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

May 8, 2002

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, May 8, 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 David M. Wallace, M.D., Chairperson for Open Disciplinary Matters.

PRESENT

Present were Board Members Chen, DiFerdinando, Farrell, Haddad, Harrer, Huston, Lucas, Moussa, Patel, Perry, Ricketti, Robins, Rokosz, Trayner, Wallace, Walsh and Weiss.

EXCUSED

Board Members Criss and Desmond.

ALSO PRESENT

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

RATIFICATION OF MINUTES

The Minutes from the April 10, 2002 Board meeting were approved as submitted.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

PELLIGRA, John P., M.D. (Counseling Deputy: LEVINE)
KERN, Steven I., and WEIR, Bonnie M., Attorneys for Respondent
KEOSKEY, Alex J., D.A.G., for Complainant

(Proceedings Recorded by Brenda Rissmeyer, C.S.R., GUY J. RENZI & ASSOCIATES)

Dr. Wallace is recused from this matter.

This matter was chaired by Glenn A. Farrell, Esq., since Dr. Pelligra is on Dr. Wallace's medical staff.

The Board voted to go into executive session for advice of counsel in this case. 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. This matter was set down for oral argument on exceptions in the matter of John P. Pelligra, M.D. Enclosed for Board review was the April 17, 2002 Initial Decision of Administrative Law Judge M. Kathleen Duncan. This matter was initiated based upon a Complaint filed May 1, 2000 alleging gross negligence, malpractice, incompetence; dishonesty, deception; and failure to comply with Board regulation. Enclosed were the Administrative Complaint filed May 1, 2000; Respondent's Answer to the Administrative Complaint filed May 10, 2000; Amended Answer to the Administrative Complaint filed October 26, 2000; and D.A.G. Keoskey's Exceptions filed April 30, 2002 which includes the Stipulations between the parties and the deposition of Albert L. Strunk, M.D., Complainant's expert.

The Board also received as a handout Respondent's Reply filed May 6, 2002 to the Complainant's Written Exceptions to the Initial Decision. The Chair permitted 15 minutes for oral argument on Exceptions. There were no preliminary matters to be considered.

D.A.G. Keoskey outlined this matter involving an incident between February 11 and 12, 1997 at Jersey Shore Medical Center. D.A.G. Keoskey alleged that on February 10, 1997, patient M. was admitted to the hospital. On February 11, 1997, Dr. Pelligra attempted to attach a needle to the fetal scalp and failed to remain with the patient for more than 25 to 30 minutes after the failed attempt. Dr. Pelligra was not in the hospital but returned to finish off on the emergency C-section. The baby was delivered healthy. D.A.G. Keoskey referred to the progress notes and records as altered on February 12, 2002 (Exhibits C7 and C8). He continued by informing the Board that George Laubach, M.D., reviews all Caesarian sections performed at the hospital and questioned Dr. Pelligra concerning certain alterations which had been made to the patient records after the child had been delivered. Dr. Pelligra acknowledged that he had made the additions to the records, which is a violation of N.J.A.C. 13:35-6.7. D.A.G. Keoskey noted that the changes could have been made provided they were clearly dated, which Dr. Pelligra did not do. D.A.G. Keoskey noted Dr. Pelligra appeared before a Preliminary Evaluation Committee of the Board and a Complaint was filed.

D.A.G. Keoskey continued by reminding the Board that Dr. Albert Strunk gave testimony at a video taped deposition because he was unavailable and the Judge made an adverse decision to exclude the expert's testimony. D.A.G. Keoskey noted for the Board Count I was supposed to be adjudicated at trial for failure to stay with the patient but, because with the dismissal of Dr. Strunk's testimony, that Count could not be sustained. The Attorney General charged that, after the date of the baby's delivery, Dr. Pelligra surreptitiously altered the medical records of Patient M. in violation of hospital policy and Board regulation N.J.A.C. 13:35-6.5 and alleged violation of that constitutes a violation of N.J.S.A. 45:1-21(h) by failing to comply with a Board regulation, and N.J.S.A. 45:1-21(c) in that it was dishonest and deceptive. D.A.G. Keoskey noted Count II was all that remained at trial.

