

State Board of Medical Examiners
Open Disciplinary Minutes
May 12, 2004

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, May 12, 2004 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 Mr. Glenn Farrell, Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Criss, Farrell, Haddad, Harrer, Huston, Lucas, Moussa, Paul, Patel, Perry, Ricketti, Robins, Rokosz, Trayner, Wallace, Walsh and Weiss.

EXCUSED

Board Members Chen and Desmond

ALSO PRESENT

Assistant Attorney General Joyce, Senior Deputy Attorney General Dick, Deputy Attorneys General Ehrenkrantz, Gelber, Kenny, Warhaftig and Executive Director Roeder and Medical Director Gluck.

RATIFICATION OF BOARD MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE APRIL 14, 2004 OPEN DISCIPLINARY BOARD MINUTES AS SUBMITTED.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

**11:00 a.m. - ANDUJAR, Edward M.D. (License # MA 52473)
(Counseling D.A.G.: DICK, Sandra Y.)**

TESTA, Michael Jr., Esq. for Respondent
KENNY, Paul R., D.A.G. for Complainant

Dr. Huston was recused from vote and discussion in this matter and left the room.

This Matter was set down based on an Order to Show Cause, Notice of Hearing and Requirement to File Answer filed on March 23, 2004 seeking the suspension or revocation of Respondent Edward Andujar, M.D. to practice medicine and surgery and for such other relief deemed appropriate. The hearing was a result of Dr. Andujar's February 6, 2004 conviction on federal charges of bankruptcy fraud and tax evasion spanning a five-year period. Enclosed were D.A.G. Kenny's Certification and letter brief along with the Verified Complaint (with Exhibits A - G), all filed on March 23, 2004 with exhibits marked A through G. To date, Dr. Andujar had not submitted his Answer to the Verified Complaint.

Also enclosed were copies of certifications as listed in D.A.G. Kenny's April 2, 2004 letter memo to the Board which the Attorney General intended to introduce at the time of Dr. Andujar's hearing, should liability be found against Dr. Andujar. The Certifications of Costs total \$4,750.83 and it was the contention of the Attorney General that such costs were recoverable pursuant to N.J.S.A. 45:1-25 in this action against Dr. Andujar.

Chairman Farrell opened the meeting and after counsel placed their appearances on the record, Chairman Farrell asked counsel if there were any preliminary matters before the hearing begins. Mr. Testa noted one matter that needed correction. Prosecution made reference to Dr. Andujar's conviction for tax evasion and in actuality, it was a conviction for failure to file income tax returns. The correction was noted for the record.

The hearing was conducted in a bifurcated fashion and the parties would be afforded the opportunity to make arguments as to the summary decision, should it be granted. Chairman Farrell informed counsel that the Board anticipated giving both parties 20 minutes of argument and should additional time be needed, the Board would liberally grant any request for extension. Mr. Farrell asked if either counsel had any problems and if they wished for any procedural matters be brought up at this time.

D.A.G. Kenny informed the Chair that he did not have a problem with that, but as a preliminary matter he had certain items that counsel would like to have placed into evidence and hoped that it would not count against his opening argument. Chairman Farrell responded that it would not and asked that D.A.G. Kenny proceed with his opening argument. It was noted for the record that Dr. Huston was recused from vote and discussion and left the room.

D.A.G. Kenny, as mentioned as a preliminary matter, moved into evidence certain items that were attached as Exhibits to the Attorney General's moving papers. D.A.G. Kenny identified those items, marked them into evidence, hopefully making it easier for the Board to refer to them.

P-1- for identification, which is Exhibit A to the Verified Complaint, is the Certification of Thomas DiLeonardo, Assistant to the U. S. Attorney, who was the trial attorney in the matter titled U.S. vs. Edward Andujar.

P-2 - for identification, which is the superseding indictment in the matter of U.S. vs. Edward Andujar, criminal #03-331FLW.

P-3- for identification, which is Exhibit C to the Verified Complaint is the Verdict sheet in U.S. vs. Edward Andujar which is identified by A.U.S.A. DiLeonardo in his Certification.

P-4 - for identification, which is Exhibit D to the Verified Complaint of the jury instructions identified by Mr. DiLeonardo that U.S. vs. Edward Andujar and attached to Verified Complaint.

P-5 - for identification, which is Exhibit E to the Verified Complaint, is the Order Modifying Conditions of Release in U.S. vs. Edward Andujar. D.A.G. Kenny noted that this Order noted a sentencing date of May 15th and D.A.G. Kenny's understanding, through counsel of Dr. Andujar and the A.U.S.A., that the sentencing dated has been carried to a date in June. Chairman Farrell clarified for the record that the actual Order indicated May 14, 2004. Specifically it has been carried to June 16th. He moved for all the items to be entered into evidence and was prepared to begin his argument.

