

**State Board of Medical Examiners  
Open Disciplinary Minutes  
May 10, 2006**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, May 10, 2006 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor Conference Center, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by Ms. Karen Criss, Chairperson for Open Disciplinary Matters.

**PRESENT**

Board Members Cheema, Ciechanowski, Clemency-Kohler, Criscito, Criss, DeGregorio, Haddad, Jordan, Lambert, Lomazow, Mendelowitz, Nussbaum, Paul, Reichman, Scott, Stanley, Strand, Walsh, Weiss and Wheeler.

**EXCUSED**

Board Members Salas-Lopez

**ABSENT**

**ALSO PRESENT**

Assistant Deputy Attorney General Joyce, Senior Deputy Attorney General Dick, Deputy Attorneys General Flanzman, Kenny, Krier, Levine, Ragone, Warhaftig, Executive Director Roeder, Medical Director Gluck and Education Director Blanks.

**RATIFICATION OF BOARD MINUTES**

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE APRIL 19, 2006 OPEN DISCIPLINARY BOARD MINUTES AS SUBMITTED.

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

10:00 a.m. MAGGIANO, Anthony M., M.D. (License # MA 49427)  
(Counseling D.A.G.: LEVINE, Debra W.,)  
CONROY, Robert J., Esq. For Respondent  
KRIER, Siobhan B., D.A.G. for Complainant

Attached was D.A.G. Krier's March 10, 2006 letter brief to the Board of Medical Examiners in lieu of a more formal submission in support of the Attorney General's March 15, 2006 Motion for Summary Decision in the matter of Dr. Anthony Maggiano on all four counts of the administrative complaint filed in this matter. Attached also was Mr. Conroy's April 12, 2006 response on behalf of Respondent to the Attorney General's Motion for Summary Decision. This matter was originally scheduled for oral argument on April 19, 2006 but was adjourned.

All relevant materials regarding this matter were enclosed for the Board's review and consideration.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT THE NEGOTIATED SETTLEMENT OF A FOUR YEAR SUSPENSION TO INCLUDE A NINE MONTH ACTIVE SUSPENSION WITH A FOURTEEN (14) DAY WIND DOWN PERIOD; \$20,000 IN CIVIL PENALTIES, AND COSTS TO INCLUDE ATTORNEYS FEES; AN ETHICS COURSE AND A CDS COURSE WITH 100 HOURS OF NON-MEDICAL COMMUNITY SERVICE TO BE PRE-APPROVED BY THE BOARD AND TO BE COMPLETED DURING THE PERIOD OF ACTIVE SUSPENSION.

1:00 P.M. NIELSON, Steven C., D.P.M. (License # MD 24080)

SARAVIA, Alma L., Esq. For Respondent  
(Counseling D.A.G.: DICK, Sandra)  
JESPERSEN, Kevin D.A.G. FOR COMPLAINANT

This matter was scheduled for a hearing on a Motion for Temporary Suspension in which it was alleged that Dr. Nielson performed lipo-suction, as well as other cosmetic type procedures. Dr. Nielson, on or about May 10, 2006, had agreed to cease and desist from all medical practice, effective May 17, 2006, pending the plenary hearing in the matter.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE CONSENT ORDER SIGNED BY DR. NIELSON TO CEASE AND DESIST FROM THE PRACTICE OF PODIATRIC MEDICINE IN THE STATE OF NEW JERSEY PENDING A PLENARY HEARING EFFECTIVE MAY 17, 2006.

3:00 p.m. KELSEY, Alan G., M.D. (License # MA37898)  
(Counseling D.A.G.: JOYCE, Sharon)  
LABUE, Anthony Esq., for Respondent  
RAGONE, Tara Adams D.A.G. for Complainant

This matter was set down for an emergent Temporary Suspension hearing in the matter of Dr. Alan G. Kelsey.

Drs. Lambert, Scott, Stanley and Ms. Clemency Kohler were not present for the hearing.

Board member, Dr. Strand stated that approximately eight years ago, he hired Mr. LaBue on a matter which had been concluded and he did not believe that it would influence him in the current proceeding. Neither side objected to Dr. Strand's participation in the hearing.

Ms. DiGregorio also placed on the record that she and Ms. Cathy Waldor, counsel for Dr. Kelsey's criminal proceedings, both served on the Advisory Committee on Professional Ethics for attorneys. She further stated that she did not believe that it would influence her participation in the hearing. Neither party objected to Ms. DiGregorio's participation in the hearing.

Finally, Dr. Criscito stated for the record that he knew Mr. LaBue through his law firm, having used members of his law firm for business interests not related to his practice of medicine. No one objected to Dr. Criscito's continued participation in the hearing.

Ms. Criss asked counsel to place their appearances on the record and Tara Adams Ragone, D. A.G., entered her appearance on behalf of the complainant, The Attorney General for the State of New Jersey. Mr. Anthony LaBue, Attorney from the Law firm DeCotis, Fitzpatrick, Cole & Wisler, L.L.P., on behalf of Dr. Alan G. Kelsey, along with Susan Fruchtman and Alex Keosky, as well as Cathy Waldor, Esq., representing Dr. Kelsey in the criminal matter, entered their appearances.

D.A.G. Ragone, in her opening statement, preliminarily placed on the record that the Attorney General had redacted her papers and asked the Board to adhere to its usual policy of instructing the court reporter only to include the initials in the record in the event that there is an inadvertent reference to the name of the patients. Additionally, the Attorney General requested that any fact witnesses presenting testimony would be sequestered in the matter.

Mr. LaBue voiced no objection to D.A.G. Ragone's requests and added that approximately 50 people were waiting outside in anticipation of a potential application for sequestration, whether they were fact or character witnesses, in keeping with the Board's standards, thus enabling the matter to move along. The Chair requested that the witnesses stay sequestered throughout the proceeding.

D.A.G. Ragone continued with her opening statement and informed the Board that this matter was about a physician, who over a period of at least ten years, had engaged in a troubling pattern of sexual misconduct in just about every conceivable arena of his professional life with patients. She continued by noting that the misconduct

involved a mother of patient, who was also his patient, and employees of his office, who were also his patients as well. D.A.G. Ragone argued that the Attorney General's proofs would show the Board that Respondent had abused his privileges of licensure by engaging in inexcusable, improper, sexual touching, kissing, hugging of three female patients and repeated sustained inappropriate sexual touching or harassment of three women whom he employed in his medical office. The Attorney General acknowledged, at the outset, that it was her burden to make a probable showing that Respondent's continued practice of medicine posed a clear and imminent danger to the public's health, safety and welfare.

D.A.G. Ragone outlined to the Board that two of the six victims had recently suffered from Respondent's abuse as recently as 2005 and 2004. The State added that while it might be argued that the Attorney General has delayed in bringing this action, she stressed that the materials setting forth in full the allegations against Respondent were sealed until February 28, 2006 when the Hunterdon County Grand Jury indicted Respondent on two counts of criminal sexual contact. Consequently, the Attorney General did not receive these materials until April 10, 2006. The State further asserted that although the conduct concerning the other four victims took place during the last decade, the conduct did not diminish the need for a temporary suspension in this matter and believed that the Attorney General would demonstrate through the evidence a continued pattern of illicit behavior over the years.