D.A.G. Keoskey noted that his adversary refers to Kaplan v. Skoloff & Wolfe from 2001 as better defining the meaning and import of the long established "Net Opinion Rule" that requires an expert to produce tangible evidence to support his personal opinion that a recognized standard of care exits, in this particular case, care by an Ob/Gyn. D.A.G. Keoskey argued that Kaplan said nothing about textbook, treatise, journal or any other particular tangible evidence. D.A.G. Keoskey argued the law in New Jersey regarding the admissibility of expert testimony is clear. Rule 702 says an expert has to have the knowledge, skill and training in order to testify and background in that particular subject. Rule 703 states the facts or data in the particular case upon which an expert bases an opinion of inference may be those perceived by or made known to the expert at or before the hearing. Dr. Strunk met that with his qualifications. Concerning the Judge's opinion that the expert did not speak to acceptable care in the community, D.A.G. Keoskey referred to Rule 702 as the standard which includes the provision that anyone can testify based on research as to the standard of the community. The reason an expert has to have training and background is to bring that "expertise" to people at trial. This expert had the background and based his opinion on his experience. Dr. Strunk testified, did peer review, to say he cannot speak to standard of care is wrong. The ALJ decision is a recommendation only and it is up to the Board to make that final decision. Regarding the second exception, regarding the penalty, D.A.G. Keoskey referred to C-7 and C-8. February 11 progress notes - the next day he added "floating to -3". The only question for the Board was why did he add this language. C-8 states "will apply internal electrode at next interval". That was written after the baby was delivered. ALJ Duncan wrote in her decision the reason for "adding material to McDonner's records" may have been done out of fear of a law suit and in order to prevent further questioning. It was misleading, done to prevent questions, because whoever looks at C-8, anyone would think it was written contemporaneously on that day. There is nothing to say it was not written on February 11, that is misleading alone. N.J.S.A. 45:1-21(b) provides the mechanism to supplement the record. The question, according to D.A.G. Keoskey, was whether it met the standard of N.J.S.A. 45:1-21(b), and if not, it constituted dishonesty and fraud.

Mr. Kern opened and agreed with everything D.A.G. Keoskey said about the recordkeeping issues, except for one fact. He noted that a 4:00 a.m. note which precedes the note at issue which makes it crystal clear that nothing the doctor wrote at 7:30 was in anyway incorrect, false, misleading or otherwise. At 4:00 a.m. the fetus was at a -3 station. Once at -3 position, the head does not go backwards. So we know at 3:00 p.m. what is added in the 7:30

note, information which must be accurate without doubt, without question, without equivocation based upon the 4:00 note by the resident. If the Board looked at this case from the worst position, if progressed, the baby would have been further along. Dr. Pelligra, when he originally wrote the note involved, taking care of the patient the next day, realized the note was unclear and clarified it.

A discourse between counsel ensued and both counsel were admonished not to interrupt one another and to conduct themselves in a civil manner.

Mr. Kern continued by arguing that Dr. Strunk's testimony was inadmissible because it was simply based on the way that he would do things. When questioned repeatedly, Dr. Strunk was not able to provide any basis to support his opinion. For that reason, the Judge did not permit the testimony. Mr. Kern continued by further arguing that the Judge actually went further. The Judge found that even if she accepted the testimony of Dr. Strunk, she still would find in favor of Dr. Pelligra because the Judge was convinced that Dr. Strunk did not establish the appropriate standard of care.

Concerning the issue of penalty, Mr. Kern acknowledge that there was no dispute that additional information was added, but there was nothing in that additional information which changed anything. The notion that there was concern about law suit, was purely speculation. Mr. Kern asked the Board not to penalize every doctor that violates a technical violation of the Board. There is not one doctor in this state that should not be disciplined. He suggested that if the Board pulled all prescriptions from pharmacies, not 1% do they have age or address of patient. If written, it is written by the pharmacy. Should you have your license disciplined, of course not. The Medical Practice Act is to punish serious violations of the law.

Mr. Kern acknowledged that there was a technical violation, however, he submitted that it did not rise to the level where any disciplinary action is appropriate. Dr. Pelligra realized he was wrong and has taken the Vilensky course. Mr. Kern assured the Board that Dr. Pelligra would comply with the Board's rule in the future.

In responding to the request for further clarification of the "Net Opinion", Mr. Kern argued that what Dr. Kaplan was merely saying was this is the way I do it, or this is what I believe the standard of care to be, which is what forms a net opinion. The court gives examples of items such as textbooks, articles, hospital policies that may render an expert opinion admissible. At a minimum, Mr. Kern argued that must be based on a consensus in the medical community, which could be the result of seminar materials or a survey taken. He gave an example of one case of whether there was a failure to diagnose undescended testes, which the court looked at the operative report from the hospital which demonstrated they were descending. One can rely on that evidence to support the fact they were undescended because it's tangible. The break seems to be between a doctor saying this is standard of care because I say it is, and a situation where you can point to what the community understands.

D.A.G. Keoskey agreed with Mr. Kern's argument regarding the need to articulate accepted standards. When talking about things that do not appear anywhere, the case law speak about the "necessity of referred textbooks, treaties, hospital policy, articles". He agreed there can also be data for accepted standards of care. He pointed out that it is not the only criteria and there is no case or rule that says that. It is the combination of skill, experience, knowledge and training. In this case, OB/GYN is not the only criteria. He noted that Dr. Strunk did specifically say it was given under the generally accepted standard of medical practice. Certainly that is not enough and you must look beyond that. D.A.G. Keoskey stated the Board should remand this matter back to Judge Duncan, allow Dr. Strunk to back up his assertion and find out what textbooks he's talking about.

