

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 1
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, June 13, 2012 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. Scott, Board Vice President.

PRESENT

Board Members Berkowitz, Cheema, Criss, DeGregorio, Jordan, Krauss, Lomazow, Maffei, Mendelowitz, Rajput, Rock, Scott and Walsh.

EXCUSED

Board Members Ciechanowski, Howard, Stanley, Tedeschi and Weiss.

ALSO PRESENT

David Puteska, Assistant Deputy Director, Division of Consumer Affairs; Assistant Attorney General Joyce, Senior Deputy Attorney's General Dick and Gelber; Deputy Attorney's General, Flanzman, Ehrenkrantz, Levine and Warhaftig; Executive Director William V. Roeder and Medical Director Harry Lessig, M.D.

RATIFICATION OF MINUTES

The May 9, 2012 Open Discipline Minutes will be presented at a later date.

HEARINGS, PLEAS AND APPEARANCES

1. **KAUL, Richard A. M.D. 25MA06328100**
Robert Conroy, Esq. For the Respondent
DAG Doreen Hafner, Prosecuting
SDAG Sandra Dick, Counseling

The Attorney General made filed a Motion in Aid of Litigant's Rights; to Amend the Verified Complaint and to Renew the Temporary Suspension Application. The Attorney General in his papers asserts that Respondent Richard A. Kaul failed to materially comply with the Interim Consent Order filed on May 9, 2012 and additionally, that he failed to cooperate with an investigative subpoena issued on May 23, 2012.

Dr. Ciechanowski previously recused in this matter.

The attorneys placed their appearances on the record.

Dr. Jordan was recused in the discussion and vote in this matter and left the Table.

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 2
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

The hearing was opened by Vice President Scott stating that the Board received a Brief from AAG Jespersen to quash a Notice in Lieu of Subpoena that had asked for Board President Jordan, Attorney General Chiesa and Eric Kanefsky, Acting Director of the Division of Consumer Affairs, to appear to give testimony before the Board.

AAG Jespersen opened by saying the Notice was improper for two reasons. None of the witnesses are proper witnesses in this proceeding and the reasons they were called is improper. He continued by arguing that a proper witness has first hand knowledge of the facts of the matter. These witnesses were called as agency heads. The law which controls the use of a subpoena of an agency head is clear and in order for it to be proper it must satisfy two prongs: one, the subpoenaed witness must have first hand knowledge of the matter and secondly, the testimony must be relevant to the proceeding. He further noted that for it to be properly issued, the litigant is required to obtain an Order from a judge, which wasn't done here. For that reason alone, it should be quashed he maintained. Moreover, he reiterated that none of three subpoenaed witnesses have first hand knowledge. The principle issues in the Kaul matter before the Board concerned patient care, that is, the doctor's competency to practice medicine with the requisite safety, and Dr. Kaul's compliance with the Interim Consent Order. None of the witnesses have first hand knowledge, but have been subpoenaed as agency heads.

Additionally, AAG Jespersen said it is improper because witnesses were being called to explain the reasons why certain actions were taken. One can't be called as an agency head to explain its rationale for taking certain action within his/her purview of his/her office. The Acting Director exercised his authority to pull Dr. Kaul's CDS license and any time an agency takes an action, it could or might overlap with the actions of another agency or body. Respondent also makes an issue over statements made to the press which Respondent maintains prejudiced the Board thereby rendering an impartial decision impossible. To the contrary, AAG Jespersen argued, the information conveyed in the press release were simple, factual statements. The statements with which the Respondent takes issue are already part of the public record. He urged the Board to quash this Notice based on the simple fact that the subpoenas were improperly issued absent a Court Order and seeks testimony from agency heads who do not possess first hand knowledge of the allegations before the Board.

Mr. Conroy, addressing the Board, opened by being amazed that a representative of the Attorney General has ignored the basic ethical premise that a prosecutor is prohibited from making a statement that will prejudice one that is being prosecuted. In this case, the Attorney General is now claiming that he knows nothing about this case when the Attorney General is prosecuting the case. The intent of the Notice was to demonstrate that the Attorney General made statements to the press about which he knew nothing. This is exactly what the representative of the Attorney General's office just confirmed.

Mr. Conroy also argued that the Board does not have jurisdiction over the matter. Dr. Kaul attempted to resolve the instant issues at the court, but the Attorney General argued that the court didn't have jurisdiction and that the proper jurisdiction was before the Board. Yet now, the same

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 3
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

Attorney General's office is arguing that coming before the Board with the Notice is improper. In short, Mr. Conroy posited that one cannot have it both ways.