D.A.G. Kenny reminded the Board that Dr. Andujar was before it as a convicted felon. On February 6, 2004 in the U.S. District Court in Camden, he continued, Dr. Andujar was convicted of one count of Bankruptcy Fraud and twenty-two counts of willful failure to file various tax returns. It was the Attorney General's contention that the Board could decide this matter by Summary Decision. D.A.G. Kenny argued that it was axiomatic that where there is no issue of material fact and because Dr. Andujar was collaterally estopped from arguing a different set of facts before the Board, it could decide the matter by Summary Decision. According to D.A.G. Kenny, the Attorney General in its brief, provided the Board with a "road map" that outlines the essence, the substance and the texture of Dr. Andujar's criminal acts. For example, the superseding indictments which were entered as P-2 in evidence, the Verdict Sheet which was entered as P-3 in evidence, and the jury instructions which were entered into evidence as P-4. The proofs showed that Dr. Andujar filed a petition in Bankruptcy on Feb. 10, 1998 on behalf of his medical practice Medi-One -Stop. This filing of the petition in Bankruptcy required him to truthfully reveal all material facts in the Bankruptcy proceedings including all listing of transfers of funds or disbursements on behalf of Medi-One Stop within one year preceding that Bankruptcy petition. D.A.G. Kenny pointed out that at trial the jury found that Dr. Andujar was not truthful even though he was under penalty of perjury in those submissions insofar as the jury found that on August 27, 1997, and again on Feb. 2, 1998 approximately one week before the bankruptcy filing, Dr. Andujar issued Medi-One checks totaling \$41,500 to his father, Ismael, as "loans." Additionally, the jury found that on March 4, 1997 and on December 22, 1997, Dr. Andujar deposited \$64,975.00 of Medi-One Medical practice receipts into his own bank account and did not list this in the bankruptcy. Dr. Andujar disputed all of these things at trial and D.A.G. Kenny posited that the Board could glean

from the verdict sheet and from the jury instructions that the jury found against Dr. Andjuar. Specifically, D.A.G. Kenny directed the Board's attention to Exhibit "C and D," the verdict sheet, and the jury instructions (P-4), where it was indicated that the jury found beyond a reasonable doubt that the omissions were material to the bankruptcy and that those omissions were made by Dr. Andjuar knowingly, willfully and with an intent to commit fraud on the bankruptcy court.

D.A.G. Kenny continued in his opening by telling the Board that Dr. Andjuar also was convicted of twenty-two counts of failure to file his income tax and various other Federal taxes. Specifically, the facts showed that he was found guilty on five counts of failure to file personal income taxes for personal income derived from his medical practices. Specifically between 1997 and 2001, Dr. Andjuar personally earned between \$50,000 and \$236,00 from his medical practices. Dr. Andjuar disputed this at trial. The Board was directed to Exhibit "C," (P-3) and to the jury verdict sheet Exhibit "D" where the jury found beyond a reasonable doubt that this failure to file personal income tax returns was done willfully and was done for the purpose of evading Dr. Andjuar's duty under the Federal Tax Laws. Dr. Andjuar was also found guilty of five counts of failure to file U.S. Corporate Income Tax returns for his various medical practices, Dr. Eddie's Health and Nutrition Inc. and for Alternacare Inc., between 1998 and 2001. While Dr. Andjuar disputed this at trial, D.A.G. Kenny informed the Board that the jury found beyond a reasonable doubt that Dr. Andjuar's actions were willful and done for the purpose of evading his duty under the tax law. The jury specifically found that these actions were willful. Finally with regard to the failure to file employer's quarterly tax returns, Dr. Andjuar was found guilty on twelve counts for his failure to file FICA, withholding tax returns, on Dr. Eddie's Health and Nutrition Inc. and Alterna Care, Inc. Although Dr. Andjuar disputed this at trial, D.A.G. Kenny informed the Board that the jury found beyond a reasonable doubt that his failure to file these returns was willful and for the purpose of evading Dr. Andjuar's duties under the tax law. The Attorney General maintained that based on these convictions and the evidence before it, the Board could determine that Dr. Andjuar had violated the Board's statutes regarding fraud, deception, misrepresentation, crimes of moral turpitude and crimes relating adversely to the practice of medicine, professional misconduct and failure to maintain good moral character.

He continued by arguing that the Board can rely on the evidence because Dr. Andjuar was collaterally estopped from arguing that these facts are not true. D.A.G. Kenny explained that "collaterally estopped" meant that in the criminal trial, the burden of proof was beyond a reasonable doubt in contrast to the Board's proceedings where the facts must be proven to a mere preponderance. He continued by stating that when the essential facts are proven in the criminal case beyond a reasonable doubt, Dr. Andjuar cannot dispute those facts before the Board on the issue of liability. The Board, according to D.A.G. Kenny, had the complete record from the court below and, therefore, the case was ripe for Summary Decision.

The question before the Board, he continued, was whether the crimes for which Dr. Andjuar was convicted were crimes of moral turpitude or crimes that related adversely to the practice of medicine. The Attorney General submitted that the answer was a resounding "yes." Quoting from the seminal case, Board of Medical Examiners v. Weiner, moral turpitude has been defined as an "act of baseness, vileness or depravity in the private or social duties which a man owes to his fellow men, to society in general, contrary to the accepted and customary rule of right and duty between man and men. Put simply, moral turpitude generally reflects the common moral sense prevailing throughout the community." Generally, he argued, crimes that involve fraudulent behavior have been held to be crimes of moral turpitude. The Attorney General submitted that there could be no doubt that a conviction for bankruptcy fraud is a crime of moral turpitude. He reminded the Board that the jury found beyond a reasonable doubt that Dr. Andjuar's omissions in the bankruptcy filing were material and were done willfully under penalty of perjury with an intent to defraud the bankruptcy court. The Attorney General also maintained that Dr. Andjuar's failure to file tax returns was done to evade his social and civic duties to pay taxes, an act which offends the common moral sense of not only the medical community, but the community in general. The Attorney General urged the Board to find that these were crimes of moral turpitude. He reminded the Board of what the Court stated in Fanelli, namely that "[t]oday the practice of medicine includes more than patient care and the Board can rightfully be concerned with how doctors run their offices, keep their records, treat their employees, and deal with anyone generated through the medical practice." In short, D.A.G. Kenny argued, that these are crimes of moral turpitude and crimes relating adversely in the practice of medicine.

