed professional misconduct. The Board ordered Dr. Kahn be reprimanded for engaging in professional misconduct. He was assessed a \$2,500.00 penalty and \$300.00 costs. Dr. Kahn must successfully complete a Board-approved course in medical ethics acceptable to the Board. EFFECTIVE DATE: March 13, 2002

**6. MARION, Milton G., M.D. License #MA04344 (Pennington, NJ)**

CONSENT ORDER OF PERMANENT VOLUNTARY RETIREMENT OF LICENSURE filed January 9, 2002. The Board has accepted Dr. Marion's request to voluntarily permanently retire his license to practice medicine and surgery in the State of New Jersey with prejudice to any future re-application. The effective date of his permanent retirement was January 15, 2002.

**7. NIZIOL, John A., M.D., License #30205 (Clifton, NJ)**

CONSENT ORDER OF REINSTATEMENT OF LICENSURE filed February 22, 2002. On July 25, 2001, the Board Office filed a Consent Order of Voluntary Surrender of Licensure wherein Dr. Niziol surrendered his license based on a relapse into a prior alcohol abuse problem. His surrender was for a minimum of three months. In September 2001, Dr. Niziol appeared before a Committee of the Board to request his license be reinstated with conditions. The Committee found that Dr. Niziol had demonstrated compliance with the requirement of the prior Consent Order and had maintained sobriety. The Board ordered his license be reinstated with conditions. He must refrain from the use of all psychoactive substances unless prescribed by a treating physician for a documented medical condition, must attend Alcoholics Anonymous at least three times per week, must continue his participation with the Physicians' Health Program (PHP) and will continue to be subject to urine monitoring. He must continue participation in aftercare as directed by the PHP until such time as his counselor and the Medical Director of the PHP agree to discontinuation. The PHP will report quarterly to the Board concerning his compliance and participation in treatment and immediately notify the Board if any evidence of relapse. EFFECTIVE DATE: February 22, 2002

**8. WICHMAN, Paul, M.D., License #MA39719 (Budd Lake, NJ)**

CONSENT ORDER OF VOLUNTARY SURRENDER filed February 26, 2002. The Board received information from the Mt. Olive Police Department that Dr. Wichman was writing prescriptions in employees' names and having the employee obtain Vicodin and cough medications with codeine allegedly for Dr. Wichman's personal use. Dr. Wichman sought leave to surrender his license to practice medicine without prejudice. He entered an in-patient treatment program for substance abuse at Clearbrook in Wilkes Barre, Pennsylvania. The Board ordered that Dr. Wichman immediately voluntarily surrender his license to practice medicine and surgery in the State of New Jersey for a minimum of three months from the date of entry of this Order. Prior to any restoration of his license, he must appear before a Committee of the Board to discuss his readiness to re-enter the practice of medicine and provide the Board with evidence he is not then suffering any impairment or limitation which could affect his practice. At that time, he must provide the Board with reports from each and every mental health professional who participated in his care/treatment and also provide a report from the Physicians' Health Program detailing the extent of his involvement with that entity. EFFECTIVE DATE: February 26, 2002

**9. WIJAYA, Don Henry, M.D. (Trenton, NJ)**

FINAL DECISION AND ORDER filed March 25, 2002. The matter was opened to the Board on the Attorney General's filing of an Administrative Complaint on March 6, 1997 alleging that Dr. Wijaya, a psychiatrist, engaged in intermittent sexual contact with his psychiatric patient, F.B. The Attorney General charged that his