The Attorney General, through the Verified Complaint, has made allegations that Dr. Kaul's practice is putting the public in imminent danger and in the Press, this global assertion was accompanied by a number of factual statements. These statements are troubling because the Attorney General has oversight of the Board and each Board member serves at the will of the Governor. Mr. Conroy maintained that this makes the Board susceptible to influence and subject to the merger problems of the Attorney General's role over the Board. The Attorney General's statements were prejudicial and through the subpoenas, Dr. Kaul was seeking information about the source of the statements that the Attorney General made before the press.

Mr. Conroy continued by saying that Dr. Jordan, a man of honor, was called because he signed the Order that is at issue with the Attorney General's Motion to Enforce the Litigant's Rights. In fairness, Dr. Kaul has the right to determine Dr. Jordan's understanding of the terms of the signed Consent Order which concluded that it was protective of the Order. It is incredulous, he continued, that with a three week period, an Order thought to be protective suddenly created a situation whereby it is claimed that Dr. Kaul presents an imminent danger to the health, safety and welfare of the citizens of New Jersey. As to Dr. Jordan, he concluded that Respondent had a right to call him to explore his personal knowledge about the terms of an Order that he signed on behalf of the Board.

Finally, Mr. Conroy argued that the Acting Director of Consumer Affairs was called because he appears to have more knowledge than the Board. He stripped Dr. Kaul of his CDS privileges after the Board determined the Interim Order was protective of the health of the citizens. Yet, without any medical background, he second guessed the Board and issued an Order. Yet here, the Attorney General represents that he doesn't know anything that is material to the issues before the Board. Then it must follow, Mr. Conroy posited, that when he issued an Order stripping Dr. Kaul's CDS privileges, he had no first hand knowledge about Dr. Kaul's practice.

Address the need to obtain on Order, Mr. Conroy informed the Board that he attempted to go to court and obtain an Order. The same Attorney General opposing Dr. Kaul's Notice in this forum, opposed it in that forum as well. In each, the Attorney General has argued that it was an improper forum. It would appear that the Attorney General's goal is simply to prevent Dr. Kaul from a proper defense and is thwarting every effort Dr. Kaul makes to defend himself.

Additionally, Mr. Conroy maintained that the Attorney General's Motion to Quash was premature and was not ripe for consideration because Dr. Kaul had not called anyone to testify. It is Dr. Kaul's prerogative and he may not call any or some of the witnesses Noticed. If a Motion to Quash was appropriate, which he maintained it was not, the Motion should only be brought at that time that Respondent calls one pursuant to the Notice.

In response, AAG Jespersen noted that the analytical flaw in Mr. Conroy's argument is that Mr.

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 4
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

Conroy wanted to pull them as heads of agency. He was trying to go behind their decisions as administrative heads to explore the reasoning of why the decisions were made. The law is clear that when the administrative head makes a decision, one cannot look behind that decision and just because a decision is made, that does not convert that person into a witness with first hand knowledge. Under the circumstances, the application was inappropriate and the Attorney General urged the Board to deny it because the testimony of those called was not relevant and those subpoenaed did not have first hand knowledge.

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

Motion made by Mr. Walsh and seconded by Dr. Berkowitz. It carried unanimously.

All parties, except administrative and counseling staff, left the room.

Returning to Open Session, the Board announced its decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE MOTION TO QUASH THE NOTICE TO APPEAR IN LIEU OF A SUBPOENA INASMUCH AS THE ATTORNEY GENERAL SUSTAINED HIS BURDEN OF PROOF AND INASMUCH AS RESPONDENT FAILED TO PROPERLY APPLY TO THE BOARD. ADDITIONALLY, THE BOARD REASONED IN PART THAT BASED ON THE LACK OF A SHOWING BY RESPONDENT THAT THE WITNESSES HAVE FIRST HAND KNOWLEDGE OR THAT THE TESTIMONY WOULD BE RELEVANT AND THE IMPROPRIETY OF CALLING AN AGENCY HEAD IN AN ATTEMPT TO GO BEHIND THE DECISION, THE APPLICATION SHOULD BE DENIED. AN ORDER MORE FULLY DETAILING THE BOARD'S RATIONALE WOULD FOLLOW.

The Motion, made by Dr. Cheema and seconded by Ms. Criss, carried unanimously.

Mr. Conroy requested an expedited Order so that he could go to the Appellate Division. He was informed that it would be done as soon as practical.

The Board then moved to hear the Motion to Enforce the Litigant's Rights and to Amend the Complaint.

