

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 1
DISCIPLINARY MATTERS PENDING CONCLUSION - AUGUST 12, 2009

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, August 12, 2009 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. Jordan, Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Berkowitz, Criss, Ciechanowski Cheema, DeGregorio, Iannuzzi, Jordan, Lambert, Lomazow, Reichman, Mendelowitz, Nussbaum, Paul, Rajput, Scott, Stanley, Walsh and Weiss.

EXCUSED

Board Member, Bender,.

ALSO PRESENT

Assistant Attorney General Joyce; Deputy Attorneys General Dick, Levine, Flanzman, Warhaftig Ehrenkrantz and Gelber; Executive Director William V. Roeder.

RATIFICATION OF MINUTES

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO
APPROVE THE MINUTES FROM THE JULY 8, 2009 BOARD MEETING.**

HEARINGS, PLEAS, AND APPEARANCES

**GODFREY, George C. MD 25MA0144070
George C. Godfrey III, Esq., For the Respondent
DAG Joan Gelber, Prosecuting**

On or about June 22, 2009, Administrative Law Judge Joseph F. Martone issued an Initial Decision in the above referenced matter. The Board received the Attorney General's written exceptions dated June 24, 2009 and Respondent's exceptions dated July 7, 2009. The matter was heard on August 12, 2009.

Dr. Rajput noted for the record that Dr. Godfrey is on staff at his hospital, but he did not believe that this would interfere with his ability to render a fair and impartial decision. Neither parties objected.

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The Board Chair opened the matter and counsel placed their appearances on the record.

Mr. Godfrey reminded the Board that this matter was before them based on the Initial Decision whereby the ALJ had determined that Dr. Godfry committed gross negligence for a matter dating back to 2000. Prior to that time, there was some limited investigation of Dr. Godfrey's practices, but the Board never took any action. After an unblemished practice, Dr. Godfrey is now before the Board in particular for his prescribing practices. He noted for the record that none of the evidence proffered by the Respondent was accepted by the Judge. His expert testified that the record keeping, while it may not be the best, it was adequate and the information contained therein is generally sufficient to inform a subsequent treating physician of the patient's condition and treatment plan. Counsel for Dr. Godfrey also noted that while the charts may be difficult to read, all the information was contained in the charts.

Concerning his indiscriminate prescribing, Mr. Godfrey informed the Board that often the Respondent has been hired as an expert for the State to testify on the standard of appropriate prescribing. This is not the case, according to Mr. Godfrey, of just giving out prescriptions, but a differing opinion as to what the appropriate medication regime might be. During the course of his patient examination, Dr. Godfrey counseled his patients and used pain management contracts. The attorney also informed the Board that Dr. Godfrey has begun to utilize prescription logs and electronic medical records to address many of these alleged problems. Also, in the past, records were kept by hand, now they are transcribed. Turning the Board's attention to the provision of physical therapy, Mr. Godfrey argued that he believed physical medicine and physical therapy overlap and some of the modalities can be delegated to nurses. The judge found that he inappropriately delegated some physical therapy activities to nurses, while it is permitted under certain statutory provisions.

Also, Dr. Godfrey has closed one of his offices and he now personally is present at one site for all necessary supervision. Dr. Godfrey also was charged with allegations of his failure to cooperate with the Board's investigation. Dr. Godfrey, according to his attorney, thought he was doing what the Board wanted. He submitted that the State has not proved its case and the ALJ's decision should not be upheld. He urged the Board to overturn the ALJ's decision.

SDAG Gelber opened by noting that this was a multiple count complaint and there were a number of statutory provisions that the judge found Dr. Godfrey violated. She also posited that it wasn't that respondent's evidence wasn't accepted, but rather the ALJ distinguished how his evidence did not refute the allegations.

Concerning the medical records, SDAG Gelber argued that the records could not be read and that she had to have Dr. Godfrey transcribe his records. Even after that, SDAG Gelber noted that Dr. Godfrey used abbreviations that were not common within the medical field. The State's expert testified as to the proper components of a medical record and when he examined Dr. Godfrey's records, he determined that his documents were lacking the basic information needed or required

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in a medical record. SDAG Gelber also informed the Board that his records did not contain any information about the quantity or dosages prescribed. It was only through the pharmacy records that one could determine how much or at what dose he prescribed for his patients. The copies of scripts in the charts were blurry, unreadable carbons that were not in any order.

The Judge, according to SDAG Gelber, has issued a well reasoned and thought out decision. He summarized the testimony and evidence and weighed the credibility of all the witnesses. For example, the nurses testified that most, if not all, of the requested manipulations were outside their scope of practice.

Without objection by the Respondent, SDAG Gelber submitted an index of various topics and referenced pages to the transcripts.

She urged the Board to accept the findings of fact in their entirety.

