

**State Board of Medical Examiners
Open Disciplinary Minutes
July 11, 2007**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, July 11, 2007 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 Karen Criss, R.N., C.N.M., Chairperson for Open Disciplinary matters.

PRESENT

Board Members Cheema, Ciechanowski, Criscito, Criss, De Gregorio, Haddad, Jordan, Lomazow, Nussbaum, Paul, Reichman, Scott, Stanley, and Wheeler.

EXCUSED

Board Members Clemency- Kohler, Lambert, Mendelowitz, Salas- Lopez, Strand, Walsh and Weiss.

ABSENT

ALSO PRESENT

Assistant Attorney General Joyce, Senior Deputy Attorney General Dick, Deputy Attorneys General Ehrenkrantz, Flanzman, Gelber, Jespersen, Krier, Mendoza, Warhaftig, and Executive Director Roeder and Education Director Blanks.

RATIFICATION OF MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE JUNE 13, 2007 OPEN MINUTES FOR THE DISCIPLINARY MATTERS PENDING CONCLUSION.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

10:00 A.M. DEMARCO, Charlene, D.O.
LORD, Nancy MD, Esq. For Respondent
KRIER, Siobhan D.A.G. For Complainant

An Order To Show Cause, Notice of Hearing, Notice to File an Answer and an Administrative Complaint were filed with the Board by the Attorney General seeking the temporary suspension of Dr. DeMarco's license to practice medicine and surgery in the State of New Jersey.

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

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

Returning to open session, the Board continued with the hearing on the application for the temporary suspension of Dr. DeMarco's license. The parties placed their appearances on the record.

Ms. Lord, attorney for Respondent, made a preliminary motion seeking an adjournment of the proceedings. She stated that she could not defend Dr. DeMarco's case until the status of the federal case against her is settled citing that Dr. DeMarco cannot speak on her own behalf and that she cannot meaningfully defend her client without her speaking. DAG Krier opposed the motion but stated that the Attorney General would adjourn the proceeding if Dr. DeMarco would voluntarily agree to cease and desist practicing medicine and surgery until the federal case is

settled or this hearing is rescheduled. DAG Krier stated if Dr. DeMarco does not voluntarily agree to cease practicing medicine and surgery then the Attorney General was prepared to move forward. Ms. Lord stated that Dr. DeMarco has been practicing medicine for 22 years out of her home without a complaint and that patients come from all over the world to seek her treatment for Lymes disease. She continued by arguing that the patient treatment that created that verdict was with ALS patients and Dr. DeMarco is currently only seeing patients with Lymes disease. Ms. Lord also stated that the trial court judge did not have any problem with the doctor continuing to see her patients which illustrates that she was not an imminent danger. Ms. Lord said she cannot defend her client since she is exercising her fifth amendment right. DAG Krier argued that if the doctor were willing to cease and desist practicing that the Attorney General would have no objection. She opposed any adjournment simply to exhaust appeals.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GO INTO EXECUTIVE SESSION FOR ADVICE OF COUNSEL AND DELIBERATIONS ON THE MOTION FOR AN ADJOURNMENT.

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

Returning to open session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE MOTION FOR AN ADJOURNMENT.

Prior to continuing with the temporary suspension hearing, Dr. Criscito placed on the record that Dr. DeMarco mentioned that he assisted in the transfer of a patient, although he did not have any recollection of this event. He did not believe that even if this had occurred, that this would not influence him or make it difficult to deliberate fairly and objectively. Ms. Lord objected to his continued participation and made a motion that he recuse from participation further in these proceedings.

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

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

Returning to open session, the Board noted the following:

The Board noted the objections of counsel, however, Dr. Criscito again stated, on the record, that he does not recall the incident and that he would be able to render an impartial decision in this matter and would continue to participate.

The hearing for temporary suspension was opened.

Ms. Lord again stated that she was not prepared to move forward and left the hearing with her client.

