

**OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 1**  
**DISCIPLINARY MATTERS PENDING CONCLUSION - SEPTEMBER 15, 2010**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, September 15, 2010 at the Richard J. Hughes Justice Complex, 25 Market Street, 4<sup>th</sup> Floor Conference Center, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by Paul T. Jordan, M.D., Board President.

**PRESENT**

Board Members Berkowitz, Baker, Cheema, Criss, Howard, Jordan, Lambert, Lomazow, Mendelowitz, Paul, Rajput, Stanley, Scott and Tedeschi.

**EXCUSED**

Board Members Ciechanowski, DeGregorio, Iannuzzi, Walsh and Weiss.

**ALSO PRESENT**

Senior Deputy Attorneys General Dick, and Gelber, Deputy Attorneys General Levine and Warhaftig, and Executive Director Roeder.

**RATIFICATION OF MINUTES**

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO  
APPROVE THE MINUTES FROM THE AUGUST 11, 2010 BOARD MEETING.**

**HEARINGS, PLEAS, AND APPEARANCES**

**WASSERMAN, Alan MD 25MA03065200**  
**GORRELL, Joseph Esq. for the Respondent**  
**S.D.A.G. Joan Gelber, Prosecuting**  
**D.A.G. Debra Levine, Counseling**

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The Initial Decision of Administrative Law Judge Jeffrey A. Gerson was served on or about August 13, 2010. The Attorney General's Exceptions to the Initial Decision were filed on or about August 19, 2010. Respondent's Exceptions to the Initial Decision were received and filed on September 3, 2010. The Attorney General's reply to defense objections was filed September 8, 2010. The Board President opened the matter.

Drs. Berkowitz and Lomazow were both recused and left the table.

Prior to beginning the hearing, the Board dealt with some preliminary matters. Dr. Cheema put

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on the record that Mr. Gorrell worked on issues for the hospitals where he works and he believed he would be able to render an impartial decision in the matter. Neither party had any objections to his continued participation. Additionally, DAG Gelber's reply to Mr. Gorrell's exceptions was accepted as part of the record. The parties placed their appearances on the record.

Mr. Gorrell began by noting that this complaint dates back many years -- Count II dates back to 1998-2000, 8 to 12 years ago, when Dr. Wasserman operated an unlicensed facility. The patient care that is at issue dates back to 1998 up to 2006 and some of the alleged, improper care could not be substantiated and the ALJ determined that the care was appropriate. Count III, allegedly, is more contemporary, and in that Count, the ALJ described it as nothing more than the Attorney General piling on because it dealt with Dr. Wasserman's lack of cooperation to a Board inquiry. It is likely that this count was never authorized by the Board because its allegations deal with an untimely and/or non-response to a request from DAG Gelber, not the Board. Nonetheless, it was dismissed by the Court.

Turning his attention to the unlicensed operation of an imaging facility, Mr. Gorrell argued that this is outside the Board's jurisdiction and this rests solely with the Department of Health and Senior Services (DHSS). This Department has/had primary jurisdiction over the facility and never took any action against it or Dr. Wasserman. The ALJ agreed that this Count failed.

By way of background Mr. Gorrell reminded the Board that the Complaint was initiated by an orthopedist who worked for an insurance carrier. Of all the cases at issue, only three cases were found by the ALJ to be "negligent" and are old. He asked that the Board put these into context against his entire career in which he read more than 80,000 cases. He also questioned how objective this sampling was insofar as they were handed over by the individual responsible for reviewing cases to determine whether it was appropriate to bill for them or not. He posited that the cases were self serving. Mr. Gorrell also questioned the qualifications of the state's expert. In contrast, the Respondent's expert, according to Mr. Gorrell, was far more qualified to render an opinion as to the validity of the readings and the diagnostic equipment at issue. He also pointed out the error rate among reading radiology films and believed this accounted for many of the discrepancies raised by the experts.

Mr. Gorrell urged the Board to determine that all three counts should be dismissed.

DAG Gelber argued that the complaint had been filed on December 19, 2008. She said the Board is not required to do a certain number of sampling of records in evaluating whether a matter is actionable. The records before the Board formed the basis of its complaint. In evaluating the care provided, the ALJ found that Dr. Wasserman committed repeated negligence in his reading of various studies and that the films were not properly taken or read. The films, according to DAG Gelber, were determined to be deficient so as to not permit a proper diagnosis. The equipment, according to the findings of the ALJ, was deficient and that the images produced were far from the state-of-the art when they were taken. At best, the services provided by Dr.