The Attorney General specifically added, that the evidence would show that Respondent had been arrested and indicted on a charge of criminal sexual contact stemming from his inappropriate conduct in luring patient K.G. to his office under the guise of providing a medical note for her son. Further, the Respondent similarly had been indicted on a second count of criminal sexual contact, based on his inappropriate touching of patient A.D.'s nipples without medical justification while purporting to perform an examination of her lungs to treat a bad cold. The evidence also would show that Dr. Kelsey lured patient M.H. into a private room in his office where he locked the door and tried to kiss her. The evidence would further show the Respondent, for years, fostered an uncomfortable work environment for his employees, subjecting employees C.A., B.L., and L.G., who also were patients of Respondent, to un-welcomed, sexual touching, grazing, and harassment, including the touching or cupping of C.A.'s breasts.

D.A.G. Ragone concluded that in the end, the Attorney General would establish that Dr. Kelsey repeatedly had violated the Board's sexual misconduct regulation and the Statutes governing the practice of medicine in the State of New Jersey. As required in N.J.S.A. 45:1-22, the Attorney General posited that based on the evidence, the Attorney General would make a palpable demonstration, that given the reprehensible, longstanding, ongoing, and repeated nature of Respondent's conduct, that his continued practice of medicine and surgery pending a plenary hearing on the charges as set forth in the Verified Complaint, posed a clear and imminent danger to the public health, safety and welfare of the citizens of New Jersey.

Mr. LaBue, with the Board's permission, reserved his opening for the beginning of his presentation. Counsel asked the Board to recognize that while the Attorney General had advised them that the matter in Hunterdon County was "sealed," it was common knowledge that Dr. Kelsey had been the subject of an arrest in January 2005 and those charges were published in the many publications within that region.

The Chair asked D.A.G. Ragone to continue and the Attorney General informed the Board that her Case-in-Chief was submitted on the papers and the bulk of the State's argument was reserved for closing.

The Attorney General offered into evidence the following exhibits that had been pre-marked by the court reporter for identification. D.A.G. Ragone requested that the record show that she had provided Respondent with a copy of all of the exhibits offered into evidence and that each was also attached to the Verified Complaint.

P-1 Respondent's Curriculum Vitae as of April 14, 2006

No objection by Respondent.

P-2 Certification of William Johan du Fosse, Jr., Corporal, Readington Township Police Department, dated May 3, 2006, authenticating the seven attachments thereto. Specifically, attachments one through three are True Copies of investigative report supplements dated various dates from January 26, 2005 through April 18, 2005, prepared by

Corporal du Fosse, Summarizing his activities pertinent to his investigation of January 24, 2005, through Thursday, April 14, 2005.

Attachment 4 - is a True Copy of a Criminal Complaint-Warrant and Criminal Complaint-Summons dated January 31, 2005, Charging Alan G. Kelsey with criminal sexual contact and disorderly persons? offense.

Attachment 5 - is a True Copy of the Adult Arrest Report dated February 2, 2005, recording the arrest of Alan G. Kelsey on January 31, 2005, on charges of criminal sexual contact and false imprisonment.

Attachment 6 - is a True Copy of the Miranda Warning Card signed by Alan G. Kelsey on January 31, 2005.

Attachment 7 - is a True Copy of a doctor note on an Alan Kelsey, M.D., prescription blank dated January 21, 2005 Addressed to C.G. and signed by "A. Kelsey."

Mr. LaBue had no objection with respect to Attachments 4 and 5, as they were public documents, but voiced objection to Attachment 1, 2, and 3, as those documents, notwithstanding their purported form, would constitute hearsay, and submitted that it is not a basis upon which the Board may act under N.J.S.A. 45:1-22.

D.A.G. Ragone in rebuttal argued that attachments 1 through 3 were copies of investigative reports kept in the normal course of business by the police department. Specifically, she noted that the attachments did not contain statements of the officers rather they report statements by others and hearsay is admissible in Administrative proceedings. Further, some of the reports contained admissions of the Respondent given during the investigative inquiries, thus not being hearsay, and were admissible as admissions of a party to this proceeding.

The Chair accepted P-2 into evidence.

As to Attachment 6, Mr. LaBue questioned the relevance as it purported to be a copy of a Miranda Warning Card, and as to Attachment 7, it appeared to be a prescription blank of the Respondent as to which he had no objection.

D.A.G. Ragone argued that Attachment 6 was part of the investigative file and was part of the context of the case. Respondent was advised of his rights and he voluntarily and willingly gave a statement to the officers. Therefore, it gave context to the statements and admissions that were reported and that was relevant to the matter.

The Chair allowed P-2 into evidence, with all of its attachments.

P-3 - Attached to the Verified Complaint- Exhibit C, Certified True Copy of Indictment 06-02-00113 State of New Jersey vs. Alan G. Kelsey filed on February 28, 2006 in Hunterdon County, NJ charging Respondent with two counts of criminal sexual contact which are 4th degree crimes.

No objection by Respondent The Chair allowed P-3 into evidence.

P-4 - Attached to the Verified Complaint as Exhibit D - is a Certification of K.G. dated April 26, 2006. Authenticating the three attachments thereto Specifically attachment 1 (transcript of the tape- recorded sworn statement provided by K.G. to The Hunterdon County's Prosecutor's office on January 24, 2005) in which she details her Allegations against Respondent as set forth in the Count I of the Verified Complaint. Attachment is the transcript of a tape recorded telephone conversation between Alan Kelsey and K.G. that took place on January 31, 2005 and was recorded by the Hunterdon County Prosecutor's office. Attachment 3 is a transcript of a tape recorded message left on K.G.'s cellular phone by Respondent on January 31, 2005.

Mr. Labue voiced his objection as to its admissibility based on hearsay. He further offered that he had been advised that attempts had been made to obtain copies of the actual tapes so that the accuracy of the transcript had not yet to be made available to him.

D.A.G. Ragone argued that N.J.S.A. 45:1-22 contemplated that an application filed by the Attorney General seeking the Temporary Suspension of a physician's license would be based on a duly verified application. As to

hearsay, the Attorney General posited that "hearsay" is admissible in administrative hearings and the statute trumps the residual rule in this particular proceeding and permits the Board to act based on a duly verified certification. Finally, as to whether or not Respondent had not had an opportunity to verify the accuracy of the transcription, the cover certification by K.G. attested to the truth and accuracy of her statement contained therein. Whether or not it was an accurate transcription of a telephone call was in ways irrelevant, now that she had sworn that the statements therein were accurate

Mr. Labue failed to see as to how it could be relevant simply because someone attested to the accuracy of the statement, and that person did so by document, and is not available to allow for K.G.'s credibility to be tested or to allow for the accuracy of the transcript to be examined.

In response, D.A.G. Ragone's statement from before was still binding.

The Chair ruled that the Statute provided for the Verified Complaint and thus would allow P-4 to become part of the record for consideration.