DAG Krier stated that this case began in September of 2000 when Dr. DeMarco started seeing patient Matt S. who was diagnosed with ALS. During that time, Dr. DeMarco said she would seek FDA approval for stem cell therapy treatment on this patient. Approval for the therapy was never given yet Dr. DeMarco had scheduled the therapy. The patient died two days before the scheduled therapy appointment. DAG Krier stated that the doctor was contacted by four other patients with ALS and that she convinced them that she was able to perform stem cell treatment on them. Evidence showed that Dr. DeMarco opened accounts at banks and Merrill Lynch and began to take money from these patients. Dr. DeMarco took more than \$ 5,000 from Robert P., \$35,000 from Tammy B., and \$35,000 from Clifton M., even though the doctor never had FDA approval to perform stem cell treatment on these patients. Dr. DeMarco was indicted for her conduct and after a criminal trial, she was found guilty on all eleven counts by a sworn jury on December 8, 2006. DAG Krier requested that the Board find her continued practice an imminent danger to the safety, health and welfare of her patients and grant the temporary suspension of her license pending a plenary hearing on the matter. She then entered the following exhibits into evidence:

P-1 ? Indictment (Ex. "A") sets forth federal charges and offers the factual basis for the charges.

P-2 ? Jury Instructions (Ex. "B") sets forth how the jury was instructed with each element of the crimes.

P-3 ? Verdict Sheet (Ex. "C") establish that the doctor was found guilty of 11 Counts the criminal trial into evidence.

In closing, DAG Krier reminded the Board that Dr. DeMarco had a chance to appear before this Board and chose not to. She further reminded the Board that at the criminal trial, it was proven that she had preyed on patients who were diagnosed with ALS and that she was in violation of many of the Boards regulations. In short, she continued, Dr. DeMarco accepted money and never provided the medical services and these patterns of fraud and deception escalated to include a number of patients. It was also proven that she accepted \$75,000 from these patients and diverted the funds for her own personal use. DAG Krier stated that the Board can infer that Dr. DeMarco violated the Boards rules based on the guilty verdict of the jury, and as demonstrated by her actions, she cannot adhere to the standards of professional conduct and cannot exercise the requisite judgement as demanded of a licensee of the Board. In closing, she argued that Dr. DeMarco is a clear and imminent danger because of the proof of criminal acts which are reprehensible and unethical.

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

All parties, except administrative and office 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 MOTION FOR TEMPORARY SUSPENSION AS SHE SUSTAINED HER BURDEN OF PROOF IN DEMONSTRATING THAT THE DOCTOR POSES A CLEAR AND IMMINENT DANGER TO THE PUBLIC. THIS ORDER IS MADE EFFECTIVE AT THE CLOSE OF BUSINESS ON JULY 16, 2007 SO THAT SHE MAY MAKE ARRANGEMENTS FOR THE TRANSFER OF CARE OF HER PATIENTS. IN THE INTERIM, SHE IS PROHIBITED FROM TAKING ON ANY NEW PATIENTS.

1:00 P.M. ANAMA, Luzminda, M.D.
CONROY, Robert J., Esq. For Respondent
MENDOZA, Kathy Stroh, DAG For Complainant

Drs. Ciechanowski and Cheema recused from discussion in this matter and left the table.

The Attorney General has filed limited exceptions to the June 11, 2007 decision of Administrative Law Judge Joseph F. Martone. The parties placed their appearances on the record.

DAB Mendoza reminded that Board that in June 2003, the first amended complaint regarding the care and treatment of residents of the Fountain View nursing facility was filed. The Complaint alleged in two counts that Dr. Anama had failed to adhere to guidelines which required that new patients been seen within 24 hours of admission and thereafter, at a minimum, every 30 days. The same set of regulations required that the physician sign all orders. She further directed the Board to the Judges's Initial decision that made specific finding of fact that supported the state's position that Dr. Anama was the physician of record for certain patients and that regulations pertaining to frequency of visits time frames for an exam upon admissions were violated. The Judge further found that the State's experts testified that Dr. Anama had failed to abide by State and Federal regulations. The judge also found that she failed to sign her orders as well. DAG Mendoza highlighted that the expert's testimony was undisputed. The Judge also found that Dr. Anama entered into an agreement at Fountain View wherein she agreed to abide by Care Policies that were based on the state and federal regulations and that she was notified in writing by her superiors at Fountain View of her continued violations of these policies. DAG Mendoza continued in her argument by stating that Dr. Anama had failed to visit her patients within the prescribed time governed by the New Jersey State Department of Health and Human Services statutes and regulations. She further

