

**NJ STATE BOARD OF MEDICAL EXAMINERS
DISCIPLINARY MATTERS PENDING CONCLUSION
OPEN MINUTES -
September 14, 2005**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, September 14, 2005 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor, Conference Center, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by Glenn Farrell, Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Ciechanowski, Criscito, Criss, Farrell, Lomazow, Mendelowitz, Patel, Paul, Perry, Robins, Rokosz, Ricketti, Walsh, and Weiss.

EXCUSED

Board Members Haddad, Harrer and Huston.

ABSENT

Board Members Desmond and Wallace

ALSO PRESENT

Senior Deputy Attorney General Dick, Deputy Attorney Generals Ehrenkrantz, Flanzman, Gelber, Goodman, Kenny, Krier, Levine, Warhaftig and Executive Director Roeder and Medical Director Gluck.

RATIFICATION OF BOARD MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE JULY 13, 2005 AND AUGUST 10, 2005 CLOSED DISCIPLINARY BOARD MINUTES AS SUBMITTED.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

**10:00 a.m. - JANI, Axat S., M.D. (License# MA 66016)
(COUNSELING D.A.G.: FLANZMAN, Steven N.,)
CONROY, Robert, Esq., for Respondent
KRIER, Siobhan B., D.A.G. for Complainant**

Dr. Ciechanowski recused from discussion and vote and left the table.

This matter was before the Board on D.A.G. Krier's Motion for an Order granting Summary Decision on the allegations set forth in the Administrative Complaint filed on May 6, 2005 in the matter of Dr. Axat Jani.

By way of background, Dr. Jani was indicted in November of 2002 and charged with theft by deception, Medicaid fraud and healthcare claims fraud stemming from his involvement in a scheme with a Newark pharmacy to defraud Medicaid out of approximately \$290,000 for medications that were never dispensed. Dr. Jani was convicted of second-degree healthcare claims fraud after he pleaded guilty on January 7, 2003.

The Board at its April 13, 2005 meeting voted to reject Mr. Conroy's proposed consent order on behalf of Dr. Jani and directed the Attorney General to file an administrative complaint seeking revocation of his license.

D.A.G. Krier, on behalf of Peter C. Harvey, Attorney General for the State of New Jersey and Robert J. Conroy

of Kern, Augustine, Conroy & Schoppman, P.C. on behalf of the Respondent, Axat Jani, M.D., entered their appearances. Dr. Perry noted for the record that Mr. Conroy's firm was assisting him in a matter unrelated to this matter and further noted that he did not feel it was necessary to recuse himself from proceeding in this case. Mr. Conroy also added that he was representing the New Jersey Society of Plastic Surgeons and they were appearing as an amicus. Neither party had an objection to Dr. Perry continuing to participate. Dr. Ricketti added that Mr. Conroy was representing a number of podiatrists in a number of matters and that Mr. Conroy is the General Counsel to the New Jersey State Podiatric Medical Society and, as such, his firm is representing the podiatrists around the State in terms of dealing with the interpretation of the Board's rules and how to conduct physician examinations pre-operatively. The Attorney General did not voice objection to Dr. Ricketti sitting on the matter. Dr. Criscito additionally added that the New Jersey Medical Society, represented by Mr. Kern's office, had a law suit against Horizon involving cardiologists and he was one of the groups that was involved. Mr. Conroy elaborated that his office represents the Medical Society in a collective action against Horizon Blue Cross/Blue Shield and were involved with other law firms, in that case as well, representing the cardiologists around the State of New Jersey. The Attorney General did not voice objection to Dr. Criscito sitting on the matter. Finally, Dr. Paul indicated that she's a member of the Institute of Public Health of New Jersey and which a representative of Mr. Conroy's firm is involved in reviewing the bylaws. No objection was voiced by the Attorney General.

The Chair asked that the proceeding begin on the State's Motion for Summary Decision and indicated that the matter would be bifurcated, noting that should the Board make a finding that the Attorney General has sustained his burden of proof sufficient to enter Summary Decision, the Board would then move to the penalty phase of the proceeding, at which time the Respondent, would be able to call any witnesses in mitigation. The Chair indicated that the Board had the opportunity to read the submissions of the parties and would entertain brief oral argument.

D.A.G. Krier opened by noting that the Attorney General intended to rely on the Exhibits that were included with the Motion for Summary Decision in the Appendix. Included and what had been marked were as follows:

- S-1 Exhibit A - The Judgement of Conviction
- S-2 Exhibit B - The Administrative Complaint filed in this matter
- S-3 Exhibit C - The Guilty Plea Transcripts
- S-4 Exhibit D - The Sentencing Transcripts
- S-5 Exhibit E - The Indictment
- S-6 Exhibit F - The Plea Form
- S-7 Exhibit G - The Criminal Consent Order of Suspension
- S-8 Exhibit H - Respondent's Answer to Administrative Complaint

It was D.A.G. Krier's understanding that counsel had stipulated to the admission of these documents and the Attorney General offered Exhibits A to H (previously marked S-1 to S-8) into evidence. Mr. Conroy acknowledged that he had stipulated the admission of those documents and the Board admitted them into evidence.

D.A.G. Krier, in her opening statement, noted that the Attorney General was moving for Summary Decision in this matter because she believed that the matter was straight forward. She continued by reminding the Board that the standards were applicable to a Motion for Summary Decision. The D.A.G. argued that there was no genuine issue as to any material fact and therefore, the Attorney General was entitled to judgement as a matter of law. The State pointed out that Dr. Jani had admitted that he was convicted of second degree health care claims fraud and referred the Board to S-8, the doctor's Answer to the Administrative Complaint and the Judgement of Conviction, S-1 or Exhibit A. The Attorney General also referenced certified copies of the doctor's Plea Transcript and Sentencing Transcript, S-3 and S-4 or Exhibit C & D, thus there was no disputing the doctor's conduct given the sworn testimony before Judge Nelson in the criminal matter.

D.A.G. Krier referenced lines and pages of the Plea and Sentencing Transcripts in which Dr. Jani, in his own words, admitted to the criminal court of his involvement in a scheme to defraud Medicaid out of thousands of dollars. The Attorney General reminded the Board that they may revoke or suspend a license upon proof that the licensee had engaged in the use or employment of dishonesty or fraud; had engaged in professional misconduct;

or had been convicted of engaging acts constituting any crime or offense involving moral turpitude or relating adversely to the practice of medicine. D.A.G. Krier added that under the circumstances, because the criminal court had already imposed a criminal sanction on Dr. Jani, practitioners convicted of a 2nd degree health care claims fraud were subject to a criminal statute NJSA 2(c)51-5. and to be subject to a presumption of life-time forfeiture of their license or where justice requires, a minimum of a one-year suspension. The State added that this particular criminal statute further provides that in those instances where the court fails to act, fails to suspend or forfeit the doctor's license, that the Board retained the authority to suspend or revoke the doctor's license based on the doctor's conduct.

Finally, the Attorney General stated that Respondent's counsel had raised the issue that promises were made to Dr. Jani or that he had been led to believe that he would only be subject to one year suspension of his license. D.A.G. Krier disputed that belief as Dr. Jani had understood that his agreement with OIFP was not and had no binding authority on the Board, as clearly demonstrated by the record. The State added that Dr. Jani had not attempted to vacate his guilty plea and additionally on the date Dr. Jani was sentenced, he signed a criminal order of suspension of licensure for one year. Therefore, the Attorney General asked the Board to find Dr. Jani liable for his conduct and revoke his license, award attorney fees and related costs and such other relief as the Board deemed appropriate. D.A.G. Krier added that if the matter proceeded to mitigation the Attorney General was prepared to submit certifications for assessment of costs related to this matter.