D.A.G. Kenny concluded by arguing that Dr. Andujar has filed an incongruous kind of answer. On the one hand, he admits that the jury found him guilty, while on the other hand, he argues that it was not wilful. The Attorney General submitted that all of these issues were decided in the Federal District Court with a full and complete opportunity for Dr. Andujar to present his defense. In spite of his proffered evidence at the Court below, the jury found beyond a reasonable doubt that Dr. Andujar was found guilty for these crimes. D.A.G. Kenny urged the Board also to determine Dr. Andujar liable for violation of the Board's laws.

Mr. Testa opened by questioning whether the Board could summarily decide this matter and respectfully suggested that the Board could not. He argued that the controlling law required a statutory right to a full, plenary hearing on the issue of liability. While Mr. Testa acknowledged that Dr. Andujar would not be permitted to re-litigate the criminal charges, he argued that Dr. Andujar should be afforded the opportunity to present evidence on his behalf so that the Board can determine whether a particular offense implicated moral turpitude. Mr. Testa continued by acknowledging that it was true that the jury found Dr. Andujar guilty, but suggested that the indictment was not relevant in this particular proceeding. Mr. Testa argued that Dr. Andujar should be permitted to testify not only as to the mitigation portion of this hearing, but he should be able to testify before the Board with respect to the underlying charges and how he got to the point that he was indicted. He requested that the issue be considered as to whether Dr. Andujar should be afforded the opportunity to address the underlying conduct, prior to his arguing whether or not these crimes rose to the level of crimes of moral turpitude that would justify a revocation of Dr. Andujar's license to practice medicine and surgery.

Mr. Kenny responded by arguing that the Fanelli case stated that one may not re-litigate the core facts, as did the Kaul case. Referring to the Kaul case, the Attorney General submitted that the court also stated that you may not re-litigate the liability. The two cases can be distinguished because in Fanelli, liability was based on a guilty plea and therefore, nothing precluded Fanelli from being collaterally estopped from arguing the facts. In contrast, Dr. Andujar's underlying conviction resulted from a jury verdict after he had already been afforded a full and fair opportunity to litigate each of the material facts in the case. He posited that there may be parts of this proceeding where it may be appropriate for Dr. Andujar to address the Board concerning the circumstances that led to his indictment and criminal convictions, but Dr. Andujar would be precluded from re-litigating his guilt or innocence. This stance was consistent with both the Fanelli and Kaul's holdings.

Mr. Testa countered by arguing that because the Board is required to make a determination as to whether or not these offenses rose to the level of being defined as crimes of moral turpitude, that based on the Fanelli decision, Dr. Andujar should be afforded the opportunity of a plenary hearing. He believed that these were two different forums with two different liability standards.

Chairperson Farrell informed the parties that it would hear Mr. Testa's entire argument prior to considering whether the Board was obligated to give Dr. Andujar a full, plenary hearing on the underlying action.

Mr. Testa continued his argument by agreeing with the definition read by Mr. Kenny from the Fanelli matter relating to the definition of moral turpitude. He argued, however, that in this particular case Dr. Andujar's actions did not meet the criteria established by that definition. He continued by arguing that the fact that someone did not file income tax returns certainly did not rise to the level of being an immoral person within the meaning of the text. There are many reasons why a person doesn't file income tax returns and it did not mean they're claiming fault. He offered that the Board would hear testimony with respect to whether or not there was any willful intent to defraud the government. Additionally, during the mitigation phase of the proceedings, Mr. Testa anticipated that would also establish that Dr. Andujar is not an immoral person. To the contrary, Mr. Testa expected that the Board would hear testimony that would establish that Dr. Andujar is an upstanding and moral person. While the jury did not believe that in reaching its verdict, Mr. Testa reminded the Board that it was not bound to the jury's determination, but would be responsible for reaching its own conclusion de novo. He concluded by suggesting that in order for the Board to do that, it should hear the facts that transpired during the years at issue when the federal tax returns were not filed and with respect to the Bankruptcy petition, what led Dr. Andujar to his decision and understanding surrounding the filing of the Bankruptcy petition. According to Mr. Testa, there was nothing in the case, the underlying federal indictment, that suggests in anyway that Dr. Andujar is not fit to practice medicine and surgery.

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

Deputies, other than counseling staff, left the room, along with other members of the public present.

The Board returned to open session with all parties present and read the following motion.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED, AFTER REVIEWING THE RECORD AND HEARING THE ARGUMENTS OF COUNSEL, THAT THE CRIMINAL CONVICTIONS CONCLUSIVELY ESTABLISHED THE ALLEGATIONS OF THE VERIFIED COMPLAINT AND THAT DR. ANDUJAR WAS COLLATERALLY ESTOPPED FROM DENYING THE FACTS UNDERLYING THOSE CONVICTIONS. THEREFORE, THE BOARD, FOUND THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT AND SUMMARY DECISION WAS GRANTED ON ALL COUNTS OF THE VERIFIED COMPLAINT. THE BOARD ALSO DENIED, AT THIS TIME, THE REQUEST TO PERMIT THE TESTIMONY OF DR. EDWARD ANDUJAR AT THIS LIABILITY STAGE OF THE PROCEEDINGS. THE BOARD FURTHER FOUND THAT DR. ANDUJAR'S ACTS PROVEN IN COUNTS 1 THROUGH 6 OF THE VERIFIED COMPLAINT CONSTITUTED ACTS OF FRAUD, DECEPTION AND MISREPRESENTATION, CRIMES OF MORAL TURPITUDE AND CRIMES RELATING ADVERSELY TO THE PRACTICE OF MEDICINE, AND PROFESSIONAL MISCONDUCT ALL IN VIOLATION OF N.J.S.A. 45:1-21 AND ALSO EVIDENCE OF A FAILURE TO MAINTAIN GOOD MORAL CHARACTER IN VIOLATION OF N.J.S.A. 45:9-6. ADDITIONALLY, AS TO COUNTS 7 THROUGH 23, THE BOARD FURTHER FOUND THAT DR. ANDUJAR'S ACTS PROVEN CONSTITUTED CRIMES OF MORAL TURPITUDE, CRIMES RELATING ADVERSELY TO THE PRACTICE OF MEDICINE AND EVIDENCE OF HIS FAILURE TO MAINTAIN GOOD MORAL CHARACTER AND PROFESSIONAL MISCONDUCT IN VIOLATION OF THIS STATUTE CITED ABOVE. AN ORDER MORE FULLY DETAILING THE BOARD'S RATIONALE WILL FOLLOW.