stated that Dr. Anama received several letters of noncompliance of federal and state regulations for long-term care and that the goal of the nursing facility and the goal of the doctors should be one and the same which is the protection and welfare of the patient. DAG Mendoza stated that although Judge Martone found that the regulations that governed the doctor's behavior at the Fountain View nursing home did not fall under the purview of the Board of Medical Examiners, she asked the Board to look to the case of Kenneth Zahl, which affirmed that his violation of a federal law in submitting claims for overlapping time periods constituted professional misconduct. She argued that in this instant case, the licensee violated state and federal regulations and the Board standards of professional conduct. DAG Mendoza asked the Board to look at Judge Martone's decision and find that Dr. Anama did exhibit professional misconduct under N.J.S.A. 45:1-21(d).

In response, Mr. Conroy stated that this case has gone on far too long and the doctor has suffered enough. The Respondent has not filed any exceptions as to Count I, but only as it relates to Count II wherein she is arguing that the alleged violated regulations were developed only to regulate nursing facilities and are not the Board regulations to enforce. Mr. Conroy further stated that during the entire discovery and hearing of the matter, no Board regulation was ever alleged to have been violated. He stated that the Department of Health regulations have been in effect since 1994, and were promulgated to regulate nursing homes, not doctors. He further stated that it is arbitrary and capricious to rule that the Board can punish one of its' licensees for the violation of another agency's rules, in particular in this case where the regulations govern a facility not under the jurisdiction of the Board. Mr. Conroy stated that the Metramedia decision stands for the proposition that you cannot regulate by adjudication. The State's experts issued an opinion that really was legal not medical in nature and that even if those regulations are not enforceable, the Attorney General wants you to adjudicate the matter based on a policy of a nursing home. Mr. Conroy stated that there are some constitutional issues involved in this as well, not to mention some employment law. He continued that to carry the Board's jurisdiction into the employment arena is equally absurd because the entirety of agency law directs that these decisions are meant to be decided by the Courts not the Board.

Mr. Conroy further stated that this case was amended twice and now the State was trying to litigate what was not alleged in the complaint. Mr. Conroy continued in noting that the Zahl case is distinguishable because it dealt with physicians' regulations which relate to ambulatory care centers, not hospitals or nursing homes which are not within the jurisdiction of the Board.

In rebuttal, DAG Mendoza focused the Board's attention on the repeated violations of regulations necessarily means that the licensee has committed professional misconduct. The regulations were developed to prevent licensees from providing substandard service to residents in the nursing home. This standard of care is paramount so that appropriate and adequate medical care is provided. She reminded the Board that it has a duty to safeguard the safety, health and welfare of the public and this can only be accomplished when the physician follows the laws as it relates to the provision of care for all agencies responsible for its regulations. The DAG stated that Dr. Anama was cautioned by the nursing home and had been informed on numerous occasions that she was not in compliance with either FountainView's policies, as well as State and Federal laws. N.J.S.A. 1:21(e) gives the Board discretion to determine what is professional misconduct.

Mr. Conroy asked the Board to refer to the judge's decision which clearly stated that the regulations which were ignored are not regulations of the Board and which the judge determined that the Board could not enforce another agency's regulations. The judge also noted that there were federal regulations that formed the basis of the allegations, but these regulations governed nursing homes, not physicians. There were not any Board regulations that alleged to have been violated and therefore, there was no action for the Board to take.

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

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

Returning to open session, the Board announced its motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT THE INITIAL DECISION

OF THE ALJ, WITH THE EXCEPTION THAT THE BOARD REJECTS THE CONCLUSION THAT THE BOARD LACKS JURISDICTION IN THIS MATTER AND IT FURTHER FINDS THAT IT MAY LOOK TO OTHER REGULATIONS (E.G., STATE AND FEDERAL) TO PROVIDE GUIDANCE ON THE STANDARD OF CARE AND THEREFORE, THE BOARD DETERMINED THAT THE ATTORNEY GENERAL HAS ESTABLISHED A BASIS THAT DR. ANAMA HAS COMMITTED PROFESSIONAL MISCONDUCT.

The Board then moved into the mitigation hearing.