The Board voted to go into executive session for deliberation. 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 REJECT THE CONCLUSIONS OF LAW OF ADMINISTRATIVE LAW JUDGE DUNCAN REGARDING HER FINDING THAT THE EXPERT TESTIMONY OF DR. STRUNK WAS NET OPINION AND INADMISSIBLE. THE BOARD BASED THIS FINDING ON PREVAILING CASE LAW. HOWEVER, THE BOARD ALSO FOUND THAT HAVING

EVALUATED THE ENTIRE RECORD, IT AGREED WITH ALJ DUNCAN THAT THE TESTIMONY, IF CONSIDERED, WOULD NOT HAVE CHANGED THE RESULTS. THEREFORE, IT WAS HARMLESS ERROR.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED THAT BASED ON ITS REVIEW OF THE RECORD ALTERATION, IT FOUND VIOLATION OF THE BOARD'S PATIENT RECORDS RULE, N.J.A.C. 13: 35-6.5(b)2 AND ALSO DETERMINED THAT THERE IS A VIOLATION OF N.J.S.A. 45:1-21(b). THE BOARD HEREBY DETERMINED TO REINSTATE THE COMPLAINT IN ORDER TO CONSIDER WHETHER TO IMPOSE SANCTIONS.

Dr. Robins abstained from vote on this second motion.

Chairman Farrell asked whether the parties were prepared to proceed in mitigation, at which time Mr. Kern advised that there was no directive that they proceed in mitigation. Therefore, Chairman Farrell advised the parties that the matter was adjourned until a later date, and the parties will be advised when that mitigation will be scheduled.

ALMAHAYNI, Rania, M.D. (Counseling Deputy: DICK) (Without Appearance)
WARHAFTIG, Jeri, D.A.G.

Order to Show Cause and Verified Complaint filed March 8, 2002 seeking a temporary suspension of Dr. Almahayni's license to practice medicine and surgery in the State of New Jersey, based upon allegations that Respondent's continued licensure constitutes a clear and imminent danger to the public arising from her untreated delusional disorder. This matter was to be heard before the Board on March 13, 2002. Dr. Almahayni and Louis E. Baxter, Sr., M.D., FASAM, Executive Medical Director of the Physicians' Health Program, agreed to and signed a Consent Order of Voluntary Surrender that adjourned the hearing until the Board's April 10, 2002 meeting. Dr. Almahayni agreed to the voluntary surrender of her license until such time as this matter is decided by the Board. The Administrative Office of the Board was advised that Dr. Almahayni was willing to appear before the Board at this meeting. Enclosed were the Order to Show Cause and Verified Complaint filed March 8, 2002 which included D.A.G. Warhaftig's Certification filed March 8, 2002 with Exhibits A through G (sealed by the Board at its March 13, 2002 meeting). Also enclosed was the Consent Order of Voluntary Surrender signed by Dr. Almahayni on March 15, 2002 and Dr. Almahayni's Answer with Exhibits A through C4 filed April 24, 2002.

This matter was adjourned until the Board's June 12, 2002 meeting.

JECK, Charles N., D.O., License #5380(Counseling DAG: FLANZMAN)
POPLAR, Carl, Esq., for Respondent (Without Appearance)
GARCIA, Alexandra, D.A.G., for Complainant

Dr. Ricketti is recused from this matter. Matter set down for hearing on an Order to Show Cause seeking the temporary suspension of Respondent's license to practice medicine and surgery pending final disposition of the Complaint on allegations of indiscriminate prescribing and sexual misconduct with two female patients. Under separate cover, the Board received the papers directly from the Division of Law.

The Board was advised by the Division of Law that with the advice and acceptance by Board President Harrer, the parties entered an Interim Consent Order pending plenary hearing at the Office of Administrative Law. Dr. Jeck will have until May 31, 2002 to wind down his practice, during which time no prescribing of controlled dangerous substances, no new patients and monitored at all times when with patients. Monitor beginning next week to be an L.P.N., R.N., or PA.

THE BOARD, UPON MOTION MADE AND SECONDED, AUTHORIZED BOARD PRESIDENT HARRER TO APPROVE THE MONITOR.

Dr. Patel and Mr. Weiss were not present for discussion and vote in this matter.

The Interim Consent Order was submitted to Dr. Harrer for signature. D.A.G. Kenny noted that Dr. Jeck was arrested and the Board will probably see this matter as a Motion for Summary Decision. D.A.G. Kenny noted that the chaperone is only in place until May 31, 2002. After May 31, 2002, Dr. Jeck is out of practice completely.

OLD BUSINESS

1. CITARELLI, Louis J., M.D. (Counseling Deputy: FLANZMAN)
D'ALESSIO, Michael, Jr., Esq. (Without Appearance)
HARPER, Douglas J., D.A.G.

Dr. Citarelli's license to practice had been temporarily suspended by Board Order filed September 30, 1998; thereafter, a second order was entered on May 3, 2000 continuing the temporary suspension, granting judgment on an amended Complaint to the Attorney General, and ordering that any determination as to final penalty should be deferred until a mitigation hearing is held, with the mitigation hearing to be scheduled after Dr. Citarelli is sentenced in federal court. The Board received Mr. D'Alessio March 28, 2002 letter with attachments to include a copy of the April 12, 2000 transcript of the proceeding before the Board. Mr. D'Alessio's letter advises that Dr. Citarelli has now been sentenced in federal court, and Mr. D'Alessio therefore asks that the Board schedule a mitigation hearing. However, Mr. D'Alessio also includes in his letter a motion seeking the disqualification of D.A.G. Harper as counsel in this matter.