The matter carried unanimously.

The Board then began the mitigation hearing. Chairperson Farrell noted for the record that the Board reserved the right to limit or exclude any cumulative or irrelevant non-probative evidence.

Mr. Testa offered the following into evidence.

R-1 was a copy of a petition that was signed by approximately 600 individuals who could have testified on behalf of Dr. Andujar's good moral character. Based on Mr. Testa's representation that each individual personally signed the petition, the Attorney General did not object to entering it into evidence.

R-2 was a copy of an editorial from The Press of Atlantic City, a newspaper from Atlantic City, New Jersey, essentially stating that the patients need Dr. Andujar in South Jersey

D.A.G. Kenny addressed the Board by arguing that, of course, an editorial in a newspaper, by definition, is an opinion that is expressed. It is not fact. As long as the Board regards it in that way, it is a matter of public record, and the Attorney General had no objection to the Board taking notice of the editorial.

Reverend Erasmo Nieves was called as the first witness. He is a minister in the Vineland area, at the Presbyterian Church U.S.A. and has held this position for the last ten years. He was ordained a minister approximately twenty-five years. He recalled that he first met Dr. Andujar about six or seven years ago. At his church, the congregation holds a number of dinners for the homeless in the area. Dr. Andujar has always accepted these people at his clinic. Additionally, Dr. Andujar has assisted the church in bringing food to the people. Dr. Andujar also has hosted dinners for the less fortunate at his clinic in conjunction with the Church. This occurs about two or three times a year. The Church also holds services at the clinic every Wednesday evening. Reverend Nieves also testified that he is a patient of Dr. Andujar. He continued by expressing his opinion that Dr. Andujar is a very respectful person and has an excellent reputation within the community. He was aware that Dr. Andujar treats individuals who do not have any medical insurance and those that others in the community have refused to treat.

Knowing about Dr. Andujar's criminal convictions has not changed Pastor Nieves opinion of Dr. Andujar.

On cross-examination, Pastor Nieves admitted that as part of the teachings of his Church, he instructs people to always tell the truth. Additionally, he acknowledged that one has an obligation to file and pay income taxes.

Mr. Joseph Artesi was sworn in and introduced himself as Dr. Andujar's martial arts instructor. He further informed the Board that Dr. Andujar is a fifth degree black belt and a former Welterweight Karate Champion of the World. Mr. Artesi also stated that he was a pre-med student at Fairleigh Dickinson University and holds a graduate degree from Rutgers. Currently, Mr. Artesi works with a behavior modification program at nursing homes called "Body Building for the Nineties," which is based on research that was done at Tuft's University on biomarkets. In short, he continued, the behavior modification attempts to change people's attitudes about themselves, reconnect them with the ultimate goal of making their lives more productive. For the past seven years, he has worked at a Cape May Care Facility working with terminally ill patients. He attended the Kirksville College of Osteopathy and Surgery in Missouri where he started his program with receiving a masters degree in Medicine. He never finished the program because of some very difficult family problems, but believed that he understood the healing aspect of the field of medicine. He has earned Teacher of the Year, Outstanding Young Man of the Year, Professional Business of the Year from the Chamber of Commerce, Key to the City, and has five Senate and State Legislative Awards for Humanitarian Activity in the State of NJ. Mr. Artesi first met Dr. Andujar when Dr. Andujar was 14 years old. After doing a presentation for the Chamber of Commerce and on his way home, his car broke down in front of Dr. Andujar's house. The following week, Dr. Andujar came to one of his martial arts training centers with \$15 in nickels and quarters and began training. According to the witness, Dr. Andujar earned his black belt in one year, which is unheard of in the Japanese system of Goju Karate. From the onset of their friendship, Mr. Artesi noticed that Dr. Andujar was a very spiritual person that was linked to the community with a great deal of love and affection for his mother and father.

The witness recalled that he encouraged Dr. Andujar to apply to Harvard for medical school after he completed his undergraduate work at Haverford College. He further recalled that Dr. Andujar did not have the \$500 application fee and Mr. Artesi told him to send it in anyway. After Harvard interviewed him and realized the impact he had already made within his community, Harvard accepted him. According to the witness, Dr. Andujar did not have an easy time at Harvard, but due to his persistence, he graduated.

Mr. Aresti described Dr. Andujar as the kind of individual that will always do the right thing when nobody is watching him. And he does the right thing. When he started off on his medical practice, which is really a family practice, Aresti said the practice is the most unique thing he has seen. It's like one big family. There's nothing aseptic, nothing sterile. It's like one big family. When these patients come in there, the witness continued, they become connected because there is a great sense of empathy and understanding, caring and love. At the clinic, Mr. Aresti stated that Dr. Andujar's patient population consists of those that have been disenfranchised and the rest of the medical profession in the area refuses to treat them.