P-5 Exhibit E - attached to the Verified Complaint is a Certification of Shannon Leigh Schlinger dated April 26, 2006 authenticating attachment 1 thereto, a transcript of a tape recorded sworn statement that Ms. Schlinger gave to the Hunterdon County Prosecutor's office on February 2, 2005 reporting that K.G. told her minutes after the incident with Respondent on January 31, 2005 as alleged in Count I of the Verified Complaint.

Mr. LaBue objected to the admission of P-5 as to being another level of hearsay. P-5 being a certification from a non-party certifying the accuracy of what was said by someone else. He again submitted that not only was it hearsay, but that it was double hearsay and had no place in a matter of this gravity for the Board and strongly objected to its admission.

D.A.G. Ragone argued that P-5 included the statement of a fresh complaint from a person that K.G. called moments after the alleged incident with Dr. Kelsey making up the allegations in Count I of the Verified Complaint. Further adding, that fresh complaints in a statement are admissible in an administrative proceeding and a plenary hearing. They are corroboration to the statements of the victim and thus are admissible.

The Chair allowed P-5 to be admitted into evidence.

P-6 Exhibit F - attached to the Verified Complaint is a Certification of Linda Fabiano, Det. Sergeant Hunterdon County Prosecutor's office dated April 25, 2006 which authenticates the 14 attachments thereto. Specifically, attachment 1 through 13 are true copies of the investigative report stating various days between March 4, 2005 and August 9, 2005 prepared by Det. Fabiano summarizing her activities pertinent to her investigation of Respondent from Friday, January 21, 2005 to Monday, January 18, 2005. Attachment 14 is a true copy of the request for consensual Interception authorization pursuant to N.J.S.A. 2A:156A-4c dated January 28, 2005.

Mr. LaBue voiced his objection on the basis of the objections that he had offered earlier. He opined that it was absolute hearsay and it was being offered as the truth of that which was asserted therein. Further, it was not what was statutorily contemplated by a duly verified application and, therefore, he objected to its admission.

The Chair allowed P-6 into evidence.

P-7 Exhibit G - attached to the Verified Complaint is a certification of A . D., dated April 27, 2006, authenticating Attachment 1 thereto, the transcript of a tape-recorded sworn statement that A. D. gave to the Hunterdon County Prosecutor's office on May 1, 2005, in which she detailed her allegations against Respondent as set forth in Count Two of the Verified Complaint.

Mr. LaBue voiced his objection on the basis that the alleged conduct which was set forth in the statement of April 27, 2006, purportedly occurred in May or June of 2000 and thus on that basis, was certainly not a fresh issue. Moreover, it constituted an impermissible utilization of a statement to demonstrate the truth of that which is asserted therein without having the proponent present so that the Respondent, through counsel, could test that

person's credibility. Further, it denied the Board the opportunity to assess credibility.

D.A.G. Ragone argued that P-7 was not offered as a statement of a fresh complaint witness, but rather was offered as a statement, a verified sworn statement, of a victim in the case. It was what was contemplated and permitted by N.J.S.A. 45:1-22, as was previously argued. The Chair accepted Exhibit P-7 into evidence.

P-8 Certification attached to the Verified Complaint of Christina Ferrari, Clerk Transcriber, Readington Township Police Department, dated May 2, 2006 attesting to the authenticity of the two attachments thereto. Namely, two transcribed sworn statements prepared by the transcriber, Miss Ferrari. Attachment 1 is a transcript of the tape-recorded sworn statement that M.H. gave to the Readington Township Police Department on April 14, 2005, in which she details her allegations against Respondent as set forth in Count Three of the Verified Complaint.

Attachment 2 is a transcript of a tape-recorded sworn statement that B.H., M.H.'s husband, given to the Readington Township Police Department on April 14, 2005, in which he details his observations of Respondent and his wife following the incident at Respondent's office in March, 1995 as set forth in Count Three of the Verified Complaint.

Mr. LaBue voiced his objection on the basis that the alleged conduct purportedly occurred in 1998 or 1999 and thus, any statement that was submitted to the authorities on April 14, 2005 was made many years after the alleged event. According to Mr. LaBue, it was critical under those circumstances to test the memory of the proponent of that statement and to afford the Board the opportunity to assess the credibility and accuracy and to ask their own questions.

D.A.G. Ragone argued that her argument in the past with respect to what N.J.S.A. 45:1-22 permitted be carried as to P-8. This was a sworn verified statement of a victim and thus was admissible.

The Chair allowed P-8 into evidence.

P-9 Exhibit I attached to the Verified Complaint, a certification of C.A., dated April 27, 2006, authenticating Attachment 1 thereto, the transcript of a tape-recorded sworn statement that C.A. gave to the Hunterdon County Prosecutor's Office on July 17, 2005, in which she details her allegations against Respondent as set forth in Count Four of the Verified Complaint.

Mr. LaBue voiced his objection concerning a statement that went back to the early '90s and asked that the Board reject any attempt to have this matter submitted on the basis that the Board would not have the opportunity to test the memory and the credibility of the proponent of the statement. Mr. LaBue noted that he had erred as to his earlier objection as to M.H. That matter allegedly occurred in March of 1995 and therefore objected to its admissibility.

D.A.G. Ragone argued for the same reasons previously stated, that this was a sworn verified statement of a victim in the case and was exactly what was contemplated by N.J.S.A. 45:1-22.

The Chair accepted P-9 into evidence and gave it its due weight.

P-10 Exhibit J - attached to the Verified Complaint, is a certification of B.L., dated April 28, 2006, authenticating Attachment 1 thereto, the transcript of a tape-recorded sworn statement that C.A. gave to the Hunterdon County Prosecutor's Office on June 28, 2005, in which she details her allegations against Respondent as set forth In Count Four of the Verified Complaint.

Mr. LaBue voiced his objection as the alleged incident occurred thirteen years ago. Mr. LaBue seemed to think that the Board would want the opportunity to test the memory of the proponent of the statement and allow counsel for the Respondent the opportunity to test her credibility before it should consider or grant any weight to the statement.

D.A.G. Ragone argued that this type of evidence was contemplated by N.J.S.A. 45:1-22 and the Attorney General

continued to argue that these exhibits went to the core of the pattern of conduct that was so troubling in this matter.

The Chair allowed Exhibit P-10 into evidence.

P-11 Exhibit K - attached to the Verified Complaint is a Certification of L.G., dated May 1, 2006, authenticating Attachment 1 thereto, the transcript of a tape-recorded sworn statement that L.G. gave to the Hunterdon County Prosecutor's Office on May 13, 2005, in which she details her allegations against Respondent as set forth in Count Four of the Verified Complaint.

Mr. LaBue vehemently objected to the Board considering the probative value of a statement that was almost fifty pages, which began with a member of the police department saying in March 2005, "I understand you wanted to see us because you have important information for us." Mr. LaBue continued his objection by arguing that this statement occurred while L.G.'s son, who was part of a burglary ring in Hunterdon County received a lesser sentence than the other two perpetrators who ended up being sentenced to State Prison for five to seven years. Counsel believed L.G.'s son got probation around the time that L.G. came forward and offered this statement, thus the credibility of the person's statement, was at best "rank gossip" and at worst, done for a motive to save her son. Thus, he asked that P-11 not be entered into evidence.