The motion for the disqualification of D.A.G. Harper was to be considered at this meeting on the papers. The mitigation hearing will be scheduled at a later date. Also enclosed for Board consideration was D.A.G. Harper's April 16, 2002 response and Mr. Citarelli's April 18, 2002 letter agreeing to the schedule proposed by D.A.G. Harper and responding to some of the arguments made in D.A.G. Harper's letter. The Board voted to go into executive session for advice of counsel.

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

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE MOTION MADE BY COUNSEL FOR DR. CITARELLI TO DISQUALIFY DEPUTY ATTORNEY GENERAL HARPER. HOWEVER, THE BOARD SHALL COMMUNICATE ITS CONCERN REGARDING THE COMMENT MADE TO D.A.G. HARPER IN A LETTER. THE BOARD WILL SCHEDULE THE MARUCCI AND CITARELLI MATTER FOR HEARING BEFORE THE BOARD AT ITS JULY MEETING. ALL PAPERS ARE TO BE FILED WITH THE BOARD BY JUNE 15, 2002.

Dr. Patel and Mr. Weiss were not present for discussion and vote in this matter.

2. JAMISON, Robert, D.O. (Without Appearance)
FAVIERI, Dominic S., Esq., for Respondent
GELBER, Joan D., D.A.G.

In accordance with the Final Order filed July 12, 2000 (a copy of which the Board received), Dr. Jamison surrendered his license to practice medicine and surgery in the State of New Jersey. He was assessed a $50,000 penalty and was to pay at least $25,000 no later than August 1, 2000, with the balance due on or before August 1, 2001. A Certificate of Debt was filed July 12, 2000. Dr. Jamison has made one payment to the Board in the amount of $12,500. The Administrative Office of the Board was advised that Dr. Jamison is trying to sell his house in order to satisfy a portion of the debt he owes to the Medical Board and to the Department of Banking and Insurance. Enclosed was a March 1, 2002 letter Mr. Favieri sent to Gregory VanDyck, D.A.G., seeking release of the lien on Dr. Jamison's house. The Board was advised if it was willing to accept a partial payment upon the sale of the house by Dr. Jamison and his wife (who would get half the proceeds) and allow the lien on the house to be lifted, the Board would then file an adjusted Certificate of Debt showing the lesser sum which Dr. Jamison personally would continue to owe. Also enclosed for Board information was the Order Denying Petition for Reinstatement filed November 2, 2001.

The Board also received with its supplemental agenda an April 10, 2002 memo from James M. Bennett, D.A.G.,

to Raymond R. Chance, D.A.G., of the Department of Banking and Insurance and to former Director Herr providing information needed in order for the two agencies to make a decision concerning the request for the release of the liens to permit Dr. Jamison to sell his house. The Board also received D.A.G. Bennett's April 26, 2002 memo revising the figures noted in his April 10th letter and requesting whether the framework of this proposal is acceptable.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THIS REQUEST. Dr. Patel and Mr. Weiss were not present for discussion and vote in this matter.

3. KOTTURI, Shiva Kumar, M.D., License #59794 (Without Appearance)
McCUTCHEON, Robert J., Esq., for Respondent
KENNY, Paul R., D.A.G.

In accordance with the Final Order filed February 21, 2002 (a copy of which the Board received), Dr. Kotturi was assessed civil penalties in the amount of $52,500 and costs in the amount of $6,832.07 which amounts were to be paid in full to the Board within 30 days of the entry of the Order, or pursuant to a schedule to be established by the Board, on application made by Respondent, for leave to pay the costs, with interest, over a period of time (not to exceed the five-year period of suspension ordered). Enclosed was Mr. McCutcheon's April 5, 2002 letter requesting a payment schedule, due to the fact that Dr. Kotturi does not presently have the funds available to pay the imposed fines. D.A.G. Kenny was present at this meeting to discuss a payment schedule with the Board in general terms so that he can convey same to his adversary. The current interest rate is 6%.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED THAT A MONTHLY PAYMENT PLAN BE SET UP FOR THREE YEARS WITH 6% INTEREST.

Dr. Patel and Mr. Weiss were not present for discussion and vote in this matter.

4. MATKIWSKY, Zenon, D.O. (Counseling Deputy: FLANZMAN)
FARBER, Zulima, Esq., for Respondent
GELBER, Joan D., D.A.G., for Complainant (Not Present)

Doctors Robins and Rokosz are recused from this matter.

Mr. Farrell brought to the attention of both parties the fact that his brother's anesthesia group is represented by the law firm of Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer & Gladstone, former counsel in this matter. Mr. Farrell did not believe his representation would affect his ability to make a decision on this matter, and he indicated he would remain fair and impartial. There was no objection by the parties to Mr. Farrell's participation in this matter.

The Board, at its April 10, 2002 meeting, heard 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, at its April meeting, reserved decision on the pending Motion for Reconsideration and directed that the motion be decided at this meeting, so that the members of the Board participating will have the transcript of the hearing held March 13, 2002 available. The prior filed Order of this Board entered March 26, 2002 is stayed until a decision is made on the Motion for Reconsideration.