DAG Hafner and Mr. Conroy entered their appearances on the record.

At the onset, Mr. Conroy noted that the objection made by Dr. Kaul to the filing of the Amended Complaint was made at a time when the matter was at the Office of Administrative Law. He withdrew his objections to the Motion to Amend the Complaint. This mooted the issue and leave

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 5
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

was granted to file the Amended Verified Complaint.

Turning to the Attorney General's Motion to Enforce Litigant's Rights, DAG Hafner argued that there have been changed circumstances which necessitated the filing. She reminded that board that when the matter was first brought before it, an Interim Consent Order was entered because the Board determined that the practice restrictions would protect the health, safety and welfare of the public. It contained certain restrictions and Respondent has failed to comply with the terms of that Order. She also maintained, and as briefed in her papers, that Dr. Kaul failed to respond to a duly authorized subpoena.

The terms of the Order, DAG Hafner continued, required Dr. Kaul to cease and desist all spinal surgeries and required him to revise his website to accurately reflect the procedures that he was authorized to perform by deleting those procedures which he was not permitted to perform. In violation of those terms, Dr. Kaul's his website still holds him out as able to perform spine surgery. While the Respondent would have you believe that there are only passing references, there are in fact fifty two minutes of video which display procedures he is not permitted to do. This doesn't even account for numerous references about procedures he is not permitted under the terms of the Order to provide sprinkled throughout his website.

DAG Hafner then presented two supplemental pieces of evidence which consisted of two DVDs that captured the videos that were still available on his website. She requested permission to show the videos at which time Mr. Conroy objected because it was improper insofar as it was evidence that went beyond the scope of the Motion. In response, DAG Hafner noted that she was not proffering it as evidence at this time. Mr. Conroy further objected because he has noticed the investigator's appearance at the hearing and the Attorney General has refused to produce her. DAG Hafner argued that any Board member could Google this and watch the video on its own. It was a matter readily available in the public domain. The Board overruled Mr. Conroy's objection.

The Board watched portions of some of the videos pulled from Dr. Kaul's website.

DAG Hafner argued that the testimonial contained in the videos still on the website was precisely the information that the Board wanted down. She argued that it was blatantly a disregard of the Board's Interim Consent Order. She cited a number of examples of other testimonials and videos on the website. Although Mr. Conroy objected because he maintained that DAG Hafner was testifying, the Board permitted her to discuss the examples as they were all included in the exhibits proffered by the Attorney General. She also noted that there was also a link to the Respondent's Youtube web page which contains even more videos.

DAG Hafner concluded that these references and continued postings on the website were in violation of the Interim Consent Order and as noted in the Order, the Board reserved the right to proceed on the Temporary Suspension filed with the Board on April 2. Finally, the DAG noted that she also filed the Motion because of his disregard of a duly authorized subpoena concerning

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 6
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

four patient records. In addition, he violated the Duty to Cooperate regulation. In light of the disregard of the Board's Order and his failure to cooperate with the Board whereby the Attorney General sought additional investigatory materials, she urged the Board to grant the Attorney General's Motion to Enforce Litigant's Rights and Move on the Application for the Temporary Suspension of his license.

Mr. Conroy, in his opening, asked the Board to understand the chronology in the case. While DAG Hafner argued that the videos were improper, it was interesting to note that the patient said something good about Dr. Kaul and the patient stressed how helpful his procedure was to improve the quality of her life. He argued that now the Attorney General must live with the contents of that video.

Mr. Conroy argued further that the Board was being asked to revisit a settlement that now the Attorney General doesn't like. It is as if the Attorney General is trying to get a second bite of the apple. There is no reason to reopen the settlement. Maybe, at best, he argued, it should be enforced, but not revisited.

Respondent requested that the witness that can testify about the investigation of the website be produced, however, the Attorney General has refused to produce her. He posited that the Attorney General is afraid to produce the witness because of what she might say. For example, Mr. Conroy noted that the certification was signed on June 5. Exhibit "U", he pointed out further, demonstrated that the series of emails with the State's experts that occurred on May 29, 2012 in the late afternoon. In that email, there is an acknowledgment that he could attend a hearing on June 13 while the investigator didn't find out about the information on the website until June 5th. It defied credulity and deserved to be explored on cross examination.

At the time of issuing the subpoenas, they were issued out of the Office of Administrative Law because DAG Hafner represented that the case had been transferred. Now, the Attorney General is arguing that they were Board subpoenas. If there were OAL subpoenas, then, he believed that the Attorney General needs to go to that forum to enforce it. Mr. Conroy also argued that the Attorney General has failed to comply with discovery requests and if his client were to be sanctioned, then the Attorney General needs to be similarly sanctioned.