D.A.G. Ragone stated that she was a bit confused and anticipated that this allegation might be put in during Respondent's defense and used as a rebuttal so the Attorney General obtained a Certification from the Assistant Prosecutor in Hunterdon County addressing Mr. LaBue's theory. D.A.G. Ragone indicated that she would be happy to offer it into evidence or to save it for her rebuttal, pending the Board's direction. In any event, the Attorney General responded that for the same reasons as previously discussed, it was a sworn statement of a victim and it was admissible in a proceeding pursuant to N.J.S.A. 45:1-22.

The Chair asked for D.A.G. Ragone's identification for P-12 and the Attorney General provided Mr. LaBue a copy of the Certification of Harvey B. Lester and asked that the court reporter mark this as P-12 for identification.

P-12 Certification of Harvey B. Lester, Esq., dated 5-8-06, 4 pages, is received and marked for identification.

Mr. LaBue voiced his objection to the submission of P-12 based on hearsay which was offered to refute a statement which itself was hearsay. Counsel continued that P-12 was being offered to refute information that he had set forth in an objection and without having the opportunity to cross-examine Mr. Lester, and Mr. LaBue argued that this Certification should not be entered as part of this proceeding.

The Chair admitted P-11 into evidence and reserved on what was marked as P-12, and gave D.A.G. Ragone an opportunity to present that evidence at the conclusion of the hearing.

At this time, the State reserved arguments for closing and rested her case.

Mr. LaBue asked for the Board's indulgence and requested that he be permitted to call on one witness before beginning his case. The Chair granted his request and Mr. Labue called his first witness, Paula Trotello who was duly sworn in.

Ms. Trotello testified that she was a full-time tenured professor at Wagner College in New York City and has recently returned from sabbatical, prior to having chaired the nursing programs for undergraduates and graduates while practicing part-time at Whitehouse Family medicine. The witness described her work to include being one of the primary care providers working per diem approximately six to eight hours per week. She has been employed at the practice for approximately nine years. Ms. Trotello continued that she worked with all of the providers, which included Dr. Campagnone, Dr. Kelsey, Dr. Hudson, Dr. Detata, and Christina Kaecker. Ms. Trotello explained that because she had a full-time faculty appointment, she was not allowed to work full-time elsewhere, but believed it was imperative in order to be effective, she would have to stay in current practice.

Ms. Trotello testified that flex hours were common at Whitehouse Family Practice and shared her professional

impressions of Dr. Kelsey through a letter that she had prepared. Ms Trotello continued that she had never known Dr. Kelsey to be anything but the most generous, kind, amazingly skillful, professional physician that she had ever met in her 30 years of practice. The witness further testified that she had met Dr. Kelsey 25 to 26 years ago. The witness proceeded to read her prepared letter to the Board verbatim. When asked by Mr. LaBue if Dr. Kelsey had ever done anything to make her feel uncomfortable, Ms. Trotello responded absolutely not and noted for the record, that he also was her physician.

On cross-examination by D.A.G. Ragone, Ms. Trotello acknowledged that she was familiar with the allegations in the Verified Complaint and she was not present in the room when these incidents allegedly took place and thus had no personal knowledge of the incidents that were alleged.

Mr. LaBue recognized the nature of the proceeding, and while it would normally be desirable to have the Respondent actually testify, as he was presently the subject of an Indictment, counsel made the decision to not allow Dr. Kelsey to testify. However, Mr. LaBue requested that Ms. Waldor, co-counsel and Dr. Kelsey's criminal defense attorney, for be permitted to address the Board before presenting his case. The Chair ruled to allow Ms. Waldor to address the Board. D.A.G. Ragone asked for clarification as to the purpose of Ms. Waldor's statement and if she were going to testify as a fact witness that she be sworn in. Mr. LaBue responded that she was a co-counsel, and essentially, would present legal argument to the Board, and was not being called as a fact witness.

When asked by D.A.G. Ragone if this was Counsel's Opening that he had reserved, Mr. LaBue replied that it was not. D.A.G. Ragone stated that she was at a loss as to her understanding of what was being procedurally requested. Counsel for Respondent stated that as to the extent for a label, it could be called a "co-opening" statement. According to Mr. LaBue, It was an opportunity for Ms. Waldor to provide the Board with the results of her efforts, and essentially, provide the backdrop for what he intended to present. The Chair ruled to allow Ms. Waldor to address the Board.

Ms. Cathy Waldor in her address to the Board stated that she represented Dr. Kelsey along with his wife, believing that their family and their marriage was being put on trial through some of the statements that were made during the proceeding. Ms. Waldor particularly cited L.G., which through her investigation had shown that despite proposed Exhibit 12, the Certification of Mr. Lester, she noted that no where does it mention that the Judge was not made aware of L.G.'s aid in having her son receive such a disproportionate and disparate sentence in the ring of burglaries still under investigation. Ms. Waldor continued that she had issued subpoenas with respect to this contention and had a full-time investigator working on this issue, concluding that there was more than one motive for L.G.'s gossip.

D.A.G. Ragone objected to Ms. Waldor's statement and seemingly understood that Ms. Waldor's statement was to be co-opening of sorts and not testimony. The Attorney General objected to the statements that were being made that were factual rather than in the nature of a typical opening.

The Chair responded that based on Mr. LaBue's statement, the Board was expecting that the remarks would be from counsel and not offering factual testimony. The Chair again asked for clarification from Ms. Waldor if her address to the Board would be in the form of a co-opening statement or if it was going to be fact testimony, at which time Ms. Waldor would be presented as a witness and sworn. Ms. Waldor responded that she was trying to convey the status of her developing investigation in order that the Board could judge each allegation as to its credibility. The Chair expressed her concern with Ms. Waldor's attempted presentation of facts whereas Ms. Waldor disagreed because they were not verified or certified, she was only presenting to the Board the investigation's progress and her interpretation as to what she has discovered.

D.A.G. Ragone did not object, based on the proffer, to the testimony, but stressed it needed to be comments from counsel and not testimony or unsworn statements that had no evidentiary basis.

The Chair ruled that it would only allow the status of the investigation and Ms. Waldor would have to be sworn in as a witness, should factual data, be presented to the Board.

Mr. LaBue decided to present the issues in a different manner and stated that he had objected to all of the statements offered into evidence by the Attorney General based upon the hearsay objection. He asked the Board to recognize that the State had advised them of their involvement in the case since April 10, 2006, while he had been served with the documents only a week earlier and received the exhibits 3 ? working days before the hearing. Subsequently, trying to place a case before the Board to consider the application made on the basis of a statute requiring a palpable demonstration of clear and imminent danger to the public health, safety and welfare. Mr. Labue continued that the State attempted to place events that allegedly occurred on January 25, 2005, June of 2004, and March of 1995 and stressed that in no way that behavior could be stretched or compressed into imminent or likely to occur or a "pattern" of conduct. To the contrary, Mr. LaBue, believed that the pattern was of Dr. Kelsey's practice and the esteem and respect with which he was held, practicing for more than 25 years, seeing more than 180,000 patients and delivered more than 500 babies and having between 30 to 35 employees in his practice.