Mr. Conroy, in his opening statement, stated that this case was indeed not a "simple" case. Although he believed that the matter was a bifurcated proceeding, he thought it was interesting that the State had already intended to seed the Board's thoughts with thinking of revocation and that was troubling to him. Counsel informed the Board that he would love to talk to them about the railroading of Dr. Jani and about the fact that the other people who masterminded the scheme were never brought to justice. D.A.G. Krier raised objection and indicated that this testimony was appropriate for mitigation and not for the liability phase. Mr. Conroy responded that the State's arguments be stricken because of the mention of the penalty. The Chair admonished both counsel and asked each to keep the proceeding civil. As far as the objection, the Chair indicated that the State had been given latitude in its argument and would afford the same latitude to Respondent.

Mr. Conroy continued that although it was simple for the State to talk about justice in this case, where the people of the State of New Jersey had truly been denied justice. Counsel believed that by disciplining a physician who worked three months, part time, would actually be determined offensive as a citizen of the State. He believed that Dr. Jani was in a "pitiabile" situation as the Board would hear from other witnesses. Dr. Jani did something objectionably wrong, but it was not the character of action that the State has attributed to it. Although he thought that this case may be ripe for Summary Decision, because in so far as the criminal conviction may in fact be for consideration here, that is not in dispute, he submitted that there was a lot that remains at issue.

Counsel noted that the D.A.G. seemed very confident in her legal opinion concerning the Health Care Fraud Act, and yet, further noted that it was a provision of law that had not been tested in the courts. Mr. Conroy reminded the Board that the courts may often take a different interpretation of the law in comparison to that which the Board determines that the law may require. He reminded the Board of the recent Zahl case, where the Appellate Division took a decidedly different view of what measure of discipline was appropriate. Mr. Conroy reiterated that the State was trying to get the revocation that they could not get in the criminal proceeding. He reminded the Board that the Attorney General had also prosecuted the doctor in the Office of the Special Fraud of Prosecution before the courts. Indeed, Mr. Conroy posited, the State was seeking to get "two bites of the apple". He asked the Board to remain mindful of the fact that this case was not a "simple" case as the State has argued. He added that he had faith in the Board members after considering all the evidence that it would not be persuaded to a simplistic rubber stamping of what the Attorney General was seeking.

D.A.G. Krier, on rebuttal, pointed out that some of the other members involved in this scheme were also prosecuted. For example, she noted, the manager of the clinic, Peggy Huston, was sent to jail for seven years. She also noted that Milton Parash was also prosecuted, although she did not know what the final sentence was. The Attorney General reiterated that more importantly, counsel had suggested that principles of double jeopardy may prevent the Board from acting in this matter. D.A.G. Krier asked the Board to note that Mr. Conroy had not cited

any case law and that was because the case law was very settled on this issue. Counsel added that it has long been recognized in New Jersey that the State can impose both criminal and civil sanctions for the same conduct so long as the civil sanctions are remedial in nature. Nothing that Mr. Conroy suggested, the Deputy continued, that the proposed sanctions are punishment because they were not punishment. Furthermore, according to the Supreme Court of the United States, the imposition of civil sanctions and debarment from profession is not punishment under the meaning of the double jeopardy clause. The Attorney General reiterated that the revocation or suspension of Dr. Jani's license would serve as a remedial function in this case, thus protecting the public from an unfit practitioner and maintaining the integrity of the profession.

The Attorney General indicated that the Zahl opinion referenced was not published and was not binding in the Dr. Jani case. More importantly, D.A.G. Krier informed the Board that the cases are easily distinguished and that the Zahl case was not binding to the Board. The State argued that it was inaccurate to say that Dr. Jani had not harmed the citizens of New Jersey. Not only had Dr. Jani cost the taxpayers over \$75,000, but that he had harmed the profession. Furthermore, adding that a physician who was willing to knowingly violate the standards applicable to the profession of medicine for illegal financial gain did indeed pose a danger to the citizens of New Jersey.

D.A.G. Krier in rebuttal added that Mr. Conroy had made representations that Dr. Jani was at the clinic for only three (3) months, therefore, he was collaterally estopped for making those representations which directly contradicted the doctor's sworn testimony. It appeared to the Attorney General that Mr. Conroy was trying to minimize the doctor's conduct and suggesting that perhaps Dr. Jani was not a key player in the Medicaid scheme. However, \$75,000 worth of fraudulent prescriptions was not a small amount of money, the Attorney General added. Also, D.A.G. Krier added that counsel had suggested that the Healthcare Claims Fraud Statute did not permit the Board to act despite sub-section(f) which specifically states that the Board can indeed act, adding that this statute is remedial and it is meant to be interpreted broadly. She further argued that there is no question pursuant to subsection (f) that the Board was entitled to act. Furthermore, the Attorney General was not party to or privy to negotiations that went on between Dr. Jani and OIFP and this was not a global settlement. D.A.G. Krier finally added that the Judge suspended Dr. Jani's license for one year and nothing can be read into that. It was part of the plea agreement and in fact, the Judge noted that "of course the Attorney General can make separate application". So, therefore, D.A.G. Krier asserted that there was no meaning in the one year suspension that the criminal court imposed other than the fact that the criminal court understood that further action could be taken by the Board, should the Board deem it necessary for remedial purposes.

Mr. Conroy objected, believing that there was a mis-statement. Counsel asserted that indeed in the criminal case, the judge entertained a criminal plea, but may not accept it, unless he or she is personally convinced that the person has not been properly advised of his rights and more importantly is that the settlement, the negotiation of the plea, is appropriate and justified under the law. So it was Mr. Conroy's assertion, that it was not a matter of whether they allow the attorneys a substitute for post-judgement. Mr. Conroy voiced his objection to the suggestion that in some way the Judge really aggregated his authority and did not do his job. Counsel believed that it was a collateral attack on the conviction. The Chair noted that the Board had the transcript of the proceedings and asked if there was anything further before entertaining a motion by a Board member to go into closed session for deliberation.

The Board, upon motion made and seconded, voted to go into Executive Session for deliberations and advice of counsel. All parties, including counseling staff (except for S.D.A.G.s Dick and Flanzman), left the room.

The Board returned to open session and announced the following motion.

THE BOARD, UPON MOTION MADE AND SECONDED, FOUND THAT THE ATTORNEY GENERAL SUSTAINED ITS BURDEN OF PROOF FOR ITS MOTION FOR SUMMARY DECISION AND VOTED TO GRANT THE ATTORNEY GENERAL'S MOTION FOR SUMMARY DECISION.

Turning its attention to the mitigation phase, Mr. Conroy in his opening statement noted to the Board that the Attorney General had characterized Dr. Jani to be a villain and yet, the Board was about to hear that he was

anything but a villain. Counsel acknowledged that Dr. Jani may have been naive or he may have been stupid. Mr. Conroy noted that the Board would hear from witnesses that Dr. Jani has been a quiet and conscientious man throughout his life. Dr. Jani has always been a humble and religious man all of his life and has always been a compassionate doctor with his patients. Furthermore, Dr. Jani has always been involved in his community.

