

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 1
DISCIPLINARY MATTERS PENDING CONCLUSION - APRIL 14, 2010

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, April 14, 2010 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 Dr. Mendelowitz, Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Berkowitz, Cheema, Ciechanowski, Criss, Iannuzzi, Jordan, Paul, Scott, Stanley, Tedeschi, Rajput, and Weiss.

EXCUSED

Board Members Baker, DeGregorio, Howard, Lambert, Lomazow, Mendelowitz and Walsh.

ALSO PRESENT

Assistant Attorney General Joyce, Senior Deputy Attorneys General Dick, Flanzman, and Gelber, Deputy Attorneys General Ehrenkrantz, Hafner, Silva, Warhaftig, and Executive Director Roeder.

RATIFICATION OF MINUTES

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO
APPROVE THE MINUTES FROM THE MARCH 10, 2010 BOARD MEETING.**

HEARINGS, PLEAS, AND APPEARANCES

LEVINE, Benjamin M.D., *pro se*, License #25MA02389700
HAFNER, Doreen D.A.G., Prosecuting
FLANZMAN, Steven S.D.A.G., Counseling

An Administrative Complaint was filed on January 4, 2010. Dr. Levine filed an Answer on January 21, 2010. The Attorney General filed a Motion for Summary Decision on February 8, 2010, based upon his convictions of Theft by Deception in the Second Degree and Falsifying Records in the Fourth Degree. Dr. Levine's Answer objecting to the Motion for Summary Decision was filed on March 2, 2010. This matter was originally scheduled to be considered by the Board at its March 10, 2010 meeting. Pursuant to Dr. Levine's request, it was adjourned

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until this meeting. The matter was set down for oral argument on the Motion for Summary Decision.

Dr. Jordan summarized the matter before the Board and noted that Dr. Levine was not present for the hearing as his request to be released from prison was denied. DAG Hafner placed her appearance on the record.

She began her presentation by asking the Board to consider the April 6, 2010 submission only as a mitigation statement. It should not consider it in the case in chief, as the hearing scheduled was for the purpose of determining whether the State has met its burden in establishing liability. The Board noted that it received the April 6, 2010 submission and reviewed it in advance of the hearing and it would be difficult to parse out the information contained therein in each phase. It would give the submission its due weight during the Board's deliberations.

At the onset, the Attorney General submitted and offered into evidence the indictment (P-1). The transcript was also submitted and offered into evidence as P-2. The Board accepted both as evidence.

DAG Hafner argued that the case law was clear that the Board could enter summary decision when there is no dispute of material fact. The Board, as an administrative body, need not conduct a new evidentiary hearing in such matters, but could rely on the findings of the court. The jury's finding of guilt could not be disputed and in fact, Dr. Levine admitted in his answer that he was convicted. While Dr. Levine attempted to collaterally attack the conviction, such an attack was misplaced as a criminal conviction is conclusive evidence of guilt. The DAG cited a number of cases to support this proposition. Dr. Levine's fact of guilt, she continued, cannot and should not be re-litigated in this forum. There was no issue as to any material fact as he was found guilty on both counts. The jury found that he purposefully obtained the money of another (*i.e.*, insurance payments) through deceptive means (*i.e.*, through the unlicensed practice of medicine). Both were *per se* violations of the Board's statutes and regulations. There can be little argument that his crimes did not constitute moral turpitude since he engaged in theft by deception. Using his status as a doctor when he did not have a license, she argued that he obtained reimbursement from submitted insurance claims. Such activities departed from the norm of professional, good moral standing of a Board licensee. She concluded by reminding the Board that it has the power to grant the Attorney General's motion because he was found guilty of theft by deception, a crime of moral turpitude and through his acts, demonstrated that he lacked the good moral standing to merit a license to practice medicine and surgery in the State of New Jersey.

DAG Hafner noted for the record that Dr. Levine requested that the Judge enter an order that he be produced before the Board at this hearing as he is incarcerated in the Adult Middlesex County Center awaiting sentencing. The judge denied that request and Dr. Levine was not able to attend the oral argument.

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

The motion was made by Mr. Weiss and seconded by Dr. Paul. It carried unanimously.

Returning to Open Session, the Board announced the following decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ATTORNEY GENERAL'S MOTION FOR SUMMARY DECISION.

The Board also noted that it would postpone the mitigation hearing in the matter until its June meeting. It also requested that full transcripts of the hearing (and if available, the sentencing transcript) be submitted by the Attorney General in advance of the June meeting.

OLD BUSINESS

1. **LAHIRI, Swapnadip, M.D., License #25MA06313700**
GORELL, Joseph M., Esq., for Respondent
DICK, Sandra, S.D.A.G. (Counseling Deputy)
GELBER, Joan D., S.D.A.G. for Complainant

An outstanding issue in the Lahiri matter from the Board's March meeting related to a determination as to the amount of restitution, if any, that should be imposed on him. The Board considered submissions from the respective counsel on this issue.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ATTORNEY GENERAL'S MOTION AND ASSESSED THE REQUESTED AMOUNT OF RESTITUTION.

Respectfully submitted,

Paul Jordan, MD Chairperson
For Open Disciplinary Minutes

WVR/dt/br

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