Mr. Labue reminded the Board that he touched upon in his brief, a citation from the case of Crawford v. Washington, which holds that, Out-of-Court statements by witnesses that are testimonial are barred under the confrontation clause, unless witnesses are unavailable and defendants had a prior opportunity to cross-examine witnesses, regardless of whether such statements are deemed reliable by the Court. Mr. LaBue referenced a New Jersey case that occurred in 1996, Dolan v. City of E. Orange, where an employee was terminated because of a letter, and the Appellate Division ruled that one cannot take away a person's employment without giving the person charged the opportunity to confront the witness, cross-examine the witness, and test the witness's credibility. Mr. LaBue believed that matter was closely akin to what the Board had before them, with even more drastic relief which the State was seeking, namely, the temporary suspension of the license of Dr. Kelsey.

Mr. LaBue then addressed the issue of the State's complaint in Counts Three and Four. In Count Three, the State alleged a litany of transgressions and its conclusion, saying that transgressions in violation of N.J.A.C. 13:35-6.3, giving subsections, "and thus provides," ? being the key words ? create a basis for disciplinary action. Counsel opined that the State was telling the Board that because Dr. Kelsey did those things, he violated that regulation and that regulation provides the predicate for the relief that the State is seeking. The same argument applied to Count Four. Mr. LaBue reiterated the time frames before the Board of the alleged conduct as to Count Four, C.A., B.L., L.G., which was between ten and thirteen years ago. However, the rules pertaining to sexual misconduct were not adopted by the Board until April 24, 1996. Mr. LaBue asked that it be marked R-1 and asked the Board to examine it closely and to strike Counts Three and Four if they accepted his argument. Exhibit R-1, Citation N.J.A.C. 13:35-6.3, was received and marked for identification.

D.A.G. Ragone argued that with respect to Count three, as alleged in the Complaint, was not just a sexual misconduct violation that was alleged as being one of the predicates that justified sanction. Prior to the enactment of the sexual misconduct regulation by the Board, courts in the State had already held that actions including sexual misconduct constituted gross malpractice, which was set forth and argued in the Attorney General's brief at more length. Consequently, the conduct that was specifically pre-1996, still violated the statutes governing the practice of medicine in New Jersey. Therefore, there were still sections of N.J.S.A. that apply and permit the Board to sanction and punish Respondent for the alleged conduct.

With respect to Count Four, the Attorney General argued that the same thing applied as in Count Three. D.A.G. Ragone believed it was a misstatement to say that all the conduct occurred before 1996, specifically indicating that L.G. discussed that the conduct continued for a few years and only stopped at the time of an affair as to which Mr. LaBue vehemently objected to as being "scurrilous gossip" and not being what was charged and it was therefore not before the Board. Adding that it was a further attempt to besmirch his client's reputation.

D.A.G. Ragone rebutted that it was included in the statement of L.G. and it was given for context as far as dating the activity, and it was there for the Board's consideration. The Attorney General trusted that the Board would give it the due weight that it deserved.

As to Count Four, D.A.G. Ragone argued that there was conduct alleged that "did" take place according to the sworn statements of the victims post-1996, and for the conduct that was alleged to have occurred pre-1996, the Board had the ability to find the conduct constituted sexual misconduct, a violation of the statute governing the

practice of medicine. If the Board found this, then there was cause for discipline.

Mr. LaBue posited that the State was seeking extraordinary relief under a statute that required a palpable demonstration of a clear and imminent threat. Counsel submitted to the Board that based upon the State's evidence, the conduct allegedly occurred prior to the adoption of the rule and therefore, asked that the Board strike Count Three and Count Four.

The Chair ruled that they would allow both Counts Three and Four as there were other citations in both Counts on which the Board could make a finding.

Mr. LaBue continued to argue that the statutory standard had not been met, the proofs before the Board were nonexistent, and the statutory predicate that was alleged in the Complaint failed.

The Chair explained that the Board understood the gravity of the remedy being sought in the proceedings, but believed that the process was designed to allow quick action to protect the public and thus sufficient predicate was alleged and the Board would consider arguments raised regarding the legal sufficiency of the evidence in its deliberations.

Mr. LaBue entered Exhibit R-2, Letters of support on behalf of Alan G. Kelsey, M.D.. It was received and marked for identification. Exhibit R-3, a CME packet, was received and marked for identification. Exhibit R-4, Letter to Medical Board of New Jersey from Paula Dunn Tropello, FNP, BC, signed and dated 5-9-06, was received and marked for identification.

Mr. LaBue called his next witness, Ms. Roshni Lavsi who was duly sworn. The witness testified that she was a phlebotomist. Ms. Roshni added that she had been employed at Whitehouse Station Family Medicine since March 20, 2006 as a chaperone to Dr. Kelsey. The witness testified that her primary functions entailed that she would be with Respondent most of the time, except when he was in with male patients or when he was in the bathroom. Ms. Lavsi testified that she had the opportunity to watch Dr. Kelsey perform professionally and had seen no wrong doing and felt that he was a very generous man who helped his patients. The witness added that he had educated her in a lot of matters in the last six weeks and believed he was a good man.

The witness on cross-examination by D. A.G. Ragone testified that she was a phlebotomist and was not licensed by the State of New Jersey, but was licensed by the American Society of Phlebotomist Physicians. Ms. Lavsi testified that she had not submitted any reports to the State Board of Medical Examiners regarding her monitoring of Dr. Kelsey. The witness further testified that she had not been provided with a copy of the Complaint, but was aware of the allegations against Dr. Kelsey. Ms. Lavsi added that she worked the same hours as Dr. Kelsey and would take lunch at the same time as well and had not been sick since her employment with Dr. Kelsey commenced. The witness was questioned by many of the Board members and referenced a Confidentiality Agreement while employed at Whitehouse Station Family Medicine.

Mr. LaBue on redirect of Ms. Lavsi's testimony, asked the witness to identify the document that she had referred to so that it be made a part of the record. The witness was shown an Employment Agreement between she and Whitehouse Station Family Medicine dated April 3, 2006, but was signed April 26, 2006 and asked that the witness review the document and further showing a document dated May 1, 2006 identified as a Monthly report. Exhibit R-5 - Employment Agreement by & between Whitehouse Station Family Medicine and Roshni Lavsi, Certified Phlebotomist, 4-26-06, 2 pages, was received and marked for identification. Exhibit R-6, Letter, 5-1-06, from Roshni Lavsi and Kathy Kovacs, signed 5-2-06, was received and marked for identification. The witness was asked by Mr. LaBue to read R-6 signed by Ms. Lavsi, to the Board verbatim, and was offered into evidence as R-5 and R-6. The Chair allowed the evidence to be admitted.

Counsel for defense, called on six more witnesses all basically testifying on behalf of Dr. Kelsey as to his professional skills, personal attributes and to the quality of care performed. All witnesses acknowledged that Dr. Kelsey was a fine doctor and that none were aware of any negative behavior that he had committed against any of his patients. Each witness informed the Board of his fine character and characterized him as a solid, up standing member of his community.