Mr. Conroy asked the Board to be aware of the fact that the events involved in this case, date back to 1995. There were also other physicians that also saw this patient and need to be addressed and the Board must focus on the care that has been received. In prior cases, he reminded the Board that he has always argued the impact that discipline has on doctors. He submitted a letter from one of the medical directors of Horizon announcing that Board disciplinary action may serve as grounds for exclusion from participating. He also believes that Medicaid is going to take a similar position. At best, he argued that there were technical violations of other state's agency regulations and based on the Board's decision could effectively put her out of business. Mr. Conroy further argued that there were no patients harmed and the events took place more than ten years ago.

Dr. Anama, after being sworn in, addressed the Board. She explained that she practices in Toms River, New Jersey and in internal medicine. Her patient population is approximately 70 to 80 percent Medicaid/Medicare patients. She also participates in the Horizon program. She holds privileges at Community Medical Center and at facilities in Manahawkin and Lakewood. She also sees patients in three nursing homes. Since she has left the FountainView nursing facility, she has not had any problems with any other nursing homes or at the hospitals. She further explained that she is a Chair of patient care at Community Medical Center and that she has served on a number of committees. She has not been cited by PRO or by Medicare/Medicaid and has never been audited. She has been practicing since 1981 and this is the first complaint that she has ever received. Dr. Anama stated that she employs two people in her office and sees about ten patients a day in the hospital. If she were not able to participate in any insurance programs or Medicaid/Medicare programs, she would not have a patient base. Dr. Anama testified that she was not aware of any Board of Medical Examiners' regulations concerning nursing home patients. She was aware of the requirement to see patients at least every thirty days. She also testified that not one of the cases had an adverse outcome. Dr. Anama also testified that it was the standard of practice at the nursing home at that time to see the patient at intervals that were appropriate for that patient. She also believed that the nursing home was using her to set an example for other doctors and was using her as a scapegoat for others' mistakes. She stated that she is the sole supporter of her family, which includes three children.

In closing, Mr. Conroy acknowledged that he was surprised by the Board's finding that it had jurisdiction. To go even further, he argued, to impose discipline on the licensee would be even more incredulous. Even a reprimand, he posited, could exclude her from participation in insurance and Medicare/Medicaid programs. In effect, such an exclusion could effectively cease her ability to practice. He asked the Board to be mindful of the effect that this decision might have on her life and the life of her family. He suggested that an admonishment might be appropriate because it would be public, however, non-disciplinary in nature. He reminded the Board that she has a pristine record and this is the only time that there has ever been a complaint against her during her nineteen years of practice. He assured the Board that she is well respected at her hospitals and holds a leadership position at them. Mr. Conroy also suggested that most physicians do not comport to the thirty day rule in a strict fashion. He concluded by asking the Board not to compound its mistake of finding that it has jurisdiction by imposing a reportable discipline sanction.

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

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

Returning to open session, the Board announced its motion:

THE BOARD, AFTER HEARING THE MITIGATION PRESENTATION, UPON MOTION MADE AND

SECONDED, VOTED TO ISSUE AN ADMONISHMENT TO STRICTLY COMPLY WITH ALL REGULATIONS CONCERNING NURSING HOME CARE AND TO REQUIRE THAT THE DOCTOR ASSURE THAT THE NURSING HOMES AT WHICH SHE HAS PATIENTS SUBMIT QUARTERLY REPORTS FOR A MINIMUM OF ONE YEAR AS TO HER COMPLIANCE AND THAT WITHIN THIRTY DAYS SHE SHALL SUBMIT A PRACTICE PLAN THAT WILL ASSURE THE BOARD OF HER COMPLIANCE WITH SEEING PATIENTS ON A THIRTY DAY ROTATION.

2:00 P.M. FASWALA, Munir, M.D. MENDOZA , Kathy Stroh D.A.G. For Complainant

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

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

The parties returned to open and began the proceedings.

Ms. Criss explained that the Board would first hear the notice of motion for default and she noted that the hearing was scheduled for 2:00 p.m. and it was now 3:15 p.m. She further noted for the record that Mr. Roeder walked around the parameter of the room asking if Dr. Faswala was present. Mr. Roeder did not find Dr. Faswala or anyone claiming to represent him.