Mr. Conroy referenced the Zahl case and stressed the importance of the Board's consideration as to the proportionality of justice in the matter before them. Counsel also reminded the Board of the Fogari case in 1989 involving multiple counts of fraud. Mr. Conroy quoted Dr. Bernard Grossman, Board President at that time, stating "that the Board strongly echoes the sentence of Judge Brown stated in Dr. Fogari's sentencing", which counsel mentioned that the Board had not heard nothing about at this proceeding. He continued to quote Dr. Grossman that "this is a case of massive proportions, wholly aside from the perjury and the obstruction of justice, we have more than six years of lies, fraud, and deceit. Indeed I felt it was one of the worst cases I had seen involving drug conspiracies and murders. There seems to be a total contempt for the law and abuse of public trust, education, and decision by a man who committed crimes that tear at the fabric of our society, the public health, respect for both law and the medical profession. I found his conduct to be an insult to the men dedicated and health professionals working daily for the public good. The committing of perjury and the obstruction of justice were equally shocking. Our system of law, our system of drug testing, which rely upon honesty. The dimensions of Dr. Fogari's dishonesty and the fabrication and the blatant lying, I find shocking". Mr. Conroy continued to remind the Board that the Judge in the Fogari matter echoed Dr. Grossman's words, and Judge Brown found Dr. Fogari's conduct egregious enough to warrant a sentence of a total of four years of imprisonment, three years on a conspiracy count, three years on a count of making and using false documents with the sentence to run concurrent with a sentence on a conspiracy count and a one year of obstruction of justice count to be served consecutively to the three year sentence along with a five year probation. Judge Brown further assessed monetary penalties in excess of \$2 million. In 1989 the Board revoked Dr. Fogari's license to practice medicine in the State of New Jersey and subsequently this Board allowed him to return to practice. Today Dr. Fogari practices medicine in Hudson County, New Jersey. Counsel submitted to the Board, that Dr. Grossman said to the Board in 1989, that Fogari was one of the worst cases that ever appeared before the Board, and yet Dr. Fogari practices today. Mr. Conroy questioned the Board as to where the proportionality and appropriateness of the full measure of discipline would be in view of Fogari matter in comparison to what was before them?

Finally, Mr. Conroy referenced the Sister-State of Florida noting that the courts there have required the Medical Board to have various schedules of penalties for various type of offenses so that they can be assured of some regularity in the disciplining process and that perhaps some day the courts will impose the same justice in New Jersey.

The Chair asked the State if they had any preliminary statement at this time and D.A.G. Krier responded that she did not, but would voice her objection and requested a proffer from respondent's first witness. She noted that the Attorney General had not been supplied with any information about the witnesses that Mr. Conroy intended to call. D.A.G. Krier stated that if the witnesses were going to testify to Dr. Jani's character, the Attorney General had no objection, but if the witnesses were going to testify behind the doctor's conviction that she would assert her objection.

The Chair noted for the record, before dealing with D.A.G. Krier's objection, that the Board as it always does, would reserve the right to limit or restrict any cumulative or non-probative testimony in these matters. The Chair presumed that counsel would not engage in redundant testimony. The Chair further noted that should there be redundant testimony, the Board would limit that testimony as appropriate. With regard to the State's objection, the Chair read into their objection as to not been offered a witness list and directed opposing counsel to proffer a witness list at this time. Mr. Conroy believed that he had one and that the court reporter was marking it and had no problem with the Chair's request. The Attorney General requested a proffer of the witnesses's testimony and the Chair asked for a proffer as well. Mr. Conroy submitted that it would take longer for the proffer than the actual testimony. The Chair indicated that the proffer was at the request of the Board and the Attorney General had requested a proffer as well as the Chair. Mr. Conroy agreed and stated that his first witness was Chaplain Smalls, who was a patient of Dr. Jani and would give his point of view on the doctor and how the doctor had touched his life and thought it to be important. The Chair asked if the State had anything further and D.A.G. Krier

replied that she did not. The Chair asked the State if they wished for a witness list and the State indicated that they did and Mr. Conroy asked that the record reflect that he was handing the witness list to the State. The Chair asked for a copy as well.

Respondent's first witness, Chaplain Henry Smalls, was sworn in. Chaplain Smalls testified to being a patient of Dr. Jani and shared his opinion of Dr. Jani as his personal physician. Chaplain Smalls indicated that Dr. Jani was a very caring and loving doctor to his family. That there had been times when they were sick and did not expect Dr. Jani to call or check on them, but he was always there for them. Chaplain Smalls indicated that he would like to see Dr. Jani come back to serve his community and that the community loved him very much. Chaplain Smalls testified that he was very supportive of Dr. Jani coming back as his doctor. Furthermore, Chaplain Smalls testified that if Dr. Jani were allowed to practice again, he and his family would return to his care. The witness testified that he had found it very difficult to find another doctor and as a result he turned to the herb process of self-treatment. The witness noted that he had gone to another physician but had not been satisfied with the care and treatment. When asked by counsel to share his thoughts with the Board, the witness indicated that he would like to see Dr. Jani come back and serve as a doctor in the community because the community really needed him and he had really been a great doctor and a leading force in the community. Chaplain Smalls testified that Dr. Jani had been his doctor for four years.

The Attorney General on cross-examination of the witness asked if he had been happy with Dr. Jani as his physician and the witness replied that he had been. The state further asked if the witness was aware of Dr. Jani's guilty plea to committing health care claims fraud? The witness replied no more than what he had heard at today's hearing. D.A.G. Krier continued to question the witness if he had personal knowledge to share with the Board about the doctor's fraudulent conduct? Mr. Conroy voiced his objection to the questioning and stated that the Attorney General had made it clear that she would object to his trying to collaterally attack the underlying conviction and consequently D.A.G. Krier was attempting to bolster the testimony. Counsel indicated that the Attorney General could not have it both ways. The Chair over-ruled the objection and indicated that it was fair game for cross-examination. Mr. Conroy interrupted the Chair and noted that if it was fair game even though it was beyond the scope, that he would re-adjust his questioning on direct more accordingly. Counsel stressed that he need the Chair to be more precise as to just what would constitute appropriate cross-examination. Counsel indicated that cross-examination is not permitted to go beyond the scope of the direct and he had not collaterally attacked the conviction and it would be fair game if he had. Mr. Conroy noted that if the Chair was going to permit the question, then he must be permitted to collaterally attack and asked the ruling be rescinded.

The Chair indicated that the Board made its ruling and would not go behind what was found. Furthermore, Mr. Farrell indicated that this was cross-examination and the Board would allow a fair cross-examination and the Chair would not go off on a tangent thus ruling it was an appropriate question and directed the state to resume its questioning. The State had no further questioning.

Counsel for the Respondent called on twenty-three more witnesses from the religious sector, community, patient pool, family members. Each witness testified on behalf of Dr. Jani's character, integrity, patient care, medical acumen and his work within the community, and as well as praise that Dr. Jani has earned from his colleagues and office staff who worked closely by his side.

Counsel for Respondent also called Dr. Jani's wife, Anjana Jani, to testify on behalf of her husband. Mrs. Jani's emotional testimony embodied her hopes of restoring her husband's dignity as a physician. She testified that she had known her husband for eighteen years and had stood by him even before he was a physician as he completed his medical school, his residency, his exams, and long days and nights on call. Furthermore, Mrs. Jani testified that she had watched him grow as a fine human being and a loving and nurturing father and that he was her family's heart and soul. She testified as to the pain and heartbreak that was endured by herself and her children and the financial burdens that were placed upon her family. She felt that her husband had already paid a high price for what he had done, as well as her entire family, and despite of this terrible public and personal humiliation, they have stood together as a family and humbly wished on behalf of her family that the Board restore the privilege of Dr. Jani's medical license and his dignity. She urged the Board to please allow them to rebuild their lives and thanked the Board for allowing her to speak on behalf of her husband, Dr. Axat Jani. There

was no cross-examination of Mrs. Jani by the Attorney General and Mr. Conroy called Dr. Axat Jani for testimony.

Dr. Perry left the proceedings and did not further participate in them.

Dr. Jani was sworn in and briefly reviewed his educational background and training. Dr. Jani continued that after completing his residency he did not go into direct practice due to his Mother's passing away and as a result traveled to India to finish the funeral ceremonies and upon return completed his residency and took part-time employment at that time.

