

**State Board of Medical Examiners
Disciplinary Matters Pending Conclusion**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, May 11, 2005 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor, Conference Center, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by Dr. Bernard Robins, Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Ciechanowski, Criscito, Criss, Haddad, Harrer, Huston, Lamazow, Mendelowitz, Patel, Paul, Perry, Ricketti, Robins, Rokosz, Weiss, and Walsh.

EXCUSED

Board Member Farrell.

ABSENT

Board Member Desmond and Wallace.

ALSO PRESENT

Assistant Attorney General Joyce, Deputy Attorneys General Dick, Ehrenkrantz, Flanzman, Kenny, Niedz, Warhaftig, and Medical Director Gluck.

RATIFICATION OF BOARD MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE APRIL 13, 2005 OPEN DISCIPLINARY BOARD MINUTES AS SUBMITTED.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

1:00 p.m. NARAG, Rodolpho, M.D. (License # MA 23072)
(COUNSELING D.A.G.: DICK, Sandra V.)
GORRELL, Joseph Esq., for Respondent
MATTHEWS, Megan D.A.G. for Complainant

Dr. Robins was recused from discussion and vote in this matter.

This matter was originally scheduled for the May 11, 2005 and was adjourned to the July 13, 2005 meeting.

This matter was set down on an Order to Show Cause and Verified Complaint filed on May 2, 2005 in the matter of Dr. Rodolpho Narag. D.A.G. Matthews' application was seeking the immediate temporary suspension of the license of Respondent, Narag Rodolpho, M. D. to practice medicine and surgery in the State of New Jersey. The attached documents alleged that Dr. Narag lacks adequate medical knowledge, patient management skills, clinical judgement, and reasoning thereby presenting a clear and imminent danger to the public's health, safety and welfare.

IT WAS ANNOUNCED THAT THIS MATTER HAS BEEN ADJOURNED TO THE JULY 13, 2005 MEETING.

OLD BUSINESS

1. NAPOLEON, John J., D.O. (License #MB21233)
IAVICOLI, Mario A., Esq. for Respondent
KENNY, Paul R., D.A.G. for Complainant

Dr. Ricketti was recused from discussion and vote in this matter and left the table.

Enclosed for the Board's review and consideration was Mr. Mario Iavicoli's April 14, 2005 letter addressed to Executive Director William Roeder on behalf of respondent Dr. John Napoleon. Mr. Iavicoli was requesting the Board's approval for Dr. Napoleon to pay off his fines and costs in the amount of \$56,254.001 at \$500.00 per month.

By way of background, this matter was brought before the Board on the Amended Complaint (the original Complaint was filed on June 21, 1995) filed with the Office of Administrative Law on June 22, 1999. The Amended Complaint charged Dr. Napoleon with having engaged in practices which constituted gross or repeated malpractice, gross or repeated negligence, gross or repeated incompetence and/or professional misconduct, failure to prepare and maintain treatment records for various inmates he treated within the prison system. Dr. Napoleon filed an answer in November 1995 and February 2000 and on or about June 10, 1996, the matter was referred to the OAL. Hearings were held more than twenty days before Administrative Law Judge Joseph F. Fidler. The Initial Decision was issued on August 6, 2002. After due consideration of the Initial Decision, the transcripts, exhibits, exceptions and arguments of counsel, on November 13, 2002, the Board adopted the findings of act and conclusion of law as set forth in the Initial Decision as to Counts I through V of the Amended Complaint and reversed the findings of the ALJ as to Counts VI and VII. A

1. The Board ordered that Dr. Napoleon's license to practice medicine and surgery in the State of New Jersey be revoked.

2. Additionally, Dr. Napoleon was ordered to pay:

- \$35,000 in penalties,
- Expert costs of \$9,041,
- Transcription and court reporting costs in the amount of \$9,804.30

3. The payment of penalties and costs are to be made within thirty days of the Order

Additionally, a Supplemental Order was filed on March 19, 2003, denying the State's application for \$35,259.91 in investigation costs based on the lack of detail in the certifications submitted which did not identify any of the services performed. Reconsideration was sought for the assessment of the investigative costs. The Board found the State failed to substantiate the types of activities performed other than those contained in the Daily Activity Logs for 1995 and 1998 to 2000 totaling \$2,409.01. Thus, there was insufficient documentation to support an award of investigative costs of more than the amount documented in the daily activity logs, and the Board denied the remainder of the application. Dr. Napoleon was to pay investigative costs in the amount of \$2,409.01 within 30 days of the date of this Order.