In conclusion, Mr. Aresti testified that it matters very little what lies behind him and what lies before him. What matters in the field of medicine, as far as the witness was concerned, is what lies within Dr. Andujar. He urged the Board to allow Dr. Andujar to continue to treat his patients and provide the only medical care that is available to them.

On cross examination, D.A.G. Kenny reminded the witness that he testified that his trust of Dr. Andujar was so great that in his analogy of Dr. Andujar taking a wheelbarrow on a tight rope across Niagra Falls and that the witness absolutely would get in the wheelbarrow. The witness also acknowledged that all of his patients have the same implicit trust in Dr. Andujar. Mr. Aresti admitted that he testified at the Federal Court trial and was aware of the jury's verdict. As a businessman for the past thirty five years, Mr. Aresti stated that he has never failed to file either his personal or business tax forms.

Mr. Testa then called Joanne Rehill. Ms. Rehill prepared a statement that she read to the Board. After being sworn in, she read her statement to the Board which included information that she is a former religious, belonging to the Immaculate Heart of Mary Community for several years of her life. Currently, she is a one year

retired teacher after having spent 43 years in the classroom. During her career of education, she spent time as an assistant principal, as well as a principal. The last 29 years of her life, however, she was back in the classroom as a teacher, because that is what she enjoyed most, teaching the children.

The witness has been a patient of Dr. Andujar's since he began to practice in South Jersey. According to the witness, she has never before met a more knowledgeable, more sympathetic or kinder doctor than Dr. Andujar. From her observations, she has observed that Dr. Andujar treats all of his patients in the same manner regardless of their race, their creed, their condition or their ability to pay. One of the first times she went to Dr. Andujar was because of an infected injection site, which had been caused by another doctor. Immediately upon looking at this site, Dr. Eddie said that he would not even touch it and advised that she needed to immediately consult with a surgeon. She informed the Board that Dr. Andujar referred her to another doctor, who treated her for four months in order to clear up this infected injection site. She continued by explaining that what impressed her the most was that Dr. Andujar was keenly aware of what he was capable of and what he wasn't. For the witness, this was, and continues to be, a sign of a true professional.

The witness stated that her conscience obliged her to share with the Board that from the time that she first met Dr. Eddie, he has been her family physician, her friend, her sounding board, and sometimes even her spiritual director. According to this witness, Dr. Andujar has saved her life on more than one occasion. Among the many things that Dr. Andujar has treated her for in the past, was the production of calcium kidney stones. She continued by explaining that Dr. Andujar realized she was just passing too many of them, and out of his concern for her as a patient, and the concern for the condition of her kidney, he sent her to a specialist, a urologist, who performed a cystoscopy on her and broke up a couple of kidney stones. The urologist then told her that she would be ok, but that she should come back in two weeks for a follow-up. When she returned in two weeks, the witness testified that the urologist informed her that the laboratory results indicated the presence of cancer in that kidney. This urologist set up a date two weeks down the line to remove that kidney. The witness immediately went back to Dr. Andujar, who recommended that she obtain a second opinion, because he felt there was no cancer, but that the kidney was pretty torn up because of the number of stones that she had been passing. Dr. Andujar, according to the witness, immediately placed a call to Fox Chase Cancer Center and set up an appointment within the next week. She continued by explaining that Dr. Andujar was correct and the Fox Chase doctor confirmed that she did not have cancer. The witness believed that because of Dr. Andujar's insights and knowledge, she was saved the unnecessary removal of her kidney.

Over the course of time, the witness has been treated for many other serious physical problems by Dr. Andujar, for example, she had a back injury and sciatica which were caused from an automobile accident, osteoarthritis of the knee, for which Dr. Andujar sent her to an orthopedic specialist. She also has been treated for vascular disease in her lower left extremity for which she again was sent to a specialist for Doppler tests and ultrasound to make sure there were no blood clots. Many of the treatments she received over the course of the last 15 years by Dr. Andujar have been for her chronic sinusitis, her seasonal allergies, her asthma which inevitably leads to bronchitis or pneumonia. The witness believed that what Dr. Andujar has done for her, as well as all of his patients, is to be commended. She relayed stories about how in his free clinic, he has held in his arms babies addicted to crack cocaine, and treated them with the same loving care that he would treat his own children. The witness interpreted this as a level of the truest and deepest fulfillment of the Hippocratic oath. His patients, according to the witness, include the homeless, the poor and those who suffer from addictions, yet it seems to the witness that there is a continual harassment of Dr. Andujar and his staff and a constant interference with the running of his free clinic. She has asked herself why this is happening many times. The only answer that the witness has come up with is that evil, jealousy or vindictiveness has to be at the bottom of these actions. She urged the Board not to believe that persecution is ever the path to justice. Ms. Rehill admitted that she was fully aware of the tax problems, but that has not interfered with Dr. Andujar fulfilling his Hippocratic oath. She has observed Dr. Andujar treating the addicts, who range from the very young to the very old, that come to his clinic. She is aware that he has assisted many of them in dealing with their addictions and assisting them with obtaining work. Most important, she continued, Dr. Andujar has helped many of them come to terms with their addictions and his patients are coming to counseling and attending the weekly church services held at the clinic. With all humility and sincerity, she pled with the Board to remember that the healing of a patient is not just through one's hands, but through the power of a higher deity. She requested that the Board allow that deity to be in the Board

members' hearts to direct the Board in their decision making process regarding the rest of Dr. Andujar's life fulfillment of his Hippocratic oath in continuing to treat the needy patients in Vineland.