Dr. Jani added that he was employed at three different jobs. He was a team physician at a Catholic High School supervising their football program. He was also a CT technician physician and worked part-time at the Smith Street Clinic in Irvington, New Jersey. He began his employment at the Smith Street Clinic part-time in September of 1997. He testified that he worked at this clinic two to three days per week for four hours at a time. He indicated that he had no private practice at this time and his duties at the clinic entailed the overseeing of patients that came in who had HIV as a diagnosis. The chart indicated their lab work, prescriptions from prior doctors and what prior medications they were on. He would sometimes call the prescriptions into the pharmacies and document the chart for whatever charts were presented to him for the various patients. Dr. Jani noted that people came into the clinic posing as patients and he did not understand at the time that these individuals were anything other than patients. When he wrote prescriptions without seeing the patient it was because he had been told they were too ill to come in that month. He was presented with the chart with the list of the medications that the patient was on. The Attorney General voiced her objection and indicated that the witness was testifying and that he was trying to get around the conviction of what he had been convicted of. Further stating, that under Fanelli or State vs. Gonzalez this testimony was not permitted.

Mr. Conroy replied that defense was not trying to collaterally attack the conviction and reiterated that he believed that he had indicated that time and again and, in fact, had objected when counsel tried to get around the conviction issue or collaterally attack the conviction. Mr. Conroy responded that simply put, the Chair had allowed the Attorney General to go into hypothetical discussions about the conduct that was engaged in the clinic and that needed to be met head on. He added that he was simply attempting to provide the Board with information that is not contained within the charging documents, and not within the transcript of sentencing and not presently before the Board. The only way it can come before the Board is to redirect testimony, unless the state had a witness that they had not disclosed as of yet. Mr. Conroy continued to reiterate that his line of questioning was not a collateral attack. D.A.G. Krier argued that the doctor was not permitted to re-litigate the facts underlying his conviction and that was made very clear by both Carusi, Fanelli and State vs. Gonzalez. The Attorney General adamantly argued that the doctor could not testify today and present evidence which was inconsistent with the elements of the underlying facts. Mr. Conroy agreed and argued that none of the testimony was inconsistent, but unfortunately counsel was not conversant with the criminal proceedings well enough to understand what was there and what was not and that was the problem.

The Chair ruled to permit the testimony if it was in essence re-litigating and would give it its appropriate weight. The Chair referenced Fanelli which stood for the proposition that the Board was not here to re-litigate the case and asked counsel to question in a manner that does not re-litigate the underlying case in the underlying conviction and added that the objection was over-ruled, thereby, allowing the testimony.

In response to whether Dr. Jani began to renew prescriptions without seeing patients, he replied yes he did. Dr. Jani further responded that the clinic manager would instruct him that the patient could not come in and so he would write the renewal based on what was already on the chart. Dr. Jani stated that he was paid out an hourly rate of \$50.00 for approximately four hours of work twice a week. He stressed that he did not remember the number of prescriptions that he wrote and that he did not receive re-numeration based upon the amount of prescriptions that he wrote or on the number of patients that he saw. Dr. Jani testified that he did not share in the profits of the clinic nor did he share in the profits of the pharmacy that was later found out to be associated with the clinic. Furthermore, Dr. Jani testified that he did not share in the \$75,000 or so that was brought in to the pharmacy as a result of the Medicaid over-billing. He never used his Medicaid number for any billing and never

shared in Medicaid billings. When asked if he had ever received direct payments from Medicaid for any of the care that was provided at the clinic, respondent replied that he never did, nor did he ever receive any payments or reimbursements for any medications that were ordered at the pharmacy in question.

Dr. Jani told the Board that when he left the clinic he found full-time employment with HIP Medical group and was appointed to the office in Eatontown, New Jersey. In January of 1998 he was given employment with the Pinnacle Medical group in their office in Eatontown, New Jersey, which later became associated with Horizon Medical Group. Dr. Jani worked in Eatontown for approximately one month until he was transferred to the Paramus office until Mid-November of 1998 when they filed for bankruptcy. He detailed his responsibilities to the Board while working at Pinnacle and he subsequently set up his own private practice in the town of Fairlawn, New Jersey and was there from January 1999 until October 15, 2004, the day of his incarceration. Dr. Jani testified that during that time period he practiced without a complaint from anyone and was never audited from any insurance company nor did a third party ever bring a complaint regarding his billing practices. He further testified that he was never asked to make any repayment to any insurance company for inappropriate billing and never wrote any prescriptions for patients that he did not know or examine during his tenure of practice. Dr. Jani testified that he did occasionally refill prescriptions over the telephone that he was sure were medically appropriate and never engaged in any of the behavior after he left the clinic.

Dr. Jani, when asked of his involvement in the community, testified that he has been involved in community work ever since he moved to New Jersey when he started his residency in 1994 as well as social committees. When asked about his membership of the "Brahmin Casts" and to what his obligations entailed, Dr. Jani replied that primary functions were as a priest and teacher for the society in the community. His primary role was to impart his knowledge and experience on other members of the community. He further testified that being a member of the "Brahmin Cast" made it particularly hard on an emotional level to accept the plea arrangement but he felt he had to accept his responsibility.

When asked by Mr. Conroy as to when he became aware of his involvement and investigation conducted by the State, he stated that he was contacted by Health and Human Services in April of 1998 and voluntarily discussed his involvement in May of 1998 with the Smith Street Clinic. He was made aware that prescriptions were fraudulently being written from the Irvington office while he was working in Paramus and testified that the State had been aware of his activities since May of 1998. Dr. Jani further stated that he fully cooperated with the investigation, without advice of counsel, because he felt he had nothing to hide. He subsequently heard from the State again in August/September of 2000 and was asked to identify members in photographs, recognize the pharmacist and the owner of the Smith Street Clinic and the other members who operated out of that clinic. In November of 2002 Dr. Jani testified that he was indicted by the Grand Jury and on December 5, 2002, was asked to appear before the Superior Court in Essex County, New Jersey. Dr. Jani further testified that he was offered a plea agreement on January 6, 2003 and appeared before Judge Michael Nelson as to his involvement with the activities of the clinic and was found to be acting as an accessory and that he had profited and accepted his responsibility by accepting the plea deal. Dr. Jani continued that he was sentenced for three years of incarceration, a \$10,000 fine, one year suspension of his medical license, and a five year disbarment from the Medicaid program. Dr. Jani testified that he served 102 days in prison and was released on the Justice Supervision Program which is basically probation for 16 months of which he has served nine months.

Dr. Jani further testified that he has not practiced any medicine during his ISP and meets with a probation officer four times a week with no problems whatsoever during his probation. Dr. Jani testified that he has stayed current with the developments in medicine during this period by reading journals but believed he could not participate in any activity including CMEs that require leaving the State.

When asked what his intentions would be if the Board reinstated his license, Dr. Jani stated that he would try to get back to his practice and try to regain his good name and the trust of his patients and members of the community. Dr. Jani wished for the Board to know that so much damage had been done to his good name and to his practice and even with the restoration of his license, that it would not be easy to practice as he used to. He further noted that he understood that given the fact that he's debarred from Medicare and Medicaid he would most likely not be employed by any hospital. Dr. Jani also understood that should the Board allow him to practice

at a future date until the period of debarment was served, he would most likely have to serve in some charity clinic or something of that sort. Dr. Jani testified that he was not appearing before the Board to undermine his conviction and that he has accepted his responsibility, has been incarcerated and penalized for his offense and will continue to be penalized for the rest of his life. He has indeed accepted his responsibility.