Mr. Godfrey stated that in the past Dr. Godfrey was a general surgeon, with the majority of work in the trauma field. Currently, he is treating acute care patients and the records that are at issue date back to 2004 and 2005. He assured the Board that changes have been made that addressed the concerns raised by the ALJ's opinion. He posited that when you look at the whole, he acknowledged there are, or were, some problems with his practice. Dr. Godfrey has changed those and they were for the large part administrative in nature. There was no quality of care issues involved here and the patients were receiving appropriate and good care. He acknowledged that the medical record is important, but again stressed that Dr. Godfrey has cured those defects. He also posited that copies of copies are always hard to read and as these files had to be copied over and over again, things were bound to get somewhat disorganized. Dr. Godfrey, according to his attorney, spends forty to forty five minutes with each patient inquiring as to the current status of the patient. When necessary, he made referrals. He practiced good medicine and going forward, with the changes that he has made, the Board's concerns will be addressed. He urged the Board to overturn the Initial Decision.

In rebuttal, SDAG Gelber noted that there were different charts that were kept for the same patient according to the accident or visit. She strongly disagreed that the patients did not suffer any harm. The records are replete with testimony about the effects or conditions that patients had to be treated for because of improper manipulation therapy. Also, there was a lack of follow up on some of the patients. While the Respondent would like the Board to believe that there were not any quality of care issues, when the Board examines the entire record, it will find a number of quality of care issues.

She again urged the Board in closing that it should accept in its entirety the findings of fact of the Initial Decision of the ALJ.

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

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OF COUNSEL.

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

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT ALL FINDINGS OF FACTS AND CONCLUSIONS OF LAW FOUND BY ADMINISTRATIVE LAW JUDGE MARTONE WITH EXCEPTIONS OF ANY FINDINGS OF FACTS OF THE PATIENT ALTERNATELY NAMED AS VTN ,VT OR VN AS THE ALLEGATIONS IN COUNT 1 REGARDING THAT PATIENT HAVE BEEN WITHDRAWN BY THE STATE.

The Board then moved into the mitigation proceeding.

In mitigation, Dr. Godfrey was called to testify under oath. He tried to explain to the Board that he set up a physical therapy program in his office and was set up by companies owned and operated by Mr. Croce. He outlined to the Board what physical medicine was and admitted that he forgot to take “physical therapy” off the door and someone complained. According to the doctor everything that was done in accordance with the law was approved by the Board. A few years later, an insurance company complained and the Board reviewed the structure a second time. The nursing Board representative reviewed everything and also determined that nothing was wrong. He continued to work under the assumption that everything had been approved. The doctor also testified that each year, he asked for a copy of the rules and regulations and received the same ones over and over again. While he did know that some things were questionable, such as his record keeping, no one has taken notice that his records were also typed. He was required to do this for each insurance submission. He kept getting paid so he assumed his records were adequate. Dr. Godfrey also informed the Board that when he had to be re-certified, he received it without question. He also addressed the allegation about his prescribing. While not required, he made carbon copies of the prescriptions and kept them in the charts.

Another issue raised by Dr. Godfrey was his teaching background. He has taught surgery, trauma courses. He also served on the Medical Society's Emergency Room committee and he visited many Emergency Rooms and did an analysis of how to improve their systems. Dr. Godfrey also outlined the number of hospital committees and organizations that he has worked with and for over the years to demonstrate how respected and valued his opinion within the community is.

He suggested that the Board continue to let him practice and he will remediate whatever items that Board deems appropriate. He reminded the Board that he already has put into practice some of the record keeping upgrades to address these concerns. He assured the Board that he practices

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good quality care of medicine for a patient population that doesn't have too many options.

Mr. Godfrey asked Dr. Godfrey to address his ability to pay any fines. Dr. Godfrey said that he writes off many co-pays that people cannot afford to pay and that he continues to see patients even after he is not reimbursed. Mr. Godfrey said the doctor has an active practice with 400-500 patients.

In closing, DAG Gelber asked the Board to consider the findings of the ALJ and particularly that the Respondent never admitted any fault in any areas of his egregious misconduct. The Judge did find gross misconduct in counts 1, 2, 3 and 5 and professional misconduct in counts 4 and 6. The penalty and costs recommended were appropriate and asked that the Board to find it so.

Counsel for Dr. Godfrey said that Dr. Godfrey was soon to be 83 and that a five-year suspension was essentially a revocation. His client had a clean record before coming before this Board and he asked the Board to reject the recommendation from ALJ Martone. He stated that Dr. Godfrey had no way to pay the penalties and costs.