Wenda L. Viruet was sworn in as the next witness. Ms. Viruet explained that her niece was running the office at the end of 2000 and although she did not have any medical insurance, Dr. Andujar treated her. While in the office, she continued, that she noted that the office staff was shorthanded. The witness volunteered to come in and help out in the office. Sometime in 2001, she continued, Dr. Andujar hired her and she began working on some old insurance claim forms. According to the witness, staff members would come in at 9:00 A.M. and not leave until 11:00 P.M. Because most of the patients are not paying, Ms. Viruet reported that there were many times that there was not enough money to pay the salaries of Dr. Andujar's employees. Ms. Viruet, as his sister-in-law, took it upon herself to figure out what the insurance companies were denying and to track how much time Dr. Andujar was spending with non-paying patients. The witness told the Board that she set up a computer system in 2003 and she kept records of non payments. Ms. Viruet informed the Board that in 2003 she calculated that Dr. Andujar provided services in the amount of \$476,000.

On cross-examination, Ms. Viruet acknowledged that she had seen R-1, the petition of Dr. Andujar's patients, and believed that she is the one that made the copy that was before the Board. She also admitted that the petition was circulated in the clinic, although she believed copies were also circulated in the community at large, and that she kept the file. The witness did not know who wrote the text on the petition. When Dr. Andujar was suspended in 2002, Ms. Viruet stated that for the continuing medical care, Dr. Andujar gave medications to the patients for the period that he would be under an active suspension. According to the witness, Dr. Andujar also made arrangements to transfer some patients.

Ms. Viruet could not recall being questioned by investigators from the Enforcement Bureau of the Division of Consumer Affairs, however, she did speak to some people who identified themselves as being with Medicare and Medicaid. Per the doctor's instructions, Ms. Viruet stated that she cooperated with whomever was investigating his practice.

Dr. Andujar was sworn in and reviewed his educational background. He was first licensed in the State of New Jersey in November 1988 and initially, he began his practice called Medi-One Stop in Mays Landing, New Jersey. After running several clinics in South Jersey and realizing there were not enough staff to service each of the facilities, he informed the Board that he declared bankruptcy for about eight medical clinics in 1996, except for the main center, which stayed open. Sometime in 1998, according to Dr. Andujar, he also declared personal bankruptcy because he and his wife had personally signed for the finances to continue operating Medi-One Stop, main center. He admitted that he was not the best businessman and in consultation with the bank, it was decided that bankruptcy was the appropriate step. He also believed that he needed to file the bankruptcy due to the amount of free medical care that he provided and income just did not meet expenses.

Dr. Andujar explained that he did have an accountant at the time of filing the bankruptcy petition in 1996. He further explained that at the beginning of 1998, as part of an investigation, the FBI seized his files, so it was impossible to file for 1997 and 1998. He continued by telling the Board that in the years after that, he moved his family to Colorado, but was still trying to maintain the practice in New Jersey. Dr. Andujar talked about the financial strain this created both professionally and personally. He informed the Board that during this period, he could not afford an accountant. In fact, Dr. Andujar pointed out that in the bankruptcy, \$14,000 that he owed his accountant was discharged.

Sometime in 2000, he did hire another accountant, however, the books were in such disarray that it took quite some time to get them in order. He believed that the accountant informed Dr. Andujar that it would be some time (maybe a couple of years) before the accountant would be able to file any tax returns. Dr. Andujar explained that he was under the impression that once the books were straightened out, the accountant would be filing the returns. Dr. Andujar recalled that in 1994, his then accountants filed four or five years of tax returns. He believed that it would happen again in the same manner. He tried to assure the Board that it was not willful on his part, and at best, he was negligent in being a good businessman. Dr. Andujar acknowledged that during the trial, his past tax returns were filed.

Dr. Andujar also explained that he was trying to always make sure that his employees were paid and this explained the checks made out to cash. He went on by stating that a check would be made out to cash, it would be cashed, and the employees would be paid in cash. According to Dr. Andujar, he would sign blank checks – maybe ten at a time – and trusted his office manager.

Regarding the two checks payable to his father, one in the amount of \$41,500, and the other one in the amount of \$64,975, Dr. Andujar explained that these checks were received from Medicaid/Medicare. The checks were placed into Dr. Andujar's personal account because the checks were made out to him personally. According to Dr. Andujar, his personal account became a "hybrid" business account. The checks were made out to his father because he could be trusted to bring the cash back. Dr. Andujar maintained that he never withdrew any money from this personal account. He continued by explaining these checks were not included in the Petition because they had to fill out the papers quickly because the bank was evicting them. At the time, Dr. Andujar recalled that he owed close to \$2.7 million to the bank. He believed that his failure to list these amounts was simply an oversight because of the time pressure of having to file the papers quickly. He also believed that his attorney told him that since these monies were being used to pay his employees, they did not have to be listed in the Petition.

In describing his medical practice, Dr. Andujar informed the Board that he has a full CLIA Certified Lab, performs physical therapy, performs IV therapy, runs programs for pain management, weight loss and cessation of cigarette smoking. The office is open seven days a week, twenty-four hours a day and all these programs are run daily. Dr. Andujar estimated that the office sees about 100 to 150 patients a day. Dr. Andujar further explained that many in his patient population are homeless and/or recovering addicts. He made it very clear that he provides much of the medical care for free. Additionally, Dr. Andujar told the Board that recently he also has been providing medications for free because most of his patients either do not have insurance coverage or are unable to pay to get the prescriptions filled. The practice is located in the City of Vineland, very close to the help center in town.