All pertinent information was enclosed for the Board's review and consideration.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GO INTO CLOSED SESSION FOR 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 DR. NAPOLEON'S REQUEST FOR INSTALLMENT PAYMENTS AND ALSO NOTED THAT THE PAYMENTS ALREADY WERE OVERDUE AND THAT PAYMENT WAS DUE IMMEDIATELY OR DR. NAPOLEON WOULD BE IN VIOLATION OF THE ORDER AS IT NOW STANDS. THE BOARD REQUESTED LEGAL ADVICE AS TO WHAT COLLECTION OPTIONS ARE AVAILABLE IN ORDER TO SATISFY THIS DEBT.

2. SAUL, Stephen D.P.M. (License # MD 24790)
FRUCTMAN, SUSAN Esq. for Respondent
WEINER, Michelle D.A.G. for Complainant

The Board voted at its April 13, 2005 meeting to defer this matter to the May 11, 2005 Board meeting and attached for

the Board's consideration was a copy of a memo dated February 16, 2005 from D.A.G. Michelle Weiner regarding the matter of Dr. Stephen Saul. When the PRC considered this matter, it determined to refer the issue of whether the Board wished to reconsider its decision in this matter to the full Board. Relevant underlying documents were attached for the Board's review.

Also attached was Ms. Susan Fruchtman's April 4, 2005 letter to D.A.G. Weiner requesting that the Board further consider the enclosed more recent letters on Dr. Saul's behalf to reconsider the Board's January 18, 2005 denial of Dr. Saul's request to return to the practice of podiatry in New Jersey.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY DR. SAUL'S REQUEST FOR RECONSIDERATION OF THE BOARD'S JANUARY 18, 2005 DENIAL OF DR. SAUL'S REQUEST TO RETURN TO THE PRACTICE OF PODIATRY IN THE STATE OF NEW JERSEY.

3. SIDDIQUI, Aftab M.D. (License # MA 25635)
(Counseling D.A.G.: FLANZMAN, STEVEN)
TIMINS, Arthur J., Esq., for Respondent
NIEDZ, Alan R., D.A.G. for Complainant

This matter was set down on a Motion for Order Permitting Amendment of Complaint filed on April 18, 2005 by the Attorney General in the matter of Dr. Aftab Siddiqui. D.A.G. Niedz was requesting the Board of Medical Examiners to grant the Motion for the reasons set forth in the enclosed April 11, 2005 letter brief to the Board. Through counsel, Dr. Siddiqui opposed the Motion. All pertinent information was enclosed for the Board's review and consideration. This matter was scheduled for oral argument.

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

All parties, except counseling staff, left the room.

The Board returned to open session.

Board President Dr. Robins opened the meeting and announced that D.A.G. Flanzman would make a statement that there was not a court reporter present to transcribe the oral argument, however, the proceeding would be electronically recorded and he had spoken to both counsel. It was represented to D.A.G. Flanzman that both counsel were comfortable and willing to proceed in this manner.

Dr. Lomazow noted for the record that Mr. Timins was a former associate of a friend of his and that he has not had any conversations with Mr. Timins regarding this matter nor has he had any professional relationship with him. D.A.G. Flanzman questioned Dr. Lomazow if he could impartially serve in this matter and Dr. Lomazow indicated that he could. Dr. Criscito also noted that he and Mr. Timins have a social relationship but it would not interfere with his judgment in regard to this case. Dr. Robins noted as well that he had known Mr. Timins for a very long time and had a professional relationship that terminated quite a while ago and that it would not interfere with his ability to render an impartial opinion in this case. D.A.G. Niedz and Mr. Timins represented that they did not object to Drs. Lomazow, Criscito and Robins participating in the hearing.