The Attorney General didn't like the deal that was struck, he argued, and that is why the Attorney General is now trying to revisit the settlement as contained in the Interim Consent Order. They are asking the Board to punish the Doctor for historical information that is protected speech. It is historic and accurate. There isn't any proof that demonstrates anyone relied on the representations made by the testimonials on the video.

An additional reason offered by Mr. Conroy not to reopen the settlement was that nothing will be added to the protection of the public health safety and welfare that was not contemplated under the terms of the Interim Consent Order. Nothing has changed since then and the Attorney General has not offered any evidence which demonstrates that Dr. Kaul has failed to abide by the

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 7
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

terms and thereby, put the public at risk.

In response, DAG Hafner attempted to clarify a few items. The subpoena that was issued in May and was issued under the Board' jurisdiction and its investigatory powers. Also, the Interim Consent Order plainly required him to revise his website. That website has not been revised to reflect the terms to which Dr. Kaul agreed.

Mr. Conroy noted that DAG Hafner continued to talk about the website. He asked the Board to realize that there is no evidence that demonstrated that he has performed any procedure outside the contours of the Order, or that he has taken any appointments for cases, or that he even consulted about cases based on website information. The videos contained on the website are historical in nature.

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

Motion made by Ms. Criss and seconded by Dr. Maffei. It passed unanimously.

All parties, except administrative and counseling staff, left the room.

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED THAT DR. KAUL VIOLATED PARAGRAPH 8 OF THE INTERIM CONSENT ORDER AND THIS VIOLATION WAS SUFFICIENT CAUSE TO GRANT THE ATTORNEY GENERAL'S REQUEST TO REOPEN THE MATTER AND PROCEED ON THE TEMPORARY SUSPENSION APPLICATION.

The Motion was made by Dr. Lomazow and seconded by Dr. Rock. It passed unanimously.

Mr. Conroy requested a decision on the other issues raised by the Attorney General. Three grounds were argued by the Attorney General and if not considered, then the Respondent has a right to know the Board's rulings in order to determine the contours of an appeal. The Attorney General responded that it moved on the violation of the Interim Consent Order and the failure to comply with a subpoena. To the contrary, Mr. Conroy noted that he expected a decision on the three issues: alleged violations of the website, the issue on the subpoena, and the issue on the malpractice insurance.

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

Motion made by Dr. Berkowitz and seconded by Dr. Maffei. It passed unanimously.

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 8
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

All parties, except administrative and counseling staff, left the room.

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ALSO FIND THE MATERIAL VIOLATION OF THE BOARD'S ORDER A SUFFICIENT BASIS ALONE TO PROCEED ON THE TEMPORARY SUSPENSION. ON THE ASPECT OF THE SUBPOENA, THE BOARD FINDS THAT THE ATTORNEY GENERAL HAS THE RIGHT TO OBTAIN INFORMATION CONCERNING HIS COMPLIANCE WITH THE TERMS OF THE CONSENT ORDER FOR THE NEW PATIENTS IDENTIFIED IN THE AMENDED COMPLAINT AND THAT DR. KAUL SHOULD HAVE RESPONDED AT THE TIME IT WAS ISSUED. THE REMAINING ALLEGATIONS ON DR KAUL'S FAILURE TO COOPERATE AND FAILURE TO MAINTAIN MALPRACTICE INSURANCE HAVE BEEN ADDED TO AND WILL BE SUBSUMED AND TRIED WITH AS A PLENARY MATTER AND WILL NOT BE RULED ON TODAY.

Motion made by Ms. Criss and seconded by Dr. Jordan. It carried unanimously.

The Board proceeded to the Temporary Suspension Application.

The attorneys again put their appearances on the record.

The Attorney General, in his opening statement on the Temporary Suspension Application regarding Dr. Kaul's license to practice medicine and surgery in the State of New Jersey, assured the Board that the evidence would show that nothing short of Temporary Suspension would protect the citizens of this state. His lack of self awareness, self-restraint and his lack of appropriate medical judgment, DAG Hafner continued, were sufficient indicia to preclude him from being allowed to continue to practice in the State of New Jersey. Two experts were going to testify about his lack of medical judgment and lack of training, experience and education to perform spinal surgeries. His training was so woefully insufficient that the experts concluded that his continued practice would pose a risk of harm to the public. He knowingly violated the Board's regulations, specifically that he had no hospital or any alternative privileges to perform certain procedures in a one room surgery center in Pompton Lakes, New Jersey. The regulations are clear that he must be privileged in order to perform them in a one room surgery center. In addition, newly learned allegations include his lack of malpractice insurance in 2004-2006, TZ's serious injury and his failure to comply with the subpoena. All behaviors which point to his continued lack of judgment. His failure to cooperate with the Board and his failure to respond to subpoena all demonstrated an ample basis of lack of good moral character and medical judgment and nothing short of a Temporary Suspension will suffice.