The Chair asked the Attorney General for their cross-examination. D.A.G. Krier asked Dr. Jani if he had testified that he appeared before Judge Nelson in January of 2004 to place his guilty plea on the record and did he mean 2003. Dr. Jani replied yes that he plead guilty in January of 2003. Further, the Attorney General asked if he accepted a lesser sentence in return for his plea? Respondent answered yes and when asked by D.A.G. Krier he admitted to telling the Judge not once, but twice that he worked at the Smith Street Clinic from January to October of 1998, not January of 2003. Dr. Jani added that the testimony at that time did not reflect the truth which his attorney knows as well as the Attorney General. He further stated that the plea deal was pushed forward and subsequently, Dr. Jani testified that his testimony in January of 2003 was part of the plea deal. D.A.G. Krier asked the respondent if his testimony in January of 2003 was a lie?

Mr. Conroy vehemently objected and stated that the witness had already answered the question once and also he objected to the witness being directed to do anything from counsel. Mr. Conroy added that the directive must come from the Chair. Mr Conroy felt that counsel may have been confused about several of the earlier rulings and believed that the Chair conducts these proceedings. The Chair informed Mr. Conroy he need not tell the Chair how to conduct the proceedings on behalf of the Board. Mr. Farrell added that no suggestions were needed by Mr. Conroy. Mr. Conroy responded that he had asked that the Chair to conduct the proceeding according to the rules and the Chair responded that counsel would take direction from the Chair and he would not speak over the Chair . Mr. Farrell also cautioned counsel to abide by the Chair's ruling. Mr. Conroy again requested the Chair to make those rulings and by objection noted that the Chair was not. Mr. Farrell responded that he had directed Mr. Conroy twice not to speak over the Chair and the Chair would direct the proceeding and Mr. Conroy would abide by that directive. Mr. Conroy informed the Chair that the record would stand as evidence that he did not speak over the Chair and that the Chair indeed spoke over him. Mr. Farrell again directed Mr. Conroy and counsel indicated that the Chair had spoken over him again and asked for common courtesy and civility from the Chair. The Chair stated that it was being civil and Mr. Conroy noted for the record that this was the third time the Chair spoke over him. Mr. Farrell announced that Dr. Rokosz moved to go into recess and there was a second. The Board unanimously voted to go into recess.

The Board returned from a ten minute recess and Mr. Farrell announced they were back on the record in the matter of Dr. Axat Jani. The Chair directed the Attorney General that the line of questioning regarding the time of the doctor's working at the clinic start over and there was disruptive argument given and he and some of the Board members had difficulty hearing in that line of questioning and asked the DAG to resume questioning.

The Attorney General showed Dr. Jani what had been admitted into evidence as S-3 which was the transcript of the guilty plea. The Chair gave permission and admitted it into evidence. D.A.G. Krier asked that the record show that she was handing Dr. Jani S-3 and Mr. Conroy looked at the document as well. D.A.G. Krier directed Dr. Jani's attention to page 9 of the Transcript starting with line 22 where the question was "Dr. Jani, were you between January 17, 1998 and October 1, 1998, did you work at a clinic?" and Dr. Jani's answer was "at that time it was yes, on advice of counsel". The Chair clarified for the record that in the transcript Dr. Jani's answer was "yes, I did, on advice of counsel because of a plea deal." Mr. Conroy objected and asked that the line of questioning be stricken from the record believing there was no inconsistency. The Chair noted that the record would reflect what was said and stated that Mr. Conroy's objection was stated for the record as well. Mr. Conroy continued that he believed the time period of three months fell within that window and they were not consistent. D.A.G. Krier continued with her line of questioning as to the time period that Dr. Jani worked at the Smith Street Clinic and as to the amount of prescriptions that were written in that time period and if Dr. Jani had full knowledge of what he was doing at the time illegal. Mr. Conroy noted that respondent had already answered and asked that the record reflect that particular question had already been answered.

Mr. Conroy indicated that he had nothing on redirect and the Chair asked if there were any Board member questions for the witness. Dr. Jani continued to answer various Board members questions as to his activities at the

Smith Street Clinic and as to his direct knowledge of the Medicaid fraud activities. Mr. Conroy informed the Board that the question the court posed was not the dates that Dr. Jani worked at the clinic but, "did he work at the clinic during this period of time?" Mr. Conroy stated that Dr. Jani indeed in his testimony today was that "he worked for three months within that period of time". So Mr. Conroy submitted that the question was indeed questioned then and was answered honestly today. The Chair directed Dr. Jani to answer Dr. Rokosz's question and again Mr. Conroy stated that he did not believe that Dr. Jani could answer the question. The Chair believed that the witness could answer and asked that Mr. Conroy not testify for the respondent. Again, Mr. Conroy protested that the question was improper. The Chair directed Dr. Jani to answer the question by Dr. Rokosz. Dr. Jani then testified that he worked at the clinic from September 1997 through December 1997. In January of 1998, he worked at the Pinnacle HIP. He explained that the testimony was documented that as part of the plea deal he had not had the opportunity to correct it. His attorney did not correct the testimony at the time and explained that he had different legal counsel at that time. Dr. Jani testified that it was part of the plea deal that he was asked to accept. Dr. Rokosz asked that it seemed that the testimony in the plea deal was inaccurate and Mr. Conroy objected to the question and stated that he would deal with it in redirect. The Chair overruled Mr. Conroy's objection and asked Dr. Jani to answer the question and instructed the court reporter to read back the question and Mr. Conroy interrupted and again stated that the question had already been answered. Mr. Farrell asked counsel not to speak over the Chair, nor the court reporter, because she had indicated that she did not record the answer.

Mr. Conroy moved at this time that the Board secure any audio-tape of the proceeding and consider it to be part of the record, along with the transcript so he could have it available and be preserved as a matter of evidence and made part of the record to be used and listened to by the Appellate Division, if necessary. Again, Mr. Farrell asked the court reporter to read back the question for Dr. Jani to answer. Mr. Conroy at this time, asked Mr. Farrell to recuse himself from the proceeding and believed that the record was clear as to why he should. Mr. Farrell stated that as the Chair, he considered Mr. Conroy's request and respectfully would not recuse himself, believing that he was being fair and impartial. Mr. Farrell again asked that the question be read back by the court reporter and voiced his frustration with the interruptions by counsel and asked that the matter proceed. Dr. Rokosz was asked to question Dr. Jani again concerning whether the testimony in his plea agreement was inaccurate. Mr. Conroy again objected that it was a mis-characterization of the transcript and asked that it be read into record as it may be an issue on appeal. Mr. Conroy reiterated that the question was "this done between January 17, 1998 and October 1, 1998, is that correct?" No where in there is anything about when Dr. Jani worked at the clinic, what he did, his terms of employment", that question is not there. Mr. Conroy believed that to represent to the witness, who was under oath, while the rest of the proceeding is not under oath, he believed was a mis-characterization that was worthy of his sustained objection. The Chair overruled his objection and instructed the doctor to answer the question. Mr. Conroy asked if Dr. Jani could answer the question and respondent answered that from about September of 1997 and December of 1997 he was the Smith Street Clinic. Also from January 1998 to November 1998, he worked with Pinnacle HIP Medical Group.