conduct is not justified in medical practice, represents a gross deviation from any acceptable standard of care, and constitutes and abuse of the doctor-patient relationship. The matter was transferred to the Office of Administrative Law for hearing. The Initial Decision of Administrative Law Judge Joseph Fidler was issued on December 18, 2001. Dr. Wijaya filed Exceptions to Judge Fidler's Initial Decision on January 24, 2002. Those exceptions were considered by the Board at its March 13, 2002 meeting. The Board adopted the Findings of Fact and Conclusions of Law of Administrative Law Judge Joseph Fidler in toto. The Board ordered that Dr. Wijaya's license to practice medicine and surgery in the State of New Jersey be revoked. In order to allow the safe transfer of respondent's patients to other practitioners, the revocation is effective April 13, 2002. During the one month from the pronouncement of the oral determination on the record to April 13, 2002, Dr. Wijaya may not see any new patients in any new setting. He may not perform any hospital service assignment and must notify his patients he will no longer be available for psychiatric care as of April 13, 2002. He must surrender his license to the Board by April 13, 2002. He must pay a \$10,000 penalty and \$38,529.42 in costs. **THIS FINAL DECISION AND ORDER WAS STAYED BY THE APPELLATE DIVISION ON MARCH 27, 2002.**

## **LICENSURE MATTERS**

### **1. BOERGERS, Richard, Athletic Trainer, License #MT001077 issued 12/4/01 (South Orange, NJ)**

CONSENT ORDER filed October 10, 2001. Reprimanded for the unregistered practice of athletic training from August 2000 to August 2001 at Seton Hall University. Assessed \$250 penalty.

### **2. CLEMENTS, Chad A., Athletic Trainer, License #MT001076 issued 12/4/01 (South Orange, NJ)**

CONSENT ORDER filed October 10, 2001. Reprimanded for the unregistered practice of athletic training from August 1999 until August 2001 at Seton Hall University. Assessed \$250.00 penalty.

### **3. EICHVALDS, Nora, Athletic Trainer, License #MT001097 issued 3/22/02 (Ocean, NJ)**

CONSENT ORDER filed March 13, 2002. Reprimanded for the unregistered practice of athletic training from 1988 to the present at Shore Regional High School and other locations in the State of New Jersey. Assessed a penalty of \$1,210.00 representing monetary penalties for each of the eight renewal cycles during which she practiced without registration. A registration will be issued to Ms. Eichvalds for the current registration period. **EFFECTIVE DATE: March 13, 2002**

### **4. ISIDRO Jr., Godofredo S., M.D., Unlicensed (Garnerville, NY)**

FINAL ORDER OF DENIAL OF RESIDENCY TRAINING PERMIT filed March 18, 2002. The Board reviewed an application for a residency training permit for Dr. Isidro at St. Joseph's Hospital in Paterson, NJ. The Board found that he failed to provide "certification of a successful performance during the first year of graduate medical education to date" constitutes a violation of N.J.A.C. 13:35-1.5(1)4. Successful completion of a postgraduate year one is a prerequisite to the granting of a residency training permit for a postgraduate year 2. He admitted under oath he did not disclose to the NY Medical College his lack of successful completion and no academic credit for a postgraduate year constitutes the use of dishonesty and obtaining the NY residency position through fraud, deception and provides grounds for denial of his NJ permit. A Provisional Order of Denial was filed February 28, 2002. Through counsel, Dr. Isidro requested modification of the Provisional Order to allow completion of the current PGY II year at St. Joseph's Hospital and Medical Center. He asserted that he is substantially through the year and should be permitted to continue. In the alternative he asked the Provisional Order be modified to allow him to apply for a PGY I position commencing July 1, 2002. His submissions were reviewed by the full Board which determined further proceedings were not necessary. The Board declined to modify the Provisional Order to allow Dr. Isidro to complete the current PGY II year. The Board was of the opinion that to allow completion would be inconsistent with a clear regulatory requirement to complete PGY I before commencing PGY II. Dr. Isidro's application for a residency training permit to practice medicine and surgery in the State of New Jersey is denied. He must immediately cease and desist any practice as a resident in New Jersey. Any practice in New Jersey without benefit of written Board authorization shall be considered unlicensed practice of medicine. **EFFECTIVE DATE: March 18, 2002**

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

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

Respectfully submitted,

Glenn A. Farrell, Esq., Chairperson  
for Open Disciplinary Matters

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