Dr. Robins stated that he would allow fifteen minutes for oral argument to each party and that this time would include any rebuttal or summation that the attorney would like to make.

Before going into the law, D.A.G. Niedz stated that he would briefly go over the chronology of the events due to the age of the case. He recounted that on January 14, 1998, a criminal indictment was returned against Dr. Siddiqui and a number of other individuals which led to the filing of a March 25, 1998 Verified Complaint seeking Dr. Siddiqui's temporary suspension. On May 11, 1998, the Board suspended Dr. Siddiqui's license to practice medicine and surgery in the State of New Jersey. On November 9, 1998, Dr. Siddiqui moved for reconsideration of the Board's decision and the Board denied that Motion on November 9, 1998. Dr. Siddiqui filed a formal answer to the complaint on November 10, 1998, thereby denying all of the Attorney General's allegations. D.A.G. Niedz noted, in anticipation of what Mr.

Timins was going to reference, that on January 24, 2000, roughly a year and half later after the answer was filed in this matter, D.A.G. Frank Gennaro wrote a letter to Dr. Siddiqui's then counsel, regarding what he was prepared to dismiss in connection with the indictment that had been returned in 1998. D.A.G. Niedz continued that on February 22, 2000, about a month after D.A.G. Frank Gennaro's letter, Dr. Siddiqui did, in fact, plead guilty to one count of the indictment. Subsequently, sometime between February 23, 2000 and February 15, 2001, Dr. Siddiqui withdrew his guilty plea and that Dr. Siddiqui was successful in obtaining an expungement of his criminal record from both the courts and from the Division of Criminal Justice, therefore, that information was unavailable to the prosecution.

On February 16, 2001, Dr. Siddiqui was admitted into the Pre-Trial Intervention Program and completed his PTI on February 15, 2002. Dr. Siddiqui applied for and secured an Expungement Order from the New Jersey Superior Court between February 15, 2002 and December 3, 2002. The Expungement Order basically closed the door on access to any criminal records other than the records that were secured by the Division of Law and the Medical Board when the temporary suspension complaint was initially filed against Dr. Siddiqui.

D.A.G. Niedz referenced the New Jersey Administrative Code, at 1:1-6.2A, which permits the free amendment of pleadings when that amendment would be in the interest of efficiency and expediency, unless it's barred by law or by some constitutional privilege, or if there's any undue prejudice to the party as a result of that amendment. Prosecution also cited a case, Division of Alcoholic Beverage Control v. Rikita which basically says that a motion should be granted when not granting that motion would require a state agency to file a subsequent complaint which D.A.G. Niedz essentially reiterated is before the Board at this time. D.A.G. Niedz further indicated that the only amendments that are being requested are those that were attached to the D.A.G. Niedz's certification a few weeks ago, and are nothing more than a more accurate recitation of the criminal procedure involving State v. Bicker, et al., which was the criminal case that Dr. Siddiqui was part of. He asked the Board to recall that when the temporary suspension was sought in 1998, the indictment had been returned but there had been no further actions and subsequently the pleadings at that time did not, nor could it, reflect a subsequent guilty plea, a retraction of the guilty plea, getting into PTI, getting out of PTI. This is basically the information that is sought to be included in the proposed amendments. D.A.G. Niedz further added that the core of the complaint (Counts I & II) was much the same as it was recited in the initial Verified Complaint. Allegations that were made by a number of investigators, either with the State of New Jersey or Essex County or the Newark Police Department, as to Dr. Siddiqui's activities in connection with the selling of prescriptions, were in the Complaint. D.A.G. Niedz further clarified that Count III basically contained a new allegation which is really the only new allegation which is the only component of the complaint referencing Dr. Siddiqui's writing of prescriptions after his temporary suspension and further noting again that although the suspension took place in May of 1998, it was actually effective on April 11, 1998. He maintained that all of the prescriptions were written after the time his license was suspended.