Dr. Rokosz again asked Dr. Jani as to his testimony in the plea agreement and as to the dates that he had worked at the clinic in Irvington was inaccurate? Mr. Conroy again objected and the Chair asked the court reporter if she had recorded the last answer. Dr. Rokosz again asked for clarification as to what the transcript reflected and the question that was posed to Dr. Jani was "Were you between January 17, 1998 and October 1, 1998, did you work out of the clinic?" and noted that Dr. Jani answered "yes". What was the name of the that clinic? And further noted that Dr. Jani answered, "The Tenth Street Smith Clinic" and was that accurate? Mr. Conroy asked that before the Board received an answer from the witness, he asked the record reflect that Dr. Rokosz was reading from a computer that was handed to him by .D.A.G. Sandra Dick and that Ms. Dick had also conferred with him off-the-record and objected to Dr. Rokosz participating further in the proceedings, asking that Dr. Rokosz recuse himself from the proceedings. Mr. Conroy also believed that Ms. Dick had stepped into the role as a quasi prosecutor for the State and as a result had impermissibly crossed the boundaries. Mr. Conroy stated that he believed that it constituted a fundamental due process right of this doctor's rights before the panel. Furthermore, it was improper for more than one Attorney General to be prosecuting this case. Mr. Conroy further asked that Dr. Rokosz recuse himself as a way of remediating and would mark this as an exception should it be brought to the court on appeal. Thus, a ruling from the courts would finally come forth as to whether or not it's appropriate for the Attorney General to be both advising and prosecuting because of just this sort of problem.

Dr. Rokosz responded that he was attempting to pull up the transcripts on the computer which was something relatively new for the Board members and welcomed assistance from anyone to help him bring up the transcript. As to the consideration of Mr. Conroy's request for recusal, he clearly felt that he had been totally unbiased and objective and open-minded in the proceeding and would continue to do so. Therefore, Dr. Rokosz declined the request for recusal.

Dr. Jani answered more Board member questions and the Chair directed Mr. Conroy to continue on his re-direct of the witness. Mr. Conroy asked Dr. Jani as to what his state of mind was during his appearance during the plea hearing. Dr. Jani testified that he was very nervous, confused was suffocating and rushed to make a decision. He further testified that his wife was not present and his attorney at that time advised him to accept the plea deal so as to avoid ten years of prison. Dr. Jani stated that he could demonstrate to the Board, if necessary, tax returns and other documents that would show in fact that he was employed at the Pinnacle group at the time in question.

Mr. Conroy asked Dr. Jani as to his limited experience at the time and to his state of mind as to the result of his mother's passing and other things going on in his life. D.A.G. Krier objected as it was a leading question and the Chair asked Mr. Conroy to restate his question and that it be stricken from the record. Mr. Conroy asked for guidance, if it was the ruling of the Chair that no leading questions maybe asked by other counsel? Mr. Farrell replied that it was not the ruling of the Chair. Mr. Conroy asked for guidance and that he was solely laying foundation and in his twenty-four years of experience, a leading question was permissible on foundation. Again, the Chair admonished counsel not to speak over the Chair as had been done throughout the proceeding and directed the court reporter to record the Chair over the speaking of counsel when both parties were placing argument on the record. Mr. Farrell directed Mr. Conroy not to speak at the same time and to go to his next question. Mr. Conroy interjected and stated that in his twenty-four years of practice he had never spoken over anyone, however the Chair had spoken over him.

Mr. Conroy continued with his questioning of Dr. Jani as to his knowledge of other physicians employed at the clinic and to the pharmacists and other people who were involved with the clinic and his reply was yes he did. Dr. Jani testified that he was not aware of any of them coming before any criminal authority for prosecution and aware of any licensing action. Dr. Jani was never called as a witness against anyone and yet he had provided information to the State of New Jersey through the office of the Attorney General as to the identities of the individuals involved at the clinic and nothing had ever become of that information. Dr. Jani was never called before the State Board of Medical Examiners to testify again those folks and was never called before a State Grand Jury to testify nor called into a court of law for testimony. Dr. Jani testified that to the best of his knowledge, he was the only physician to be prosecuted by the Board to be part of the scheme.

D.A.G. Krier on re-cross asked Dr. Jani if he had testified of representation of counsel throughout the criminal matter and Dr. Jani indicated that he retained counsel when indicted.

Mr. Conroy added an additional exhibit that was submitted late from a lawyer, Diane D'Alessandro, a criminal defense attorney for the Public Defender office in Bergen County and also a patient of Dr. Jani for years. When asked if the State had seen the letter, D.A.G. Krier replied that she had not and the Chair directed Mr. Conroy to provide the Board and counsel a copy of the letter. D.A.G. Krier, when asked as to her position on the letter, responded that the writer of the letter could not be cross-examined by the Attorney General, which was somewhat troubling to her. D.A.G. Krier added that having read the letter she saw that basically a letter on behalf of Dr. Jani was relatively short and no legal representations were contained in the letter and therefore had no objection. The Chair asked Mr. Conroy if it was his desire to read it into the record or to admit into evidence or to do both? Mr. Conroy replied that his choice was to do both. He stated that he would emphasize two paragraphs in particular and handed to Executive Director Roeder copies of the letter for distribution to the Board. The Chair asked the court reporter to mark the letter R-1. After reading the two paragraphs to the Board the Defense rested their case.

The Chair noted for the record that the letter was not dated and did see a fax sheet at the top of the page and did that date reflect the send or received date? Mr. Conroy replied that he could not speak as to the date sent but only to the date received.

The Chair asked the State if they had any rebuttal witnesses or evidence. D.A.G. Krier replied that they had evidence. The Attorney General offered certification that had been marked as S-9 pertaining to attorney fees in the matter totalling in the amount of \$9,571.50 and that copy was provided to counsel with the motion. Mr. Conroy stated that he had seen the document and noted his objections to the underlying detail and believed that it did not meet the requirements of the Appellate Division that are required to such documents. Further, Mr. Conroy believed that there were serious questions and asked the Board have a separate proceeding at these matters. The Chair permitted that the document be entered into evidence to be considered, however, in reviewing the document, should the Board feel that additional detail is required as suggested by counsel, then the Board could take further requests or clarification from the State. Therefore, the document was admitted into evidence, subject to that comment.

The Attorney General further offered into evidence a certification of costs that had been marked S-10, prepared by John Vatasin, Acting Supervisor of the Enforcement Bureau. This document was also provided to counsel with the motion. Mr. Conroy confirmed that he had seen the document and submitted the same objections that were made to the prior submission. The State also offered a certification of costs prepared by Richard L. Perry which had been marked S-11 and stated that this document was also provided to counsel. Mr. Conroy again confirmed that he had seen the document and offered the same objection that were made to the prior submission. The Chair made the same ruling with regard to that document as well.

D.A.G. Krier offered into evidence S-12, a certification and noted that this document was provided to counsel as part of the motion. Mr. Conroy again confirmed having seen the document and noted the same objections as before and the Chair noted that the Board made the same ruling as before, and would admit it into evidence subject to further examination and detail if needed. At this the State noted that they had no more evidence and rested their case.

At this time, the Chair noted that brief closing statements would be entertained and reminded counsel that the Board had the opportunity to rather attentively read the submissions of both counsel and hear extensive testimony.

The Attorney General reiterated to the Board members that they had heard from a number of patients testifying on Dr. Jani's behalf who all believed that he was honest. Many of the witnesses all indicated that their opinion did not change of Dr. Jani even though they knew that Dr. Jani pleaded guilty to Health Claims Fraud. D.A.G. Krier reminded the Board that they were not here today regarding Dr. Jani's medical practices but rather were here because of his fraudulent activity which raised the question as to his fitness to practice medicine in the State of New Jersey. Furthermore, Dr. Jani not only cheated the taxpayers out of a considerable sum of money, but he purposely injured the profession. The Attorney General urged the Board to keep in mind that Dr. Jani, was not a victim and that the hardship suffered was brought on by his own actions. D.A.G. Krier believed that it was significant that Dr. Jani received the benefits of a plea agreement in 2003, at which time he promised to give a truthful and factual basis for his plea agreement and thus swore under oath to many facts leading to the benefit of a plea agreement and yet sits before the Board contradicting the facts.