Mr. Conroy choose not to make an opening statement and reserved his time for his closing.

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 9
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

The Attorney General offered into evidence a number of pre-marked exhibits. Mr. Conroy made a standing objection and noted for the record that he had many objections that he was not raising because he did not believe they would be granted. He reserved his right to object at the Office of Administrative Law and in the event that the Attorney General attempts to offer anything for an impermissible purpose, he objected. The items were accepted into evidence.

The Attorney General called his first witness, Dr. Przybylski, a licensed physician in New Jersey who is Board certified in neurological surgery. He testified about his credentials including that he had completed three fellowships in spinal surgery and currently maintained hospital privileges at JFK, Jersey Shore and Princeton University Hospital, where he is privileged to perform spinal procedures. He is Director of Neurosurgery at JFK, and is a professor of Neuroscience at Seton Hall University. He has trained physicians when he was an assistant professor at Jefferson, responsible in part for training residents and he is also a professor at Northwestern. He has never served on a credentials committee, but has served on a multiple disciplinary work group to evaluate a number of physicians and procedures. He is a member of a spine specialist specialty society where members dedicate at least half of their time on spinal surgeries. Dr. Przybylski reviewed his CV and attested that it was truthful and accurate for identification (it was pre-marked as P-27B). He has been qualified a number of times as an expert in open and minimally invasive surgery;

The DAG moved the CV into evidence and although Mr. Conroy objected to it, it was entered into evidence.

On voir dire, he testified that he came to JFK sometime in 2002 and spent time teaching and that he has published on Coding issues. His report to the Attorney General was written sometime in March 2012 Dr. Przybylski did not believe that his report was supplemented although he did receive additional materials. He thought that the supplemental packets came sometime before the end of April and he has discussed his findings on the supplemental information by telephone with DAG Hafner. He estimated that those discussions took place sometime toward the end of May.

DAG Hafner objected and said the expert's oral opinion was confidential. The objection was sustained.

Dr. Przybylski continued his testimony with regard to the information on Dr. Kaul's CV. The addition of CME credits in open spine surgery on one's CV does not necessarily enable one to perform this surgery. At JFK and other hospitals where he has worked, in order to have credentials in performing open spinal surgery, the expert opined that one had to undergo an adequate residency training program and that was not the case with respect to Dr. Kaul.

Dr. Przybylski continued his testimony discussing the potential of complications with open or minimally invasive spinal surgery in the open setting without the benefit of hospital privileges should complications arise. The expert said he does many of these surgeries and that there are

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 10
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

still significant risk to harm. The physician performing these surgeries must have adequate capacity to manage complications in the open setting. The absence of hospital privileges does concern the expert. There could be imminent threat to the health and welfare of the patient. The failure to obtain the appropriate privileges and credentials to perform these types of surgeries, according to Dr. Przybylsk, was a gross deviation from the standard of care.

In reviewing the records for patient TZ, the expert looked at a wealth of information and the procedure performed during this patient's seven hour spinal fusion surgery and according to the record's examined, TZ woke up with pain and the imaging records were problematic. It was clear, however, that there was harm caused. The expert noted that months later the patient required surgery to repair the problems with the surgery performed by Dr. Kaul. In the opinion of the expert, there was a gross deviation in care.

Mr. Conroy objected to the expert's opinion related to the report offered by the expert in his oral findings conveyed to DAG Hafner. In response, DAG Hafner noted that Mr. Conroy was provided with the information as Exhibit "U". Mr. Conroy's objection was overruled.

Concerning patient FK, Dr. Przybylski stated that he reviewed medical records, including but not limited to, imaging reports, preoperative, operative and postoperative reports. His review indicated that FK underwent a minimally invasive procedure to repair an area in which FK had prior surgeries and as a result of a car accident needed additional work. Dr. Kaul, he opined, deviated from the appropriate standard of care based on information about the prior surgeries in that he did not obtain sufficient information to justify some of the procedures subsequently performed by him. Dr. Kaul failed to obtain certain imaging reports and ignored some data that would have suggested that this procedure should not have been performed. Additionally, he relied on discography which was inappropriate and would not have assisted in determining the levels at which the surgery should have been performed.