Board member Douglas Wheeler left the meeting at this time.

D.A.G. Ragone, on rebuttal, reminded the Board, that Mr. LaBue previously had made a representation on the record with respect to L.G., and as to whether or not there was any relationship between her statements given to Hunterdon County Prosecutors and the sentencing that her son experienced in Hunterdon County in a similar time. The Attorney General added that Ms. Waldor effectively provided unsworn testimony to the Board with respect to her beliefs about what her investigation may produce and P-12 was marked for identification. The Attorney General argued that the Board should have before it, this piece of evidence, a sworn Certification, not unsworn testimony and not predictions as to what investigations might reveal, but actually a sworn statement of the Chief Assistant Prosecutor of Hunterdon County who prosecuted the matter involving L.G.'s son. She noted that in the certified in this sworn statement that there was no consideration given at all to the treatment that L.G. received in the sentencing based on his mother's cooperation in Dr. Kelsey's criminal case. The Attorney General moved for P-12, the Certification of Harvey Lester, to be admitted into evidence.

Mr. LaBue voiced his objection for the reasons that he had set forth on the record earlier, in terms of the need for the Board to be able to assess credibility.

D.A.G. Ragone responded that the Certification of Chief Assistant Prosecutor Lester set forth a time-line that was very important in the Board's consideration of this matter. The Certification stated that the investigation of the Hunterdon County Prosecutor's Office, with respect to L.G.'s son, involved a 48 Count Indictment. Of the three defendants, he was involved in the smallest number of burglaries. The Attorney General continued that L.G. gave a statement in connection with the investigation of the burglaries on February 9, 2004 and at that time, L.G. voluntarily turned over property that she found after searching her son's room where another co-defendant also was residing and subsequently the property turned out to be some of the proceeds of the burglaries.

On February 9, 2005, L.G. gave a statement in connection with this investigation of the burglaries and the prosecutor stated that at no time during the statement, did L.G. mention or discuss Alan Kelsey and on February 4, 2005, there was Plea Agreement entered in which L.G.'s son pled guilty to Count 48 of the Indictment, a third degree theft with an aggregate amount of loss of \$59,000. The original Indictment, as set forth earlier in the Certification, was for a second degree crime. But when they aggregated the thefts in which he was involved, it didn't come to the level that would warrant or justify a second degree offense since it was only \$59,000 and subsequently downgraded to a third degree theft. Prior to February 4th, the Prosecutor made clear that he had already contacted the defendant, L.G.'s son's, defense counsel, to propose the terms of a Plea Agreement that was entered on February 4, 2005.

On April 29th, L.G.'s son was sentenced and it was not until April 29, 2005, according to Prosecutor Lester, that defense counsel for L.G.'s son approached him and said, my client's mother may have information pertinent to the Kelsey investigation. The Prosecutor made clear that it was before the plea was offered, the same day of sentence.

D.A.G. Ragone continued that the Prosecutor never discussed the substance of the allegations regarding what L.G. might have know about the Kelsey matter. The sentencing went forward pursuant to the Plea Agreement that had previously been entered. The Attorney General further arguing that the Certification gave much context in the allegations being made in unsworn statements that had been put before the Board and thus it would be prejudicial for it to not be given that clarification for the record.

Mr. LaBue responded that explanation was the best reason that anyone could give for the need to have that person appear before the Board because the Board was listening to an interpretation based upon a reading of the provisions of the Certification. Mr. LaBue believed that the crucial aspect was that the three burglars were living in L.G.'s basement and thought it to be prudent to find out more information regarding that situation and subsequently the length of the sentence in regards to the other two perpetrators was not balanced. Mr. LaBue suggested to the Board for that reason that the Board not allow P-12 into evidence.

The Chair ruled that P-12 would be admitted into evidence for completeness of the record and the Board would

give it its due weight during deliberations. The Chair further asked to review what had been moved into evidence. A.A.G. Joyce informed the Chair that she had R-5 and R-6 which had been admitted into evidence but did not have the originals of R -1 through R-4 to which Ms. Criss stated that she did have and the court reporter indicated that they had not been marked into evidence. Mr. LaBue moved them into evidence and there were no objections by State.

Exhibit R-1 - 28 New Jersey Register 2560, that's the rule and the rule, which was four pages, on sexual misconduct that was adopted on April 24, 1996. There was no objection by D.A.G. Ragone. Exhibit R-1 was received into evidence.

Exhibit R-2 Letters of support on behalf of Dr. Kelsey.

D.A.G. Ragone pointed out these letters were uncertified and unsworn and to the extent that witnesses testified and submitted letters, the Attorney General noted for the record the redundancy. The Attorney General noted that the letters were provided before the start of the hearing and that there were two letters from the same individual and a duplicate of one letter that was submitted. R-2 was received into evidence.

Exhibit R-3 Dr. Kelsey's CME credits. There was no objection by D.A.G. Ragone. Exhibit R-3 was received into evidence.

Exhibit R-4 Letter read by Paula Trepello Other than the previously stated concerns of redundancy, there was no objection. Exhibit R-4 was received into evidence.

A.A.G. Joyce requested by way of clarification of documents that were attached to Mr. LaBue's letter submitted to the Board and asked counsel if he wished them to be moved into evidence. Mr. LaBue offered them into evidence:

Exhibit A of his brief in opposition to the Verified Complaint and Order to Show Cause, which was a polygraph report dated April 28, 2005 to which D.A.G. Ragone voiced her objection to the admission of the polygraph examination. She argued that several courts, per se, ban the admission of polygraph results and the Supreme Court recently reiterated this prohibition in *U.S. v. Scheffer*, 523 US 303 at 309 thus showing there was no consensus that polygraph evidence was reliable. The Attorney General further noted that several jurisdictions persist in a per se ban, including military tribunals, the fourth Circuit, the D.C. Circuit, approximately 27 States, and the District of Columbia. Nineteen States condition admissibility on the stipulation of both parties, including New Jersey, which in criminal trials, absent a clear unequivocal and complete stipulation by the parties, forbids their entry into evidence. The Attorney General noted that in this case, the parties had not so stipulated.

Additionally, the Attorney General argued that Courts throughout the Country have held that the results of polygraph examinations are inadmissible in administrative proceedings. D.A.G. Ragone cited the Supreme Court of Nebraska which ruled polygraph results inadmissible in administrative hearings, *Mathes v. City of Omaha*, 254 Neb. 269. Also *Kaska v. City of Rockford*, where the Supreme Court of Illinois similarly ruled. The Attorney General also posited that Respondent had not laid a proper foundation as required by *State v. McDavitt*, State of New Jersey Supreme Court Case, 62 N.J. 46, which requires attestation from a qualified examiner that the test was administered in accordance with established polygraph technique, noting that there was no representation nor foundation laid by Mr. LaBue in the instant matter.

Finally, the Attorney General submitted that if the Board found that the polygraph report was admissible, given the highly questionable reliability of such tests, and how numerous jurisdictions generally treat such proffers of evidence, the Attorney General submitted that this piece of evidence was of limited probative value and reliability. The Attorney General asked that it be given appropriate weight, which if any at all, should be minimal. Further, the Attorney General would discuss in her closing how much weight this particular document should be given and as to the reason why.