D.A.G. Krier added that it was the Attorney General's position that the doctor admitted to committing this conduct for a ten month period between January and October of 1998. Also, that it was very clear from the Doctor's transcript that he knew that what he was doing was illegal at the time he was doing it. D.A.G. Krier believed that Dr. Jani's contradictions were a result of avoiding the civil penalties that he was presently facing. Furthermore, the contradictory facts that the doctor had offered did not serve to mitigate or to show him as a rehabilitative practitioner and indeed showed a continuing practice of dishonesty and self-interest. The Attorney General submitted that Dr. Jani had clearly been convicted and under the applicable statute, the Board had the authority to revoke or suspend his license based not only on the conviction but based on his underlying conduct that the doctor had admitted to. Therefore, the Attorney General urged the Board to revoke the doctor's license and to impose the attorney's fees and costs and whatever such relief that the Board deemed appropriate.

Mr. Conroy in his closing statement reminded the Board not to believe the State to be always right or wrong or that anything was black or white or "simple". He drew the Board's attention to the Attorney General, herself,

making a mistake. He referenced how the State talked about the Doctor admitting that that the patients that he was writing prescriptions for were dead, and what the Board had heard was that he received charts and that he later found out that they were dead. He further added, that whether it was a slip of the tongue, or was she nervous, he did not seek to hold D.A.G. Krier accountable for her mistake, but yet, Dr. Jani's whole life turns on a thin thread. Mr. Conroy believed that if Dr. Jani's testimony at a plea hearing should be the basis of revocation of licensure, then it was indeed sad, because it belays the fact that there was no real search for truth in a plea arrangement. Mr. Conroy continued that Dr. Jani at the hearing before them, with advice of counsel, needed to be truthful in the facts and that indeed he was, although the Attorney General made every attempt to make that appear to be a lie. Mr. Conroy referenced Dr. Jani's appearance before the Criminal Judge in Superior Court when he entered his plea to a second degree crime. Further adding, what an emotional and stressful event, and being dragged off in hand-cuffs when he did not in fact even know he was going to jail that day.

Mr. Conroy at the risk of offending his client, was perhaps more guilty of being criminally stupid than anything else and believed that the Board would not revoke Dr. Jani's license simply on the filing of the representation of the criminal proceeding. Mr. Conroy continued that he thought it was interesting that the Attorney General in the list of cases cited, that one case was conspicuously absent and that being the Zahl case, the most recent pronouncement of the Appellate Division. Zahl is the case where the Appellate Division has told this Board that you may not revoke where there has been no patient harm and consequently puts counsel in a curious position, because the State argues that prescriptions were for non-existent patients and so therefore there could be no patient harm. Yet urging the Board that Zahl should not apply, thus both of those premises can not be mutually true.

Counsel asked that the Board read the testimony from Dr. Jani. Dr. Jani has been in practice for many years since the events that he was convicted and noted that Dr. Jani has not had one incident at all since the time of his conviction. Mr. Conroy added that the Board take into consideration that he is now part of the community with no ISP violations and no probation officers to inform the Board of parole violation. There was no proof of anything other than this physician doing of what he was suppose to do required to do by law. Dr. Jani did not do what the other participants in the scheme did, which was "lawyering" up. Dr. Jani believed if he told the truth he would not need a lawyer, and indeed he didn't get representation until he was indicted.

Mr. Conroy believed that the State was punishing Dr. Jani punitively as to laying the whole scheme on him while other participants have not been held accountable for their part in the scheme. Mr. Conroy reminded the Board that Dr. Jani was the one small "guppie" that was caught up in the net and the State had sent him to prison, fined him \$10,000, and suspended him from practice for a year and as of yet had not returned to practice. Counsel further reminded the Board that they may only impose remedial action as a civil sanction and may not penalize him, as the courts have told them, and counsel had brought that to their attention. Thus, revoking Dr. Jani's license is punitive, not necessary, and it is not protective of the public. Mr. Conroy related his understanding of the Board's need to communicate to the regulating community its concerns about certain types of behavior, but talked about the point when that need leaves off, and punishment begins. Mr. Conroy reiterated that many cases come before the Board where the physician is involved in fraud, and where those physicians are receiving payment directly from the billing. This was not the case for Dr. Jani. Mr. Conroy, finally read a letter to the Board from Dr. Jani's nine year old daughter imploring the Board to return her father's license and allowing him to return to practice. Mr. Conroy concluded that Dr. Jani had indeed learned his lesson and asked that they imagine the pain of sitting down with their own children and explaining all of this to them. He could think of no greater punishment.

The Board, upon motion made and seconded, voted to go into Executive Session for deliberations and advice of counsel. All parties, including counseling staff (except for S.D.A.G.s Flanzman and Dick), left the room.

The Board returned to Open Session and announced the following motion.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO SUSPEND DR. JANI'S LICENSE FOR FIVE YEARS. THE FIRST TWO YEARS OF THE SUSPENSION ARE TO BE SERVED AS AN ACTIVE SUSPENSION AND THE REMAINING THREE YEARS ARE TO BE STAYED AND SERVED AS

A PERIOD OF PROBATION. THE FIVE YEAR PERIOD OF SUSPENSION SHALL BE DEEMED TO HAVE COMMENCED ON OCTOBER 15, 2004 AND THE ACTIVE PERIOD OF SUSPENSION SHALL THUS CONTINUE THROUGH OCTOBER 14, 2006. RESPONDENT SHALL PERFORM 400 HOURS OF COMMUNITY SERVICE OVER THE PERIOD OF THE SUSPENSION TO BE PERFORMED IN A NON-MEDICAL SETTING APPROVED BY THE BOARD AND TO BE PERFORMED AT A RATE OF NOT LESS THAN 100 HOURS PER YEAR DURING THE SUSPENSION.

RESPONDENT IS ASSESSED A CIVIL PENALTY OF \$10,000 TO BE PAID EITHER IN FULL WITHIN 30 DAYS OF THIS ORDER OR PURSUANT TO A PAYMENT SCHEDULE ACCEPTABLE TO THE BOARD, NOT TO EXCEED THE DURATION OF THE PERIOD OF ACTIVE SUSPENSION. RESPONDENT IS ASSESSED COSTS TO INCLUDE ATTORNEY'S FEES AND INVESTIGATIVE COSTS; RESPONDENT SHALL BE AFFORDED AN OPPORTUNITY TO SUBMIT IN WRITING ANY OBJECTIONS TO THE COSTS THAT HAVE BEEN SOUGHT IN THE CERTIFICATIONS PRESENTED IN EVIDENCE S-9 THROUGH S-11 AND SAID OBJECTIONS SHOULD BE SUBMITTED WITHIN 20 DAYS; IN THE EVENT OBJECTIONS ARE RECEIVED THE ATTORNEY GENERAL WILL BE AFFORDED 10 DAYS TO RESPOND IN WRITING TO THE OBJECTIONS. THE MATTER WILL THEN BE CONSIDERED BY THE BOARD ON THE PAPERS AND THE BOARD WILL THEN DETERMINE WHETHER ANY HEARING IS NECESSARY TO RESOLVE ANY FACTUAL DISPUTES OR IF IT WILL DETERMINE THE AMOUNT OF COSTS TO BE ASSESSED WHICH WILL BE FIXED IN A SUPPLEMENTAL ORDER OF THE BOARD. IN THE EVENT NO OBJECTIONS ARE SUBMITTED BY RESPONDENT WITHIN 20 DAYS, RESPONDENT SHALL HAVE BEEN DEEMED TO HAVE WAIVED ANY OBJECTIONS TO THE COSTS SOUGHT AND COSTS SHALL BE FIXED IN THE AMOUNT OF \$11,937.42.