Dr. Andujar recounted the number of awards that he has received. These include some commendations from the City, from the Cumberland County Freeholders, from Senators LoBiondo and Asselto and has met with Governor McGreevey on a number of occasions.

Finally, Dr. Andujar thanked the Board for the opportunity to address it. He acknowledged that in the past, the Board has always been fair with him. He asked that the Board once again treat him fairly. Dr. Andujar believed that his heart was in the right place and that because of his dedication to the poor, asked that the Board not take away the only doctor many of his patients will ever have.

On cross examination, Dr. Andujar admitted that his prior accountant, prior lawyer, and prior office manager all testified at the trial. He further admitted that each was called by the Government and that the jury heard their testimony. Dr. Andujar acknowledged that no one from the City of Vineland, from the Cumberland County Freeholders, from Senators LoBiondo and Asselto or Governor McGreevey's office testified on his behalf in spite of the many commendations Dr. Andujar talked about earlier.

D.A.G. Kenny introduced the following documents into evidence.

P-6 was a copy of the Board's Order of August 12, 1999.

P-7 was a copy of the Board's Order which was filed on December 12, 2002.

P-8 was D.A.G. Kenny's Certification as to attorney's costs in this matter, up to April 5, 2004 in the amount of \$2,925.

P-9 was the Certification of Costs executed by Robert Starrantino, Supervising Investigator of the Enforcement Bureau in the amount of \$661.57.

P-10 was a Certification of Costs by Richard L. Perry, Supervising Investigator of the Enforcement Bureau, dated March 29, 2004 in the amount of \$1,164.24.

The Board moved these documents into evidence.

Mr. Testa, in his closing, reminded the Board that it heard the testimony of Dr. Andujar and the witnesses that were before the Board. He also reiterated that he could have called any one of probably a thousand people to testify as to Dr. Andujar's fine, upstanding character. He believed that from what the Board heard today, the Board could glean that Dr. Andujar certainly was not a good businessman through the many years that he was practicing medicine. He certainly did not keep records like most of us do in the course of our business. He certainly did not pay a lot of attention to taxes and things of that nature. But regardless of what the jury decided in Camden, he expected the Board should come to the conclusion that Dr. Andujar never willfully or deliberately attempted to defraud anyone, steal from anyone, or not do what was right and just within the meaning of the law. Mr. Testa acknowledged that the Board made the decision that these crimes do implicate moral turpitude, but he suggested that Dr. Andujar's actions are at the very threshold of moral turpitude, in the sense that he was sure that the Board sees many, many more egregious cases than this. He assured the Board that Dr. Andujar recognizes his mistakes and is remorseful. According to Mr. Testa, Dr. Andujar and his family have suffered far more than anybody in the room probably could imagine and suggested that he has been punished enough. Additionally, he asked the Board to consider the impact any suspension of license would have on Dr. Andujar's patients. He reminded the Board of the incredible amount of free medical care provided by Dr. Andujar and the fact that most, if not all, of Dr. Andujar's patients would be without any medical care whatsoever.

D.A.G. Kenny addressed the Board positing that if Dr. Andujar were here alone on the federal convictions, it might be very difficult to argue for the revocation of his license. Turning the Board's attention to P-6 and P-7 in evidence, the 1999 Order and the 2002 Order, he respectfully submitted that the documents indicate some shoddy medical practices and highly questionable financial conduct long before the Board became aware of these convictions.

D.A.G. Kenny suggested that on the last two occasions, the Board tempered justice with an awful lot of mercy -- a two year stayed suspension of the 1999 Order, with a reduced penalty figure and in the 2002 Order, when poised to go to hearing, over the objection of the Attorney General, this Board entered into a stipulated settlement with Dr. Andujar, which included, again, a two year suspension, two months active, and the rest stayed. Again, in response to a plea, with regard to his financial condition, a reduced payment schedule over time was given to Dr. Andujar.

At this time, D.A.G. Kenny argued that Dr. Andujar has twice before received the Board's indulgence. It was respectfully submitted that now is the time for the Board to mete out a just punishment, one which will serve to defer Dr. Andujar and others from the kind of conduct in which he has engaged. D.A.G. Kenny further argued that this kind of conduct bespeaks, despite some of the protestations to the contrary, a basic disrespect for the law and a basic disrespect for medical practice. The Attorney General asked that in addition to the revocation of the license and that the Board impose the costs which total \$4,751.11. The Attorney General specifically requested that the Board not impose any civil penalties because under case law, there is at least one argument that can be presented in federal court, when Dr. Andujar goes for sentencing, that he's already been punished, if the Board were to impose civil penalties. The Attorney General did not want to put that shackle on the judge, when the judge has to make a decision about sentencing for Dr. Andujar.

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

Deputies, other than counseling staff, left the room, along with other members of the public present.

The Board returned to open session with all parties present and read the following motion.

THE BOARD, UPON MOTION MADE AND SECONDED, DETERMINED THAT THIS MATTER INVOLVED SERIOUS ALLEGATIONS INVOLVING CONVICTIONS ON 22 COUNTS OF FAILING TO FILE TAX RETURNS WITH INTENT TO EVADE TAX OBLIGATIONS, AND ONE COUNT OF BANKRUPTCY FRAUD, ALL INTEGRALLY RELATED TO DR. ANDUJAR'S MEDICAL PRACTICE.