Enclosed were the March 13, 2002 Board hearing transcript and the April 10, 2002 transcript of the argument held at the Board's last meeting. Also enclosed for Board consideration were all of the documents the Board had in its possession at its April 10, 2002 meeting. They were as follows: 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; 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. The Board was asked to make a decision on whether or not to continue the stay of the Order and whether it would permit an extension of time to pay the penalties and costs. The Board is then to decide whether or not it would consider the matter and, if so, the parameters that would be taken for reconsideration. The Board voted to go into executive session for the purpose of deliberating on the matter before it on the papers and perhaps to receive advice of counsel as well. 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 HAS CONSIDERED THIS MATTER AND HAS ACTED AS FOLLOWS:

THE BOARD HAS GRANTED THE MOTION TO RECONSIDER THE MATTER, HOWEVER, DETERMINED THAT THERE IS NO NEED FOR ANY FURTHER HEARINGS IN THIS MATTER. RATHER, THE BOARD HAS RECONSIDERED THE PENALTY THAT WAS IMPOSED PREVIOUSLY AND AMENDED THAT PENALTY AS FOLLOWS:

THE LICENSE OF DR. MATKIWSKY TO PRACTICE MEDICINE AND SURGERY IN NEW JERSEY WILL BE SUSPENDED FOR A PERIOD OF TWO YEARS, SIX MONTHS OF WHICH ARE TO BE SERVED AS A PERIOD OF ACTIVE SUSPENSION. DR. MATKIWSKY WILL BE AFFORDED ONE MONTH OF SUSPENSION AT WHICH TIME THE REVOCATION WAS ENTERED BY THIS BOARD AND THE PERIOD THIS ORDER WAS STAYED. HE WILL BE REQUIRED TO SERVE AN ADDITIONAL FIVE MONTHS OF ACTIVE SUSPENSION. THE REMAINDER OF THE TERMS OF THE ORDER OF PARAGRAPH 2 ($25,000 IN CIVIL PENALTIES); PARAGRAPH 3 (COSTS IN THE AMOUNT OF $8,000) AND PARAGRAPH 4 (APPEARANCE BEFORE THE PRELIMINARY EVALUATION COMMITTEE OF THE BOARD WITH EXPRESSED RESERVATION BY THE BOARD TO IMPOSE ANY SANCTIONS) WILL REMAIN IN PLACE. A WRITTEN ORDER WILL FOLLOW.

Mr. Weiss voted in opposition.

Dr. Moussa abstained from vote in this matter.

Ms. Farber addressed the Board and requested that it reconsider the period active suspension that Dr. Matkiwsky has not practiced since the original Order revoking his license back in March. She requested that he be given credit not just for the one month the revocation was in place, but for the two months he has not practiced. Ms. Farber also requested that the Board permit a payment schedule.

D.A.G. Kenny, in the absence of D.A.G. Gelber, stated that the Attorney General had absolutely no reason to doubt Dr. Matkiwsky has not practiced since March and deferred to the Board to make its own determination. Regarding penalty and costs over time, under reasonable terms, the Attorney General had no objection.

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:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT MS. FARBER'S MOTION TO HAVE THE SUSPENSION DEEMED TO HAVE COMMENCED AS OF MARCH 13, 2002 AND FOR DR. MATKIWSKY TO BE AFFORDED CREDIT FOR THE TIME HE HAS NOT PRACTICED SINCE THE INITIATION OF THAT ORDER, WHICH WILL BE TWO MONTHS. CONCERNING THE PAYMENT SCHEDULE TO BE ARRANGED, THE BOARD WILL REQUIRE DR. MATKIWSKY TO PAY THE $8,000 IN COSTS IMMEDIATELY. HOWEVER, THE BOARD WILL ALLOW DR. MATKIWSKY TO NEGOTIATE

WITH THE ATTORNEY GENERAL AND SCHEDULE THE PAYMENTS FOR THE FINES OF $25,000. ANY PAYMENT SCHEDULE SHOULD INCLUDE THE APPROPRIATE INTEREST. Doctors DiFerdinando, Lucas, Trainer and Mr. Walsh voted in opposition.

5. PRADA, Angel, M.D., License #21655 (Counseling Deputy: DICK)
ALBERTSON, B. Michelle, D.A.G. (Without Appearance)

A Provisional Order of Discipline (POD) was filed August 24, 2001 which would revoke the above physician's license. Enclosed for Board consideration were D.A.G. Albertson's March 25, 2002 letter to the Board; Dr. Prada's Certification in opposition to the POD with attached Exhibits A through C; and the POD with attachments filed August 24, 2001.

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

Dr. Patel and Mr. Weiss were not present for discussion and vote in this matter.

6. STEINBERG, Paul, D.O., License #43436 (Counseling Deputy: DICK)
ALBERTSON, B. Michelle, D.A.G. (Without Appearance)

A Provisional Order of Discipline (POD) was filed February 4, 2002 which would revoke the above physician's license, to be stayed in its entirety. Enclosed for Board consideration were D.A.G. Albertson's March 25, 2002 letter to the Board; Dr. Steinberg's response with attachments; and the POD with attachments filed February 4, 2002.