The Attorney General further argued that there had been no undue prejudice in this matter involving Dr. Siddiqui. Although there had been a long passage of time, Dr. Siddiqui had continued to practice medicine outside the State of New Jersey during the time of the Temporary Suspension. Prosecution further argued that as held in Springfield Twp v. Board of Education which stands for the proposition that it is sound public policy to liberally permit amendments to the pleadings and that amendments should be granted liberally in situations where there are questions of public policy and where the public interest is involved.

Prosecution further argued that, in anticipation of some arguments from Mr. Timins, the core issue before the Board at this time was whether or not the amendment should be granted given the constraints that were mentioned previously. Dr. Siddiqui's response basically to the Board, was a response that was aimed more at the equities of what was right and what was wrong and ultimately went to the questions of fact that the Board would have to decide. The issues of expediency and efficiency were not really addressed in Dr. Siddiqui's papers and assuming arguments in advance, there has been much made in the certification submitted on behalf of Dr. Siddiqui as to the February 24, 2000 letter from D.A.G. Frank Gennaro. The Prosecution posited that while it may be true that D.A.G. Gennaro essentially said that he was prepared to withdraw the racketeering and conspiracy charges, it's equally true, that if Dr. Siddiqui intended to go to trial, he should be prepared to face the issues of falsification of medical records and medicaid fraud. So it was very clear that although the Division of Criminal Justice was willing to make some accommodations, they were not willing to simply discard the entire indictment at that particular point. Also in anticipation of arguments contained in Dr. Siddiqui's papers, DAG Niedz stated there was an attempt being made to compare Dr. Siddiqui to Dr.

Campos, apparently a co-defendant in the conspiracy charge or in the indictment. D.A.G. Niedz noted two distinguishing factors and pointed out that one of them (being the new Count III containing an allegation that basically Dr. Siddiqui continued to prescribe, even after being suspended), was not contained in any of the papers involving Dr. Campos and ultimately Dr. Campos did agree to the discipline imposed by the Board.

D.A.G. Nidez made a final reference to videotapes that apparently were made at some point by the Division of Criminal Justice in the certification submitted by counsel. Neither the Division of Law, nor the Medical Board, ever had access to those tapes. Further adding that should the matter proceed, during the discovery period, prosecution would not be able to access those video tapes because the D.A.G. does not have them. They were all subject to the Expungement Order that Dr. Siddiqui secured by himself, apparently, without notifying the Board or the Division of Criminal Justice that he was seeking the Expungement Order subsequently making it a nonissue.

Mr. Timins, in opening argument, stated that he had to submit himself into being pigeonholed to a legalistic category for objecting to this procedural motion with the undue prejudice. Respondent's counsel argued that Dr. Siddiqui has been temporarily suspended since April of 1998, respectively submitting that the system has extracted its "full pound of flesh" and more from Dr. Siddiqui. By way of background, Mr. Timins summarized that Respondent was represented back in 1998 when he initially pled guilty in the criminal case by an attorney by the name of Mr. Perkins who was subsequently disbarred a short time after these events. Also, the competency and fairness of what happened to Dr. Siddiqui only needs to be compared to that of Dr. Campos, a co-defendant in the same matter. Counsel referenced the fact that took place charged against both Dr. Siddiqui and Dr. Campos occurred in the office of a Dr. Rios. He argued that Dr. Campos worked in Dr. Rios' office for five or six months, that Dr. Siddiqui was only a locum tenens doctor working in Dr. Rios' office for a couple of days and that Dr. Siddiqui should never have been viewed as a participant in a racketeering or conspiracy enterprise. Basically, Dr. Siddiqui was just in the wrong place at the wrong time. Mr. Timins asked that the Board look at what happened to Dr. Campos as compared to Dr. Siddiqui.