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

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

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ADOPT THE RECOMMENDATIONS OF ALJ MARTONE AND TO SANCTION AND IMPOSE THE PENALTY, EXCEPT AS MODIFIED. DR. GODFREY'S LICENSE IS SUSPENDED FOR 5 YEARS COMMENCING 30 DAYS FROM ENTRY OF THIS ORDER. DURING THIS THIRTY-DAY PERIOD HE SHALL NOT ACCEPT ANY NEW PATIENTS. UPON APPLICATION OF REINSTATEMENT, DR. GODFREY MUST SUBMIT TO AN ASSESSMENT OF SKILLS WITH AN ENTITY PRE-APPROVED BY THE BOARD. THE BOARD RESERVES ON ALL THE OTHER RECOMMENDED REMEDIAL MEASURES AND CONDITIONS OF LICENSURE UNTIL SUCH TIME AS THE RESPONDENT APPEARS BEFORE THE BOARD FOR HIS APPLICATION OF REINSTATEMENT. THE BOARD IMPOSED COSTS AS REQUESTED BY THE STATE IN THE AMOUNT OF \$148,490. THE BOARD FOUND THE COSTS REASONABLE GIVEN THE TIME SPENT ON THIS CASE. AN ORDER MORE FULLY DETAILING THE BOARD'S RATIONALE WILL FOLLOW.

OLD BUSINESS

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FEIT, Frederick M.D. , License #25MA05617400
Stephen M. Pascarella, Esq. For the Respondent
DAG Tara Ragone, Prosecuting
Debra W. Levine, D.A.G., Counseling

On July 8, 2009 the Board, voted to impose a five-year suspension of Dr. Feit's license, with two years active, the remaining to be served as probation. Prior to Dr. Feit's return to practice, he must successfully complete ethics and coding courses and make an appearance before a committee of the Board who may require either a practice where he is not responsible for the billing or that his billing practice be monitored at his own expense. The Board also assessed costs in the amount of \$11,689. Dr. Feit's counsel requested that the Board stay the imposition of Dr. Feit's license suspension pending review of the matter before the Superior Court of New Jersey, Appellate Division.

THE BOARD, UPON MOTION MADE AND SECONDED VOTED TO AFFIRM THE BOARD PRESIDENT'S DENIAL OF THE STAY APPLICATION.

SHETH, Surendra M.D., License #25MA03027000
DAG Shiobhan Krier, Prosecuting
Robert Conroy, Esquire for the Respondent
Debra W. Levine, DAG , Counseling

On May 18, 2009, the Initial Decision of Administrative Law Judge Patricia M. Kearns, in the above matter was received by the Board. On July 8, 2009, the Board voted for a one year suspension of Dr. Sheth's license, stayed, to be served as a period of probation. In addition Dr. Sheth must successfully complete a record-keeping course to be completed within six months and he was issued a penalty of \$20,000. The record was left open for fifteen days for Counsel's response to the Attorney General's costs application to be considered on the papers. Counsel for Dr. Sheth is in opposition to the application for costs and attorney's fees submitted by the Attorney General's office.

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

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

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT

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ALL COSTS SOUGHT BY THE ATTORNEY GENERAL WITH THE EXCEPTION OF 0.2 HOURS FOR RETURN OF CAR KEYS. THE FINAL ORDER IN THIS MATTER, FULLY DETAILING THE BOARD'S RATIONALE, WILL FOLLOW.

AZAM, Chowdhury MD 25MA06382200
R. Bruce Crelin, Esq. For the Respondent
DAG David Puteska, Prosecuting

By way of background, Dr. Azam's case was heard by the Board on Wednesday, January 14, 2009 on the Attorney General's application for an Order to Show Cause seeking the temporary suspension of Dr. Azam's license to practice medicine and surgery and for other such relief as deemed appropriate. The Board declined to suspend Dr. Azam's license and ruled that the doctor could continue to practice at Insights Behavioral Health LLC, subject to certain restrictions. Dr. Azam petitioned the Board for permission to practice at another location in addition to the locations that the Board has allowed under the current restrictions for his practice.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE SUGGESTED AMENDMENT AND APPROVED THE REQUESTED WORK LOCATION.

OFF AGENDA

COSTINO, John G., Jr., D.O., License #25MB02575800
Glenn A. Zeitz, Esq. For the Respondent
DAG David Puteska, Prosecuting
Sandra Y. Dick, S.D.A.G, Counseling

At the July, 8, 2009 meeting, the Board voted to accept the findings of fact and conclusions of law of the Initial Decision of Administrative Law Judge W. Todd Miller in its entirety. The Board then voted to revoke Dr. Costino's license with no right to reapply for five years from the date of the Temporary Suspension and assessed a penalty of \$10,000. Dr. Costino's counsel was seeking to file a Motion for Reconsideration based on his receiving discovery in the criminal case which he wanted to bring to the Board's attention. He requested that the Board not issue the Final Decision in this matter and to give him an extension of time.

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

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

Returning to Open Session, the Board announced the following:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE REQUEST TO DELAY THE ISSUANCE OF THE FINAL ORDER PENDING THE MOTION FOR RECONSIDERATION WITH THE UNDERSTANDING THAT THE PARTIES WAIVE THE RIGHT TO OBJECT TO THE LATE ISSUANCE OF THE BOARD'S ORDER IN THIS MATTER.

Respectfully submitted,

Paul Jordan M.D., Chairperson
For Open Disciplinary Minutes

WVR/dt/br