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

Dr. Patel and Mr. Weiss were not present for discussion and vote in this matter.

D.A.G. Dick noted that Dr. Steinberg asked for an administrative hearing to explain the extenuating circumstances. However, since this is a stay, she did not believe the Board needed to offer him a hearing at this time.

REPORT OF NEW COMPLAINTS FILED

1. REVOREDO, Jorge L., M.D., License #23448 (Paterson, NJ)

Complaint filed April 15, 2002 alleging dishonesty, fraud, deception and misrepresentation; professional misconduct; lack of good moral character; failure to maintain records; and failure to comply with regulations.

REPORT OF INTERIM AND FINAL ORDERS FILED WITH THE BOARD

1. ALMAHAYNI, Rania, M.D., License #MA57196 (West Windsor, NJ)

CONSENT ORDER OF VOLUNTARY SURRENDER filed April 23, 2002 with an effective date of March 13, 2002. On March 8, 2002, an Order to Show Cause and Verified Complaint were filed with the Board alleging that Dr. Almahayni's continued licensure constituted a clear and imminent danger to the public arising from her untreated delusional disorder. She sought leave to voluntarily surrender her license to practice medicine and surgery in the State of New Jersey without prejudice. She represented she was not engaged in the practice of medicine at that time. The Board granted her leave and she must immediately voluntarily surrender her license to practice medicine. The Order to Show Cause originally scheduled for March 13, 2002 is adjourned to April 10, 2002. Additional adjournments must be requested in writing. Dr. Almahayni's continued surrender of licensure is a prerequisite to any additional adjournments. Said surrender shall remain in effect pending the hearing on the Attorney General's application for temporary suspension. EFFECTIVE DATE: March 13, 2002

2. BIBAWY, Adly Anis, M.D., License #MA60091 (South River, NJ)

CONSENT ORDER filed April 29, 2002. Dr. Bibawy's license to practice medicine and surgery in the State of New Jersey is revoked. He may not apply for reinstatement of his New Jersey license for three years. The Board's action was based on the revocation of Dr. Bibawy's license in the State of New York after admitting guilt to professional misconduct by practicing medicine fraudulently; harassing, abusing or intimidating a patient either physically or verbally; and engaging in conduct evidencing moral unfitness. He admitted sexually abusing four adolescent females. EFFECTIVE DATE: April 29, 2002

3. CHAMBERS, Bryan P., M.D., License #62016 (Cherry Hill, NJ)

MODIFIED CONSENT ORDER OF RESTRICTED LICENSURE filed March 25, 2002. On January 2, 2002, Dr. Chambers appeared before a Preliminary Evaluation Committee of this Board to request the Board to empower its Medical Director to consider and approve any future employment opportunities in order to avoid the delay entailed in seeking full Board approval. Dr. Chambers and Dr. Canavan, Medical Director Emeritus of the Physicians' Health Program (PHP) testified he has been fully compliant since first entering into the January 1997 Consent Order. The Board ordered he be granted permission to submit a proposal for professional employment to the Medical Director of the Board. Employment approval to be within the discretion of the Medical Director, in consultation with the President of the Board. He must complete continuing medical education in anesthesiology for 50 credits per year of formal didactic work for three years as required to earn the Physician Recognition Award. He is permitted to practice anesthesia only in a supervised setting under the supervision of the Director of Anesthesiology of said facility, who shall agree in writing to notify the PHP of any signs of relapse. He must maintain absolute abstinence from alcohol and all mood-altering chemicals, unless such substances are prescribed by a treating physician for a documented medical condition. He must continue attendance at Alcoholics Anonymous. Until further Order of the Board, he must continue his psychotherapy treatments on a schedule determined by his therapist and continue his involvement with the PHP. In the event he is employed pursuant to the terms of this Order, he must submit to random urine monitoring. PHP to report quarterly to the Board with immediate reporting if evidence of noncompliance or relapse. EFFECTIVE DATE: March 25, 2002

4. FREUNDLICH, William, D.P.M., License #MD1143 (Passaic, NJ)

CONSENT ORDER filed March 15, 2002. On October 13, 1998, Dr. Freundlich pled guilty to one count of felony information charging him with conspiracy to commit mail fraud. He was placed on probation for three years, ordered to complete 450 hours of community service and confined to his residence for four months. On June8, 2001, a Provisional Order of Discipline was filed seeking the revocation of his license based on the above listed guilty plea. Through counsel, Dr. Freundlich submitted a response seeking dismissal or modification of the Provisional Order. After reviewing the materials, the Board found that since the Provisional Order was based solely on Dr. Freundlich's guilty plea, any explanation as to the underlying facts was not relevant. His request for a hearing was denied. The Board found that pursuant to N.J.S.A. 45:1-21(f), there was clear basis to take disciplinary action based on his conviction. On August 31, 2002, a Final Order of Discipline was filed with the Board which revoked Dr. Freundlich's license to practice podiatry in the State of New Jersey. By letter dated November 7, 2001, Dr. Freundlich's new attorney filed a Motion for Reconsideration of the Board's Final Order of Discipline. The Board also received a letter from the Deputy Attorney General outlining why Dr. Freundlich's application for a stay pending appellate review should be denied. After consideration of the materials presented, the Board voted on November14, 2001 to stay the revocation of Dr. Freundlich's podiatry license and discussed a proposed settlement. The Board ordered that Dr. Freundlich's license to practice podiatry in the State of New Jersey be suspended for three years. Two months of the suspension would be an active suspension deemed effective retroactive to June 8, 2001, the date of the Provisional Order of Discipline. The remainder of the three-year suspension shall be served as probation. Dr. Freundlich must successfully complete a Board-approved ethics course and pay a $2,500 penalty and costs. EFFECTIVE DATE: June 8, 2001