THE BOARD CONSIDERED THAT IT HAS TWICE EXHIBITED LENIENCY IN IMPOSING LENGTHY STAYED SUSPENSIONS AND REDUCED MONETARY PENALTIES ON TWO PREVIOUS DISCIPLINARY MATTERS INVOLVING SERIOUS ALLEGATIONS OF MISCONDUCT IN DR. ANDUJAR'S PRACTICE OF MEDICINE. YET DURING THE TIME OF PROBATION ON THOSE ORDERS, RESPONDENT ENGAGED IN THE UNLAWFUL CONDUCT WHICH LEAD TO THE CONVICTION ON 22 COUNTS OF FAILING TO FILE TAX RETURNS. NOTHING PRESENTED IN MITIGATION PERSUADED THE BOARD THAT DR. ANDUJAR'S FAILURE TO FILE TAX RETURNS OR COMMIT BANKRUPTCY FRAUD WAS EXCUSABLE OR WARRANTED FURTHER LENIENCY FROM THE BOARD. THEREFORE, THE BOARD MOVED TO REVOKE THE LICENSE OF DR. ANDUJAR EFFECTIVE IN 30 DAYS, THAT IS, JUNE 11, 2004, IN ORDER TO PERMIT CONTINUITY OF CARE AND APPROPRIATE TRANSFER OF PATIENTS. THE COSTS OF \$4,751.11 ALSO ARE IMPOSED. AN ORDER MORE FULLY ARTICULATING THE BOARD'S REASONING WILL FOLLOW.

OLD BUSINESS

**1. CHANG, Ming Z., M.D. (License #MA 41830)
(Counseling D.A.G.: LEVINE, Debra W.,)**

**KYREAKAKIS, Andrew J., Esq. for Respondent
GELBER, Joan D., D.A.G. FOR COMPLAINANT**

In the Matter of Suspension or Revocation of the License of Ming Z. Chang, M.D. to practice Medicine and Surgery in the State of New Jersey, attached was Mr. Andrew Kyreakakis, counsel for Respondent, April 6, 2004 Letter updating the Board members and requesting the appointment of a monitor pursuant to the Board's enclosed September 25, 2002 Final Decision and Order.

Mr. Kyreakakis respectfully requested that in light of Dr. Chang's attendance at Board approved courses pursuant to paragraph 2 of the Decision and Order, a monitor be appointed at this time to monitor Dr. Chang's practice pursuant to paragraph 6 of the Board's Decision and Order and that a hearing be scheduled before a Committee of the Board pursuant to paragraph 5.

Also, pursuant to paragraphs 3 and 4 of the Board's Decision and Order, Dr. Chang was assessed \$20,658.18 in costs and \$100,000 in penalties. The Attorney informed the Board that Dr. Chang has paid \$780 toward Dr. Palace's fee and Mr. Kyreakakis asked the Board's permission if this payment of \$780 would be deducted from the costs set forth above.

Finally, recognizing that there is an appeal process pending, Mr. Kyreakakis requested deferment of the above payments until after the appeal process had been completed in this matter. Should the Board reject this request, Dr. Chang's counsel requested that the sums be paid in installments.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY MR. KYREAKAKIS' REQUEST FOR THE DEDUCTION OF \$780 OF THE COSTS SET FORTH BECAUSE HE HAS ALREADY BEEN GIVEN CREDIT FOR THIS AMOUNT IN THE ASSESSMENT OF COSTS, AND THAT DR. CHANG SHOULD PROVIDE TO THE BOARD HIS FINANCIAL SITUATION, BEFORE A DECISION BE RENDERED AS TO HIS REQUEST FOR THE PENALTIES TO BE PAID IN INSTALLMENTS.

****SUPPLEMENTAL OPEN MINUTES****

**1. SISTER-STATE MATTERS - ISSUANCE OF FINAL ORDER OF DISCIPLINE
FRANCISCO, Alice N., M.D. (License # MA 33619)
PEREZ, MILEIDY D.A.G.**

Enclosed was D.A.G. Perez's April 28, 2004 memo to the Board summarizing the Sister-State matter for the above physician. A Provisional Order of Discipline (POD) was filed on January 21, 2004 and the Attorney General proposed to finalize this order based on Sister-State actions or convictions for the above physician.

THE BOARD, UPON MOTION MADE AND SECONDED, MOVED TO ENTER A FINAL ORDER OF DISCIPLINE WITHOUT MODIFICATION. THE BOARD FINDS THAT THE ASSERTION BY RESPONDENT THAT THIS IS A PERMANENT SUSPENSION IS INCORRECT BECAUSE THE RESPONDENT HAS THE ABILITY TO RE-APPLY FOR REINSTATEMENT IN NEW YORK. AN ORDER MORE FULLY DETAILING THE BOARD'S REASONING IN THIS MATTER WILL FOLLOW.

2. SISTER-STATE MATTERS - ISSUANCE OF FINAL ORDER OF DISCIPLINE WITHOUT MODIFICATION

MUHAMMAD, Rafeak, M.D. (License #MA 43140)

PEREZ, MILEIDY D.A.G.

Enclosed was D.A.G. Perez's May 3, 2004 memo to the Board summarizing the Sister-State action along with affidavit of service with respect for the above physician where Provisional Order of Discipline (POD) was issued. As indicated in the POD, finalization was subject 30 days after the issuance and no response had been received to date. The Attorney General was seeking the entry of Final Order of Discipline (FOD) without modification for the above physician.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ISSUE A FINAL ORDER OF DISCIPLINE WITHOUT MODIFICATION IN THE MATTER OF DR. RAFEAK MUHAMMAD.

NEW BUSINESS

None.

The meeting ended at 5:00 P.M.

Respectfully Submitted,

Glenn Farrell Esq.,
Vice President
Chairperson for Open
Disciplinary Matters

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