In April of 1998, Dr. Siddiqui's less than adequate attorney refused or neglected to present a defense, thus Dr. Siddiqui's license was temporarily suspended until this day. Whereas, Dr. Campos' competent counsel fought the suspension and was not suspended and eventually Dr. Campos negotiated a deal with the Attorney General in 2000 and Dr. Campos was simply reprimanded, incurred some civil penalties and costs and ordered to take approved ethics courses, thus satisfying the Board's discipline. Ultimately the Board had Dr. Campos suspended for one week and Dr. Siddiqui suspended for more than seven years, thus, having a gross inequity of punishment. Mr. Timins submitted that, to allow this amendment, would add nothing to the accomplishment of substantial justice as to Dr. Siddiqui. Counsel added that he would like to see this matter, by which his client has been unable to practice in New Jersey for almost seven years, brought to a conclusion and anything less would further delay the accomplishment of justice.

In rebuttal, D.A.G. Niedz argued that the issue before the Board at this time involved the "impropriety of the amendment," not the underlying issues as to whether or not Dr. Campos was less guilty than Dr. Siddiqui or whether or not Dr. Siddiqui had been suspended for a longer period of time. The Prosecution again noted for the record that Dr. Siddiqui had practiced outside of New Jersey for this period of time. The Attorney General reiterated that the amendment does not impact the equities of this case, but that the amendment talks about being the prescriptions that were written after he was suspended by the Medical Board. The matter before the Board, D.A.G. Niedz stressed, has nothing to do with Dr. Campos and has very little to do with Dr. Rios or conspiracies, racketeering or anything else. The matter deals exclusively with prescriptions that were written roughly between May of 1998 and October of 1999. The Prosecution asked that the Board keep in mind that of October of 1999, almost a year and a half after he was suspended by the State Board of Medical Examiners, Dr. Siddiqui continued to write prescriptions in violation of his suspension by the Board.

Mr. Timins in his rebuttal submitted that justice should be comparative and doled out in like patterns for participants in the same alleged event, and if it were, Dr. Siddiqui would never have been suspended between May of 1998 and October of 1999. Dr. Siddiqui could have continued to practice like Dr. Campos. Counsel again submitted that Dr. Siddiqui has suffered enough. Mr. Timins further argued that he would not want to have anything done that would cause this matter to be further delayed and Dr. Siddiqui at the very least, after all this time, was entitled to his day in court. Mr. Timins made reference to the expression, "Justice delayed is Justice denied." Respondent's counsel reiterated that Dr. Siddiqui has been temporarily suspended for seven years and there has never been a plenary hearing,

and he simply would have to object to any amendments that would further delay the fair and proper conclusion of this proceeding against Dr. Siddiqui.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GO INTO CLOSED 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 GRANT THE ATTORNEY GENERAL'S MOTION TO AMEND THE COMPLAINT AND ORDERED THAT THIS MATTER BE TRANSFERRED TO THE OAL AS A CONTESTED COMPLAINT WITH A DIRECTION TO THE OFFICE OF THE OAL THAT THIS MATTER BE TRIED AS EXPEDITIOUSLY AS POSSIBLE.

NEW BUSINESS

1. SISTER-STATE MATTERS - FINALIZATION OF PROVISIONAL ORDERS OF DISCIPLINE - W/O MODIFICATION PEREZ, Mileidy D.A.G.

D.A.G. Perez submitted the enclosed April 20, 2005 memo to the Board concerning Provisional Orders of Discipline ("POD") filed with respect to the three physicians listed below. These PODs were subject to finalization 30 days after issuance and no response had been received. Enclosed was Executive William Roeder's Affidavit of Service with respect to the physicians listed below. The Attorney General was seeking the entry of Final Orders of Discipline ("FOD") without modification.

JIMINEZ, Raul, M.D. - POD filed December 27, 2005

PFISTER, Alene Maria, M.D. - POD filed February 16, 2005

TUCKER, Angela R., M.D. - POD filed December 27, 2005

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE FINALIZATION OF THE PROVISIONAL ORDERS OF DISCIPLINE WITHOUT MODIFICATION FOR THE ABOVE THREE PHYSICIANS.

The meeting ended at 3:15 p.m.

Respectfully Submitted,

Bernard Robins, M.D.
Chairperson for Open
Disciplinary Matters

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