5. KUDRYK, Alexander B., M.D., License #53469 (Bridgewater, NJ)

ORDER OF AUTOMATIC SUSPENSION OF LICENSE filed April 26, 2002. The Board ordered that Dr.

Kudryk's license to practice medicine and surgery in the State of New Jersey be suspended. The Board's action was based on receipt of notification from the Physicians' Health Program (PHP) that Dr. Kudryk had admitted suffering a relapse into the abuse of alcohol. He had notified the PHP of his most recent relapse after being involved in an alcohol-related automobile accident on April 19, 2002. Dr. Kudryk has a long history of abuse of alcohol and involvement with the PHP. On January 16, 2001, he entered into another Consent Order with the Board after the Board found that he failed to inform the PHP about his consumption of alcohol on May 30, 1999 and his subsequent arrest and conviction tor Driving Under the Influence (DUI). He also failed to disclose such information on his renewal application for Controlled Dangerous Substances. The Board also found that he failed to properly monitor the collection of another physician's urine samples on behalf of the Physicians'sz Health Program. Pursuant to the Consent Order, he consented to the entry of an Order of automatic suspension of license without notice upon the Board's receipt of reliable information demonstrating his failure to comply with the terms and conditions of that Order. In the event he applies for reinstatement in the future, he must appear before a Committee of the Board and provide, at a minimum, evidence of successful completion of a long-term treatment program for substance abuse. At that time, after review of all relevant documentation, the Board will determine whether Dr. Kudryk is physically and psychologically fit to practice medicine. EFFECTIVE DATE: April 26, 2002

6. MATKIWSKY, Zenon, D.O., License #MB21950 (Union, NJ)

FINAL ORDER REVOKING LICENSURE filed March 26, 2002. License to practice medicine and surgery in the State of New Jersey is revoked; and assessed civil penalty of $25,000 and costs of $8,000. At some time in the future, should Dr. Matkiwsky apply for reinstatement of his license, he must appear before a Committee of the Board to demonstrate his compliance with all terms of this Order and that he has successfully completed a Board-approved ethics course. EFFECTIVE DATE: March 13, 2002 THIS FINAL ORDER IS STAYED UNTIL THE BOARD DECIDES ON A MOTION FOR RECONSIDERATION ON THE PAPERS AT ITS MAY 8, 2002 MEETING.

7. RASIN, Grigory, M.D., License #42275 (Union, NJ)

CONSENT ORDER filed April 19, 2002. The Board received information from State Farm Insurance Company concerning billing codes used by Dr. Rasin for psychiatric treatment provided to a patient following an automobile accident. Information revealed that the initial psychiatric evaluation and the eight psychiatric follow-up sessions were conducted by a non-physician clinician employed by Dr. Rasin. The Board found Dr. Rasin misrepresented himself to the insurance carrier as the treating physician, when in actuality, he supervised a clinician who treated the patient. The Board ordered he be reprimanded for this conduct and pay investigative costs of $1,559.24. He must successfully complete Board-approved ethics and billing courses within twelve months. EFFECTIVE DATE: April 19, 2002

8. ROSENBERG, Paul Howard., M.D., License #58683 (Fort Lee, NJ)

CONSENT ORDER MODIFYING LICENSURE RESTRICTIONS filed April 11, 2002. Dr. Rosenberg petitioned the Board for modification of the Board's Order of Reinstatement of Licensure filed January 29, 2001 to permit prescribing or dispensing of all Controlled Dangerous Substances (CDS) with the exception of Schedule II narcotics. Dr. Rosenberg appeared before a Committee of the Board and testified as to his continuing success in maintaining a drug-free life style and his continued attendance at Alcoholics Anonymous and Caduceus meetings. The Physicians' Health Program (PHP) confirmed that he has maintained absolute abstinence from any substance use and has complied with all conditions of his treatment program. The Board was satisfied that he has demonstrated fitness to practice and of his ability to prescribe or dispense all CDS with the exception of Schedule II narcotics. The Board ordered that the present restrictions on Dr. Rosenberg's license be modified. He must maintain absolute abstinence from all psychoactive substances, unless such substances are prescribed by a treating physician for a documented medical condition with notification provided to the PHP. He must continue participation in individual and group counseling with counselors reporting quarterly to the Board. He must submit to twice weekly random urine monitoring and continue to attend support groups. He must continue participation with the PHP with quarterly reports to the Board concerning his participation and immediate notification for

failure to comply or evidence of relapse. He is precluded from prescribing or dispensing Schedule II Controlled Dangerous Substances in his medical and surgical practice. EFFECTIVE DATE: April 11, 2002