RESPONDENT SHALL COMPLETE AN ETHICS COURSE ACCEPTABLE TO THE BOARD AND THE COURSES TO BE COMPLETED PRIOR TO THE TIME RESPONDENT RESUMES THE ACTIVE PRACTICE OF MEDICINE.

FINALLY, PRIOR TO RESUMING PRACTICE, RESPONDENT SHALL BE REQUIRED TO APPEAR BEFORE A COMMITTEE OF THE BOARD AND THEN DEMONSTRATE TO THE SATISFACTION OF THE BOARD THAT HE IS FIT TO RESUME THE PRACTICE OF MEDICINE AND THAT HE HAS COMPLIED WITH ALL TERMS OF THIS ORDER. THE BOARD RESERVES THE RIGHT FOLLOWING SAID APPEARANCE TO PLACE CONDITIONS OR LIMITATIONS UPON ANY CONTINUED PRACTICE OF MEDICINE BY RESPONDENT DURING THE PERIOD OF PROBATION TO INCLUDE, WITHOUT LIMITATION, THE REQUIREMENT THAT RESPONDENT'S BILLINGS BE SUBJECT TO PERIODIC REVIEW.

**1:00 p.m. GOLDSTEIN, Jerrold B., D.O. (License # MB 22185)
(COUNSELING D.A.G.: DICK, Sandra V.)
KERN, Steven Esq., for Respondent
BAUDRY, Adriana D.A.G. for Complainant**

ALJ Reiner's Initial Decision rendered on May 2, 2005 was handed out at the May 11, 2005 meeting for the Board's review in the matter of Jerrold B. Goldstein D.O. Attached was D.A.G. Baudry's May 13, 2005 letter requesting the Board to accept, reject or modify the OAL's decision revoking Dr. Goldstein's license to practice medicine in the State of New Jersey and the assessment of total penalties in the amount of \$270,000 as well as the payment of such costs and expenses as the Board may determine. In addition, attached were the certifications which D.A.G. Baudry requested the Board's consideration in support of the Attorney General's application for fees and costs.

THE APPEARANCE WAS ADJOURNED UNTIL THE OCTOBER 19, 2005 MEETING.

OLD BUSINESS

1. SINGH, Manjit, M.D. (Lic. #MA29339)

**CHERRY, Gloria Esq., for Respondent
GELBER, Joan D., D.A.G. for Complainant**

Enclosed was D.A.G. Gelber's August 25, 2005 Letter Brief to the Board along with attachments summarizing the matter of Dr. Manjit Singh. Submitted on behalf of Dr. Singh, was Ms. Gloria Cherry's August 29, 2005 letter brief in support for reinstatement of the license of Dr. Manjit Singh to practice medicine and surgery in the State of New Jersey and requesting a hearing at the September 14, 2005 meeting regarding Dr. Singh's reinstatement.

All relevant materials regarding this matter had been submitted to the Board for its review and consideration in this matter.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY MS. CHERRY'S REQUEST FOR CONSIDERATION OF THE REINSTATEMENT OF LICENSURE ON BEHALF OF DR. MANJIT SINGH.

NEW BUSINESS

**1. SISTER-STATE MATTERS - Proposed Finalization of Provisional Order of Discipline
O'HANLAN, Katherine A., M.D. (Lic. # MA45955)
PEREZ, Mileidy D.A.G. for Complainant**

Enclosed was D.A.G. Perez's August 17, 2005 memo to the Board along with attachments summarizing the matter for the above Respondent. By Provisional Order of Discipline ("POD") entered on July 14, 2005, the Attorney General was seeking the suspension of Dr. O'Hanlan's license to practice medicine and surgery in the State of New Jersey until such time as her license to practice medicine in California is fully reinstated without restrictions.

As a result of the California action, the New Jersey Medical Board entered a POD suspending Respondent's license to practice medicine and surgery in the State of New Jersey pursuant to N.J.S.A. 45:1-21(b), (e), (g) and N.J.S.A. 45:1-7.1(b). Respondent filed a response to the POD dated July 26, 2005, a copy of which is attached. In her response, Dr. O'Hanlan requested that the Board consider the circumstances involved in the California action and set aside the POD to allow her to serve the disciplinary action imposed by the California Board only as noted from Respondent's response.

Attached was Dr. O'Hanlan's response to the POD from New Jersey and the Board was asked to determine whether Respondent's submission merited modification or withdrawal of the POD; established a need for further proceedings such as an evidentiary hearing, or does not persuade the Board that there are issues which merited further consideration, in which case a Final Order of Discipline would be entered.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FINALIZE THE PROPOSED PROVISIONAL ORDER OF DISCIPLINE FOR THE ABOVE PHYSICIAN.

D.A.G. ITEM OFF AGENDA

1. SENDER, Paul M.D.

A Verified Complaint was filed in June of 2004. Allegedly Dr. Sender engaged in repeated acts of gross negligence and simple negligence of his care treatment of 7 different patients. He voluntarily surrendered his license temporarily in July of 2004 to go to CPEP while the matter was being transferred to the OAL. CPEP issued a report finding numerous deficiencies in Dr. Sender's medical knowledge and clinical skills. They also recommended that he go to a neuro-psychologist. He went to a neuro-psychologist who recommended further neurological testing. To date he has never provided the Board with any proof of this. A trial is scheduled to begin this Monday, before Judge Klinger at the OAL. Judge Klinger brought the parties together and tried to do mediation with the different ALJ and the following settlement was reached in conjunction with Dr. Robin's input all day long as well as section chief Kenny. The following tentative settlement was reached and placed on the record specifically subject to this Board's full agreement and ratification. The tentative settlement was as follows:

1) Consent Order - Dr. Sender's license would be suspended for five years; that would include 2 years active/3 years stayed suspension; he would successfully complete all of the recommendations and or follow-up remediation by CPEP and neuro-psychologist prior to his license reinstatement; he would agree to pay \$50,000 in total costs and civil penalties to the Board which would be memorialized in a Certificate of Debt and paid out over four years, with interest. The payments would commence immediately upon Dr. Sender's resumption of employment as a physician in any jurisdiction or 36 months from the entry date of this Order, which ever came first. So essentially giving him up to a year to find a job before he would have to start paying this back. Either way interest would be accruing during that time period. Doctor would admit to committing repeated acts of gross negligence and/or simple negligence concerning his care and treatment of two of the patients in the Amended Verified Complaint; and Dr. Sender would appear before a committee of the Board in order to demonstrate his fitness to resume the active practice of medicine, prior to his license being reinstated. The Board would reserve the right to place limitations and/or restrictions on Dr. Sender's practice, if and when his license was reinstated.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTE TO ACCEPT THE TERMS OF SETTLEMENT IN THE MATTER OF PAUL SENDER AS OUTLINED IN D.A.G. DANIEL GOODMAN'S SEPTEMBER 13, 2005 LETTER BRIEF TO THE BOARD.

The meeting ended at 6:10 p.m.

Respectfully Submitted,

Glenn Farrell, Esq.
Chairperson for Open
Disciplinary Matters

[Return to Minutes Menu Page](#)

 [back](#)

division: [dca home](#) | [complaint forms](#) | [licensing boards](#) | [adoptions](#) | [proposals](#) | [minutes](#) | [consumer protection](#)

departmental: [lps home](#) | [contact us](#) | [news](#) | [about us](#) | [FAQs](#) | [library](#) | [employment](#) | [programs and units](#) | [services a-z](#)

statewide: [nj home](#) | [my new jersey](#) | [people](#) | [business](#) | [government](#) | [departments](#) | [search](#)

Page last modified: *undefined, undefined NaN, NaN*