The Chair ruled to admit it into evidence, but would be given its due weight during the deliberation of this case.

R-7 - Polygraph examiner's report of Scientific Lie Detection, Inc. 4-28-05, 2 pages received and marked for identification.

Mr. LaBue asked that attached to his Case-in-Chief, there was an Exhibit B, which was the case, State v. Ragi, noting that attached to it was an Interim Order of the Board dated June 11, 2003 and asked the Board to take note that, in that matter, there were five Counts, one second degree ? two second degrees and in that matter, the Interim Order only provided for a monitor. Mr. LaBue also cited Exhibit C, an indictment involving Mohammad Dahhan from West Paterson, with four counts of criminal contact, and an Interim Consent Order entered by this Board, in July of 2004, that permitted him to continue to practice with a chaperone and/or monitor. He reminded the Board that its prior reactions to indictment for far more serious charges than this matter and asked that the Board take a similar position here.

The Chair took note of the documents attached to Mr. LaBue's brief as Exhibits B & C and asked for closing arguments from Mr. LaBue.

In his closing argument, Counsel for Respondent asked Dr. Kelsey who was 6' 5" tall and Susan Fruchtman who was 5' 3" and asked Ms. Fruchtman to stand next to Dr. Kelsey. Mrs. Kelsey is 5' 3'. Mr. LaBue wanted the Board to visualize the difference in height because some of the information had Dr. Kelsey at 6'5" or 6'4", but believed it was critical for the Board to have chance to see with their own eyes how tall Dr. Kelsey was and how he looks next to someone who was 5'3".

Mr. LaBue, with respect to the issues before the Board, pointed out that it was faced with the fundamental issue of the standards of N.J.S.A. 45:1-22, which required a clear and imminent threat to the public health, safety and welfare and submitted categorically that there was no evidence before the Board that even approached this high standard of proof. Continuing, Counsel added that with respect to the first count concerning K.G. and that was a situation where, according to the documents before the Board which should not be in evidence, K.G. claimed that something occurred, called her girlfriend, girlfriend files a report, calls another girlfriend, girlfriend filed a report, then went to her hairdresser and we don't have a report there. At some point, although it is unclear when, Mr. LaBue argued, K.G. met with her husband, went to the lawyer and to the police station.

With respect to A. D., who was a young, impressionable woman who claimed she was touched, was a situation that happened in May or June 2004 and who has been in Dr. Kelsey's office four times since the alleged incident. A.D.'s mother is a patient of the practice as well and has been to the practice three times since the alleged incident. If Dr. Kelsey had committed the alleged acts, why would A.D. and her mother continue to be treated by him, Mr. LaBue questioned.

With respect to M.H., in 1995, she wrote a letter to the Board that came back because it did not have enough postage, but the letter was kept by her until a year or two ago. When M.H. heard about the complaint or was contacted via a note in her mailbox saying, "Come forward, you are not alone", she goes in and makes a complaint, which Dr. Kelsey denies. The Board needs to question why she stayed silent so long.

Mr. LaBue continued in his closing argument discussing the allegations of B.L., A.C., and L.G., employees that continued to use Dr. Kelsey as their physician. L.G. was in the office with her grandchild recently, and was in the office as recently as the week before. Counsel, making the point, questioned how L.G. was still a patient of Dr. Kelsey and the two employees C.A. and B.L. were still employees of the practice.

Finally, Mr. LaBue asked the Board to consider some interesting questions and believed there was a basis from the outset to ask the Board's consideration in the absolute critical issue before them. Would Dr. Kelsey walk out of the meeting and go back to his practice in the morning or would the Board enter an Order, adding that Dr. Kelsey was the owner of the practice and the rest of practitioners were employees, immediately ordering him to cease and desist his medical practice. Counsel represented to the Board that Dr. Kelsey was prepared to comply with the directive to require the constant chaperoning of Dr. Kelsey. Mr. LaBue requested that the Board deny the State's application for a temporary suspension and if the Board must, allow this matter to go forward and run its course in the administrative process before the Office of Administrative Law.

D.A.G. Ragone, in her closing statement, made an objection to the various statements that were testimony and would discuss the various statements that were not in the record before the Board. Continuing in her closing statement, the Attorney General reiterated that a physician's sexual abuse of, sexual imposition upon, or sexual harassment of patients and employees violate the Board's statutes and regulations and supports a temporary suspension or revocation of a licensee's medical license pursuant of N.J.S.A. 45:1-22.

The Attorney General respectfully referred the Board to her letter brief discussing in more detail and citing various cases holding the same, such as in the matter of Prasert Chunmuang, M.D. from 1993. In that case, the Board ordered the temporary suspension and eventual revocation of the license of an obstetrician gynecologist's license because he had violated the trust of female patients by improperly touching them. D.A.G. Ragone continued that the evidence before the Board clearly established the Respondent had engaged in repeated and pervasive sexual misconduct with patients and employees. The seeming compulsion to engage in this behavior presents a palpable, clear and imminent danger to the public, as established by the evidence, and his long standing, egregiously poor judgement in the conduct of a safe medical practice.

The State detailed the overwhelming and unmistakable evidence with respect to patient K.G. and noted to the Board that no evidence had been introduced by Respondent disputing the allegations of K.G., but rather the Board had overwhelming evidence establishing the violation. Respondent's conduct against K.G. was reprehensible and seriously questions his judgement and self-control and such conduct standing alone, might be enough to warrant the present application, but this case is not about just one incident with K.G., deplorable as that conduct was, but about a pattern of behavior over a number of years.

D.A.G. Ragone continued to reference all of the cases in the Verified Complaint and in sum, Respondent's repeated, long-standing, ongoing, inappropriate sexual touching and harassment of his patients and employees compelled the Attorney General to seek the emergent, temporary suspension of his medical license pending a plenary hearing on these alarming charges.

Finally, the Attorney General reiterated that the public deserved firm action on its behalf by the Board to prevent the imminent danger of additional harm for Respondent's uncontrolled behavior and therefore, the Attorney General respectfully urged the Board to exercise its power and responsibility pursuant to N.J.S.A. 45:1-22 to immediately suspend Respondent's license to practice medicine in the State of New Jersey, pending a plenary hearing before additional patients and employees fell victim to his predilections.

Mr. LaBue, on rebuttal, stressed to the Board that reiterating phraseology didn't make it a reality and noted that the Board had heard the terms "pervasive" and "repeated". Counsel urged the Board to keep in mind that what the State was asking them to do was to summarily revoke the license of Dr. Kelsey. Mr. LaBue reminded the Board that the while the term "suspension" is used, such action was tantamount to revocation. He urged the Board not to "revoke" a physician's license who's been practicing for 27 years, with no malpractice actions, and after hearing his colleagues, staff, and patients discuss their impressions of him and never having a negative decision. In particular, because the Board has not heard the totality of the evidence nor had the ability to test the credibility of the witnesses on events that occurred close to fifteen years ago, it should not grant the Attorney General's application. In fact, he believed the only conclusion that should be reached is for the Board to find no cause for action in the matter of Dr. Alan G. Kelsey.