9. SHAH, Pankajlal S., M.D., License #45596 (Hornell, NY)

FINAL ORDER OF DISCIPLINE filed February 13, 2002. Dr. Shah's license to practice medicine and surgery in the State of New Jersey is suspended for six months with the suspension stayed. Prior to resuming active practice in New Jersey he must complete a medical recordkeeping course and appear before a Committee of the Board to demonstrate fitness to resume practice. The Board's action was based on Dr. Shah's entering a Consent Order with the New York Board after being charged with five counts of failing to maintain records for five patients which accurately reflected the care, evaluation and treatment. He admitted guilt to the charges, was censured and reprimanded and required to complete a medical recordkeeping course. EFFECTIVE DATE: February 13, 2002

10. SINGH, Manjit, M.D., License #MA29339 (Ramsey, NJ)

MODIFIED FINAL ORDER filed February 19, 2002. On October 28, 1999, the Board entered a modified Final Order to allow monitoring tasks that had been previously reserved to physicians to be discharged by a licensee of the Board of Nursing. All other provisions of the May 6, 1997 Final Order remained in place. In November 2001, Dr. Singh sought removal of the remaining restrictions on his license. After review, the Board agreed to further modifications. The Board has ordered that the restrictions set forth in paragraphs 3, 4 and 5 of the Amended Order as to restrictions on practice locations and functions (insurance physicals), methods of communication with patients, investment limitations, chart review and practice monitoring personnel are removed. In reliance on his representation that he will continue his life-long involvement with Gambler's Anonymous and review of a report from his treating psychologist indicating therapy is no longer required, the requirements for regular psychotherapy, as well as participation in self-help groups, are lifted. He is not relieved of his responsibility to assure patient reimbursement in accordance with the previously approved restitution plan specified in paragraph 9 of the May 6, 1997 Board Order, nor shall the accounting firm be relieved of the requirement to prepare quarterly accountings to be provided to the Board. Any changes in priority of creditors shall be approved by the Board. He is not relieved of his continuing obligation to pay costs subsequent to repayment of patients, nor is he prevented from seeking a waiver of the $5,000 in costs upon completion of payment to patients. EFFECTIVE DATE: February 19, 2002 LICENSURE MATTER

1. MELENDEZ, Manuel A., M.D., Unlicensed (Absecon, NJ)

FINAL ORDER OF DENIAL OF RESIDENCY TRAINING PERMIT filed April 29, 2002. Dr. Melendez' application for a residency training permit to practice medicine and surgery in the State of New Jersey is hereby denied without prejudice to reapplication in the future. The Board reviewed Dr. Melendez' application for a residency training permit. He began his United States postgraduate medical training in 1996 as a pediatric resident at Texas Tech University Health Sciences Center. A June 18, 1998 letter from Joel Kupersmith, M.D., the Dean and Vice President for Clinical Affairs, documented that Dr. Melendez was dismissed from his pediatric residency program on that date after receipt of two complaints from the mothers of his pediatric patients regarding their perceptions of inappropriate conversations and conduct of a sexual nature. He signed an order dismissing him effective August 31, 1998. In sworn testimony before the Credentials Committee of the Board of Medical Examiners on November 19, 2001, he testified that in 1998 he submitted one hundred applications for a psychiatry residency position in which he disclosed his dismissal from the pediatric program at Texas Tech and had been subjected to embarrassing questioning. He further testified that because of the embarrassing situation, in 1999 he crafted a plan in which he decided to gain admission to a residency program by withholding or omitting information concerning his termination from the Texas Tech. He also admitted it was his intention to disclose that information after allowing himself the opportunity to show his competency in the residency program. He completed and submitted to Cooper Hospital an application for Graduate Medical Education dated November 11, 1999. He entered a psychiatry residency training program in July 2000. At the end of November 2000, he disclosed to the program director, on or about the same time he began to complete the application for a New Jersey residency permit, that he had a disciplinary problem at Texas Tech. His failure to disclose to Cooper Hospital on his Application for Graduate Medical Education and the accompanying Curriculum Vitae that he had

been dismissed from the pediatric residency program at Texas Tech on August 31, 1998 constitutes a violation of N.J.A.C. 13:35-1.5(c)2 and subjects him to sanctions pursuant to N.J.S.A. 45:1-21(h). In addition, his admission under oath that he did not disclose to Cooper Hospital his termination from the Texas Tech and that he crafted a plan to withhold this information constitutes the use of dishonesty in violation of N.J.S.A. 45:1-21(b) and provides grounds for denial. Based on these findings, a Provisional Order of Discipline denying Melendez' application for a residency training permit was entered on March 19, 2002. Dr. Melendez' counsel responded and included a letter of support from Dr. Dunn, the Residency Training Director in Psychiatry for the Cooper System and several other attending physicians asking the Board to reconsider its decision. The submissions were reviewed and the Board determined that further proceedings were not necessary as no material discrepancies had been raised. EFFECTIVE DATE: April 29, 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,

David M. Wallace, M.D., Chairperson
for Open Disciplinary Matters

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