On cross examination, Mr. Conroy probed the contacts that he had with Ms. Hafner and confirmed that the frequency of contact was as he stated earlier. He did recall that he was asked to be available on a prior date, although he could not recall that date. He knew that the matter was adjourned, but again he could not recall the specifics that were explained to him why he was not needed. Dr. Przybylski acknowledged that he was critical of both the lack of credentials and Dr. Kaul's clinical practice. When pressed, he further acknowledged that in some of the cases, and without reviewing some post operative studies, whether the final outcome deviated from the standard of care was difficult to ascertain, specifically referring to the three cases in which he opined that Dr. Kaul did not possess the right credentials to perform the surgeries. Mr. Conroy also moved into evidence Exhibit P-2, without any objection by DAG Hafner.

DAG Hafner then called Dr. Kaufman. He was sworn and discussed that he was Board certified in anesthesiology and has hospital privileges at University Hospital and Overlook Hospital. He discussed the procedures he performs and also stated that he is an associate professor of anesthesiology at NJ Medical School based in Newark. He is currently on the Credentials

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 11
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

Committee at University Hospital. He evaluates the credentials of physicians who are applying to perform spinal surgeries and what he looks for in credentials in particular the type of residency training with appropriate fellowship training that a physician possesses. He submitted his CV and attested it was accurate. DAG Hafner entered his expert opinion as P- 28A and it was offered into evidence.

Mr. Conroy objected to P-28A admission because it consisted of a net opinion. DAG Hafner responded that he met the requirements of being an expert and that the expert opinion is based on his review of medical records. Mr. Conroy continued to object because the opinion is not backed up by accepted medical literature or objective medical literature.

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

Motion made by Dr. Lomazow, seconded by Dr. Maffei. It passed unanimously.

All parties, except administrative and counseling staff, left the room.

Returning to Open Session, the Board resumed the hearing over ruling the objection. The Attorney General rested.

Mr. Conroy suggested that this be his opening and closing argument at the same time.

He reminded the Board that back on May 2, 2012, Dr. Jordan signed a consent order which the Board believed was adequate to protect the public, however, the Board was now being asked to determine that the failure to update a website presented an imminent danger to the public. He argued that in the Court system, one could always file a Motion for Reconsideration and for the majority of those filings, the Court denies them and with good reason. Once a matter has been considered and denied, the parties deserve a sense of finality. He went on to argue that while the Attorney General has filed a Motion by another name, in essence it is a Motion for Reconsideration and he was positing that because of a failure to update a website, the Attorney General was asking the Board to reconsider what it put in place to protect the public. The website, he noted, was up and running when the Order was signed. There was no evidence that suggested that Dr. Kaul performed any surgeries demonstrated on the videos or that even an appointment to have it performed was ever made with or without the benefit of the videos. This is the case, according to Mr. Conroy, because for all intense and purposes, Dr. Kaul has complied with the terms of the Interim Consent Order.

And in spite of the Board's finding, the Acting Director of Consumer Affairs (ADCA) filed an Order to remove Dr. Kaul's privilege to prescribe CDS. In essence, and contrary to the Board's findings, he made a determination that Dr. Kaul was a risk. In short, based on his belief and without any medical knowledge or experience, he told the Board it was wrong when it entered its

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 12
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

Order. Mr. Conroy also suggested that the ADCA acted without the requisite knowledge to even make that determination. Looking at the terms of the Consent Order, Mr. Conroy noted that it permitted Dr. Kaul to seek hospital or alternative privileges and generally one needs to have CDS privileges in order to be granted those privileges. This would suggest that given the Order entered by ADCA, it would appear that the Attorney General never intended to honor the terms of the Consent Order. Once having done that and realizing that there wasn't a clinical basis, he opined, the Attorney General filed the instant papers to cover the ADCA's actions. That case is set down for hearing on the 21st. Of course, if the Attorney General's application is granted, it moots the point of the Order to Show Cause filed by the ADCA.

Mr. Conroy argued that no new information has been proffered that wasn't available at the time the Consent Order was entered. The experts proffered their opinions prior to the May hearing and did not add anything different. In fact, one expert, Mr. Conroy recalled, in three of the cases dealt with credentialing issues and the other expert, only testified with his credentials. The credentials maintained by Dr. Kaul are the same today that they were back in May when the Order was entered into. In the interim, and consistent with the terms of the Consent Order, Dr. Kaul has not performed any procedures, including those advertised or available on the website. He honored his part of the bargain, but it seems the Attorney General just doesn't like the bargain reached and whether through the ACDA or the Board, wants to renegotiate the deal.