The Board, upon motion made and seconded, voted to go into Executive Session for deliberations. All parties, except for counseling staff and members of the Administrative Office, left the room.

The Board returned to Open Session and announced the following motion.

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED THAT THERE IS SUFFICIENT PROOF UPON WHICH A TEMPORARY SUSPENSION COULD BE BASED, ABSENT RESTRICTIONS.**

**ACCORDINGLY, THE BOARD HAS DETERMINED TO LIMIT DR. KELSEY'S PRACTICE TO HIS OFFICE SETTING WITH MALE PATIENTS ONLY, AND TO FURTHER REQUIRE A MONITOR WHEN HE IS IN THE OFFICE IN THE PRESENCE OF ANY FEMALE. THE MONITOR WOULD BE A HEALTHCARE**

PROFESSIONAL, LICENSED IN THE STATE OF NEW JERSEY, APPROVED BY THE BOARD, REQUIRED TO PROVIDE MONTHLY REPORTS TO DR. GLUCK.

THE BOARD ENCOURAGED THE PARTIES TO PURSUE AN ACCELERATED PROCEEDING AT THE OFFICE OF ADMINISTRATIVE LAW WITH REGARD TO THIS MATTER AND IN THE ABSENCE OF THE MONITOR, DR. KELSEY WOULD NOT BE AUTHORIZED TO ENGAGE IN PRACTICE IN THE OFFICE, OR BE PRESENT IN THE OFFICE.

Mr. LaBue requested the Board entertain a stay for seven days to give the Respondent an opportunity to either consider his judicial alternatives or to begin the implementation of what the Board had just ordered. The Attorney General objected to Mr. LaBue's request for a stay of the Board's Order.

The Board, upon motion made and seconded, voted to go into Executive Session for deliberations and advice of counsel. All parties, except counseling staff, left the room.

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

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY RESPONDENT'S REQUEST FOR A STAY OF THE BOARD'S ORDER.

## **OLD BUSINESS**

1. SIDDIQUI, Aftab A., M.D.  
NIEDZ, Alan R., D.A.G. for Complainant

By way of brief background, this matter involved a physician who was temporarily suspended after he was indicted on prescription fraud matter in 1998. Thereafter, Dr. Siddiqui went to Florida and had been out of practice in New Jersey since 1998, but the underlying matter was never resolved. Dr. Siddiqui, eventually, entered into Pre-Trial Intervention and had the matter expunged after completing his PTI. The matter was scheduled to go to OAL on April 27, 2006 and D.A.G. Niedz was involved in negotiations along the same lines as the Board had previously authorized and the Consent Order before the Board was approved by the Executive Committee on April 26, 2006 which included an eight year suspension retroactive to the time when Dr. Siddiqui was temporarily suspended; \$40,000 in costs and penalties and proof of successful completion of CMEs. D.A.G. Kenny indicated that the proposed settlement was put on the record before ALJ Robert Giordano. Mr. Kenny stated that Dr. Siddiqui acknowledged the violations of the Medical Practice acts and was presented to the Board for its approval.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE TERMS OF THE CONSENT ORDER SIGNED BY DR. SIDDIQUI AND BY HIS ATTORNEY, MR. ARTHUR TIMINS, IN SETTLEMENT OF THIS MATTER.

2. QURESHI, Shams M.D. (License# MA 46706)  
(Counseling D. A.G.: Levine, Debra W.,)  
HAFNER, Doreen D.A.G. for Complainant

D.A.G. Kenny summarized to the Board the matter of Dr. Qureshi which was set down on the Attorney General's emergency application for the immediate temporary suspension at its April 19, 2006 meeting. The Board was urged to determine from the evidence presented, that the public's health, safety and welfare was jeopardized by Respondent's continued practice as a licensee of the Board, given his conduct demonstrating a wide spread pattern of economic fraud coupled with documented gross deviations in the quality of care rendered to patients. As a result, the Board voted to approve the Interim Consent Order pending resolution of the criminal case.

A negotiated settlement was agreed upon, avoiding a plenary hearing, which would include, among other things a billing monitor, practice monitor and refraining Dr. Qureshi from certain pain management procedures. Also, Dr. Qureshi would have surrendered his license and cease practice until such time as the monitor provisions were implemented. The Board's approval was requested of the proposed Order that was signed by Dr. Qureshi.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE TERMS OF THE CONSENT ORDER SIGNED BY DR. QURESHI TO CEASE THE PRACTICE OF MEDICINE UNTIL SUCH TIME THAT A PRACTICE MONITOR IS IMPLEMENTED.

3. GOOBERMAN, Lance L., M.D. (License # MA38191)  
SITZLER, John S. Esq., for Respondent  
KENNY, Paul D.A.G. for Complainant

At its January 11, 2006 meeting the Board tabled decision as to whether a temporary reduction of payment to \$3,000/month for the next six months be granted and requested comprehensive certified audited financial statements regarding Dr. Gooberman's current financial status. The January 11, 2006 Open Disciplinary Minutes were attached for the Board's review.

Enclosed for the Board's review and consideration was Dr. Lance Gooberman's April 11, 2006 response letter to Executive Director William Roeder's attached January 12, 2006 letter.

Dr. Gooberman's financial information was placed on the Closed Agenda.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY DR. GOOBERMAN'S REQUEST FOR A REDUCTION IN MONTHLY PAYMENTS. THIS MATTER WAS PLACED ON THE CLOSED AGENDA AS WELL.

4. SISTER-STATE MATTERS - PROPOSED FINALIZATION OF PROVISIONAL ORDER OF DISCIPLINE W/O MODIFICATION  
LUBAN, Arthur L., M.D.  
PEREZ, Mileidy D.A.G.

Enclosed was D.A.G. Perez's April 21, 2006 memo to the Board summarizing the Sister-State matter for the above physician with respect to the Provisional Order of Discipline (POD) issued in the matter of Dr. Luban. As indicated in the POD, the matter was subject to finalization thirty (30) days after issuance. Enclosed was Executive William Roeder's Affidavit of Service with respect to Dr. Luban. Accordingly, the Attorney General moved before the Board, on the papers, seeking the entry of a Final Order of Discipline ("FOD") without modification. All underlying documents were submitted.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE FINALIZATION OF THE PROVISIONAL ORDER OF DISCIPLINE WITHOUT MODIFICATION.

5. MASSOOD, Stephen D.O. (License #MB 63095)  
CORDOMA, Megan D.A.G. for Complainant

Attached was D.A.G. Cordoma's April 10, 2006 memo to the Board summarizing and requesting ratification of the Board President's acceptance of the doctor's surrender of license.

This matter was placed before the Board to either accept, reject or modify the terms of the signed Consent Order of Voluntary Surrender by Board President, Sindy Paul, M.D. and by Respondent in the matter of Stephen Massood, D.O.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT THE TERMS OF THE SIGNED CONSENT ORDER OF VOLUNTARY SURRENDER.

The meeting ended at 8:10 p.m.

Respectfully Submitted,

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Karen Criss, R.N., C.N.M.  
Chairperson for Open  
Disciplinary Matters

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