DAG Mendoza began by giving the background of the case and that the Verified Complaint was filed in March 2005. She was able to demonstrate proof of service. She noted for the record that Dr. Faswala was to file a response and none have been received and therefore the complaint is uncontested. The doctor was temporarily suspended in April 2005 for his failure to respond. This order was also sent to him by registered receipt, which was signed by him and the certificate of receipt was returned to the Board office.

Turning to the instant motion, DAG Mendoza informed the Board that the Notice of Motion also was sent by Certified mail, with a Return Receipt requested. The return receipt was returned to the Board office and there no any further response has been received to the Motion by either the Board office or the Attorney General's office. Additionally, a letter was sent by the Board office informing him of this scheduled meeting. Delivery of the appearance letter was tracked by the UPS system.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED THAT THE ATTORNEY GENERAL HAS SUSTAINED ITS BURDEN OF PROOF THAT ADEQUATE SERVICE WAS MADE ON BOTH THE VERIFIED COMPLAINT AND THE NOTICE OF MOTION OF DEFAULT BY CERTIFIED, REGISTERED RECEIPT, RETURN REQUESTED, SIGNED BY DR. FASWALA.

DAG Mendoza highlighted the allegations of the complaint which included, among other things, his arrest for unlawfully dispensing drugs. This was discovered by an undercover policeman who presented to his office. Dr. Faswala did not perform a physical examination and in exchange for CDS medications, arranged with the undercover agent to fix his automobile. His overall conduct demonstrated a lack of professional judgment and the use of dishonesty, fraud, deception, false promise, and all of which pose a danger to the public.

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

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

Returning to open session, with all parties present, the Board announced the following decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ATTORNEY GENERAL'S MOTION FOR DEFAULT IN SO FAR AS A PRIMA FACIE CASE WAS DEMONSTRATED BY THE UN-REBUTTED EVIDENCE OF THE FACTUAL ALLEGATIONS OF THE COMPLAINT WITH ONE MODIFICATION AS TO COUNT II PARAGRAPH 4 AND ALL CONCLUSIONS OF LAW GIVEN THE

EGREGIOUS CONDUCT IN THIS CASE. IT FURTHER ORDERED THE REVOCATION OF HIS LICENSE. THE BOARD ALSO ORDERED A PENALTY OF \$ 50,000 AS WELL AS IMPOSED COSTS AND ATTORNEY'S FEES AGAINST DR. FASWALA.

NEW BUSINESS

I/M/O Steven P. Brownstein, M.D.

Dr. Jordan noted that he has known this individual for about fifteen years, but has not seen him in recent years. He did not believe that this would interfere with his ability to remain impartial.

Ms. DeGregorio also noted that she worked very closely with his attorney, Benjamin Clarke, and did not want to continue until she put the parties on notice of her prior professional relationship. At this time, she was not recusing, however, Ms. DeGregorio abstained from any discussion in this matter and left the room.

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

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

Returning to open session, with all parties present, the Board announced the following decision:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE REQUEST FOR INTERLOCUTORY REVIEW AS THERE WAS NOT A SUFFICIENT SHOWING THAT IT MET THE THRESHOLD STANDARD FOR REACHING THE DISCRETIONARY TRIGGER FOR THE INTERLOCUTORY REVIEW.

OLD BUSINESS

I/M/O Leonard Joachim, M.D.

At the May 9, 2007 meeting, the Board voted to adopt the findings of fact and conclusions in law in their entirety of their initial decision of the ALJ. At that meeting, the Board reserved on the issues of cost and penalties. It instructed the parties that within thirty days, Mr. Kern was to submit his exceptions to the applications for costs and the reason that would warrant a hearing on the matter of costs. The parties' submission on the costs and penalty issues were provided to the Board.

Mr. Kern also has filed a motion in which he sought recusal of the Board in deciding the cost application.

Mr. Wheeler left the meeting.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE MOTION REQUESTING THE BOARD TO RECUSE IN THE COST APPLICATION DECISION.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REFER THE APPLICATION FOR COSTS AS WELL AS THE QUESTION WHETHER A HEARING IS NECESSARY, TO A COMMITTEE OF THE BOARD WHO WOULD MAKE A RECOMMENDATION TO THE BOARD.

Respectfully Submitted,

Karen Criss, R.N., C.N.M., Chairperson

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