He also noted the amount of resources that were expended on this application. He noted the number of attorneys present and the volumes of paper that were created and wasted over issues that did not exist. Nothing in all of that paper presented by the Attorney General evidenced that Dr. Kaul was performing the prohibited procedures. He also opined that the money spent on this case could have been better allocated to resources, including those for the Administrative Office.

In closing, Mr. Conroy asked the Board not to second guess its decision. It made the correct decision in entering into the Interim Consent Order because it was, and continues to be, protective of the public. Nothing has changed. He thought it was incredulous to believe that the public was harmed, or even put at risk of harm, because of a video of a procedure that was performed years ago. He asked the Board not to relegate its duty to the Attorney General's office or the Acting Director of Consumer Affairs.

Mr. Conroy rested.

In her closing argument, DAG Hafner asked the Board to realize that what was new today is the touchstone of the case – namely, the utter lack of medical and personal judgment of Dr. Kaul. There existed a new patient that suffered harm because of Dr. Kaul's performance of surgery on her that wasn't indicated and was improperly performed. Additionally, the Board has now learned that Dr. Kaul did not comply with the terms of the Board's Order and that he refused to cooperate in a Board investigation and produce documents even with the service of a subpoena.

DAG Hafner reminded the Board that the Temporary Suspension Application was based on

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 13
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

spinal surgeries that were being performed without the appropriate education, training or experience. Dr. Kaul, she continued, performed the surgeries absent any grant of hospital privileges or alternative privileges. The experts both testified as to the lack of credentials possessed by Dr. Kaul. And as if that wasn't sufficient, she added that Dr. Kaul has not maintained the appropriate malpractice insurance as required by law.

She urged the Board to temporarily suspend his license for the above, but also because Dr. Kaul has strikingly shown that he lacks the requisite professional judgment evidenced by the numerous violations of the Board's regulations. In his 2004 Order, the Board specifically cautioned him from not practicing medicine absent a complete adherence to the laws. Instead, Dr. Kaul has not only ignored the laws, but has demonstrated time and time again, his total lack of honesty and integrity.

Mr. Conroy, in his concluding remarks, again stressed that the Order signed May 2, 2012 was authored by DAG Hafner and specifically stated that it was protective of the public. The Board entered into the Consent Order because it determined that pending the plenary hearing, with certain restrictions as contained in the Order, the public would be protected. The same allegations that were before the Board in April and in May are the same allegations that were before the Board at this hearing according to Mr. Conroy, who suggested that if the Board were to grant the temporary suspension, then it would be sending a message to the regulated community that the Board does not stand behind its Orders. This will, according to Mr. Conroy, have a chilling effect on settlement negotiations and ultimately, in settling cases.

He concluded by arguing that the Order was adequately protective then as it was now. He urged the Board to enter an Order that reflects the same terms of the Interim Consent Order. Dr. Kaul upheld the terms and vowed his word that he would continue to do so, so there was no reason for the Board to second guess its decision.

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

Motion made by Dr. Berkowitz, seconded by Ms. Criss. It passed unanimously.

All parties, except administrative and counseling staff, left the room.

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ATTORNEY GENERAL'S APPLICATION FOR THE TEMPORARY SUSPENSION OF DR. KAUL'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY SINCE THERE WAS A PALPABLE DEMONSTRATION OF IMMINENT HARM TO THE PUBLIC

**OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 14
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012**

BASED ON THE EVIDENCE AND TESTIMONY PRESENTED DURING THE HEARING AND THE UNREFUTED TESTIMONY OF TWO EXPERTS THAT TESTIFIED THAT HE GROSSLY DEVIATED FROM THE STANDARD OF CARE. IN THE BOARD'S EXPERTISE, THE RESPONDENT'S LACK OF FORMAL SURGICAL TRAINING EXPOSED PATIENTS TO UNDUE RISK, INCLUDING THE FACT THAT HE WAS WITHOUT HOSPITAL OR ALTERNATIVE PRIVILEGES AND BY FLOUTING THE BOARD'S REGULATIONS REQUIRING SUCH PRIVILEGES AND THAT THE RESPONDENT NOT HAVING THE JUDGEMENT TO RECOGNIZE THE GRAVE RISK UNDERScoreD THE BOARD'S JUDGEMENT THAT HE PRESENTED AN IMMINENT DANGER TO THE PUBLIC. ADDITIONALLY, THE BOARD FOUND THAT HIS FAILURE TO RESPOND TO A DULY AUTHORIZED SUBPOENA AND THAT HE DID NOT COMPLY WITH THE TERMS OF AN AGREED UPON ORDER RELATING TO THE WEBSITE. THE BOARD WAS MINDFUL THAT THIS WAS NOT THE FIRST TIME THAT THIS PRACTITIONER HAD BEEN BEFORE THE BOARD AND PRIOR TO THIS MATTER, HE HAD BEEN CAUTIONED TO COMPORT HIS PRACTICE WITH THE STRICTEST COMPLIANCE WITH THE STANDARD OF CARE AND THE LAWS OF NEW JERSEY. THE CONTINUED NON COMPLIANCE FURTHER SUPPORTED THE CONCLUSION THAT NOTHING SHORT OF TEMPORARY SUSPENSION WOULD SUFFICE TO PROTECT THE PUBLIC. THIS TEMPORARY SUSPENSION WOULD BE EFFECTIVE BY CLOSE OF BUSINESS ON JUNE 20, 2012. THE PARTIES WERE ENCOURAGED TO AGREE TO AN ACCELERATED HEARING BEFORE THE OAL. DR KAUL SHALL CEASE AND DESIST FROM SPINAL SURGERY IMMEDIATELY AND WAS NOT PERMITTED TO TAKE ON ANY NEW PATIENTS OR PERFORM ANY SURGICAL PROCEDURES AND THE INTERIM PERIOD UNTIL HIS SUSPENSION WAS FOR THE PURPOSE OF WINDING DOWN HIS PRACTICE.

Motion made by Dr. Lomazow and seconded by Dr. Rock, it carried with eleven votes in the affirmative and Ms. DeGregorio voted against.

Mr. Conroy requested a stay of the order which was denied by unanimous vote of the Board.

Dr. Mendelowitz left the meeting.

- 2. BEJJANI, Fadi Joseph M.D. 25MA05011700
DAG Wendy Leggett Faulk and DAG Bindi Merchant, Prosecuting**

The Attorney General made application for the Immediate Temporary Suspension of Respondent's license to practice medicine and surgery in the State of New Jersey. This matter, previously scheduled, was adjourned because an Interim Consent Order was signed by Dr.

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 15
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

Jordan. Dr. Bejjani agreed to the Temporary Suspension of his license and further agreed to cease from practice in any jurisdiction and that he may not derive any income from the practice of medicine in the State of New Jersey. The Board was asked to ratify, modify or reject the terms of that Order.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RATIFY TERMS OF THE TEMPORARY SUSPENSION OF DR. BEJJANI'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY.

Motion made by Dr. Berkowitz, and seconded by Dr. Rajput. It was unanimous.

IV. OLD BUSINESS

I/M/O DISCENZA, Ronald, M.D. 25MA00456300
SDAG Joan Gelber, Prosecuting
SDAG Sandra Dick, Counseling

The Board filed an Order on May 25, 2011, restricting Respondent's license to practice Medicine and Surgery in the State of New Jersey. Respondent requested removal of those restrictions. The Attorney General responded in opposition.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REMOVE THE RESTRICTIONS TO RESPONDENT'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY

V. New Business

I/M/O MILLER, William D.P.M. 25MD000158100
DAG Megan Goulding, Prosecuting

An Order of Automatic Suspension of Respondent's license to practice Medicine and Surgery in the State of New Jersey was filed by the Board on May 25, 2012 based on allegations of non compliance with the Board's requirements of monitoring with the Professional Assistance Program. The Board was asked to ratify, modify or reject the terms of that Order.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RATIFY THE AUTOMATIC SUSPENSION OF THE RESPONDENT'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY.

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 16
DISCIPLINARY MATTERS PENDING CONCLUSION - JUNE 13, 2012

OFF AGENDA

I/M/O HESSEIN, Amgad A. MD 25MA06765000
Susan Fruchtman, Esq. For the Respondent
DAG Kay Ehrenkrantz, Prosecuting

Dr. Hessein sought Interlocutory Review by the Board of a June 4, 2012 Order by ALJ Jesse H. Strauss which denied Dr. Hessein's motion to compel the Attorney General to respond to certain discovery demands. The Attorney General opposed the request.

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY
THE REQUEST FOR INTERLOCUTORY REVIEW AND WOULD DEFER TO
THE OAL JUDGE WHO HEARD THE MOTION.**

Nine members decided in the affirmative and Ms. DeGregorio abstained from vote.

Respectfully Submitted,

George Scott, D.P.M., D.O.
Board Vice President

WVR/dt/br