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Wasserman were minimal and border line. The proofs on Count I were satisfied by the parameters of which Dr. Hecht testified were necessary for an appropriate diagnostic study. DAG Gelber also stressed that Dr. Wasserman's studies were deficient in its failure to take the cuts/slices at the correct angle; the failure to show the lateral structures; the failure to take additional films to verify the information, and the failure to issue accurate reports. There was also testimony that demonstrated that he failed to maintain the equipment. DAG Gelber urged the Board to adopt the findings of fact and the conclusions of law as determined by the ALJ in light of the overwhelming evidence.

In rebuttal, Mr. Gorrell asked the Board to review the record carefully as DAG Gelber was taking most, if not all of her references to the testimony, out of context. He further asked the Board to read the passages before and after each of the cites offered by DAG Gelber. He also stressed that the ALJ only found deficiencies in three cases.

DAG Gelber followed by arguing that Dr. Wasserman admitted that he needed to upgrade his machine and that it was not properly maintained. This was almost an admission on the part of Dr. Wasserman that he was using an outdated machine.

**MOTION TO GO INTO CLOSED FOR DELIBERATIONS AND ADVICE OF COUNSEL. MOTION MADE BY MS. CRISS AND SECONDED BY DR. PAUL.**

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

Dr. Lambert left and did not participate further in the hearing.

Returning to open session, the Board announced the following motion.

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO AFFIRM THE ALJ'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ON COUNTS I, II AND III EXCEPT THAT IT NOTED THAT THE BOARD DOES HAVE THE AUTHORITY TO TAKE ACTION IF IT WERE TO DETERMINE WHETHER A LICENSEE WERE TO FAIL TO COMPLY WITH RULES AND REGULATIONS THAT IMPACT ON THE PROVISION OF HEALTH CARE EVEN IF THOSE RULES AND REGULATIONS ARE PROMULGATED BY ANOTHER AGENCY.**

The Motion was made by Dr. Cheema and seconded by Dr. Stanley. It passed unanimously.

Proceeding to mitigation, Dr. Wasserman took the witness stand. He reviewed his background and experience. Since 1975, he has practiced radiology in the State of New Jersey. He closed his office two years ago and has been working out of a Hackensack center. He always kept up with CME credits relating to MRI and radiology courses. In 2009, he developed a number of medical issues which included a finding of prostate cancer. He acknowledged that there were

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some limitations to the machine he was using, but the images were still able to be read and he only used it for “static” images. In the event that he thought the machine was not adequate, he would refer the work out to another imaging center. He told the Board that his future plans included winding down his practice and retiring. He acknowledged that he was not Board certified, however, he did pass the written portion of the exam. He did not complete the process because of the health of his wife and new born children at that time. He also acknowledged that he did have to reimburse the insurance carriers for the moneys paid out for the period that the facility was not “licensed.” Dr. Wasserman said if he had the money, he would have upgraded the machine.

Dr. Stanley noted for the record that he has been working on the Medical Practitioner Review Panel with the next witness, Dr. Orsini. He did not believe that it would have any impact on his ability to render an impartial decision. Dr. Mendelowitz made the same statement about the time that he was on the panel. No one objected to their continued participation.

Dr. Orisini, a practicing medical oncologist, spoke to the Board. He testified that he has known Dr. Wasserman for a number of years and testified to his character, both personally and professionally. He also addressed the issues that Dr. Wasserman has faced concerning the death of his wife and the obstacles he has faced with his family. Dr. Orisini, who also worked with Dr. Wasserman, testified that he never observed an issue with his ability to read the films. He also has referred a number of cases to him. The witness also informed the Board of the financial difficulties that Dr. Wasserman’s health and this case had imposed on him. He urged the Board to permit Dr. Wasserman to continue his practice and to put an end to this nightmare.

On cross examination, Dr. Orisini acknowledged that he does not read MRIs nor does he read any radiologic films.

In summary, Mr. Gorrell asked the Board to take into consideration the many difficulties Dr. Wasserman’s life have been filled with. He noted that he is a sincere, honest man and none of the actions were done deliberately. As he testified, Dr. Wasserman always thought that the work he was performing was accurate and well intentioned. He was professional and ethical. He asked the Board to take into consideration the testimony offered in mitigation and conclude that there would be no purpose to any period of active suspension. He asked the Board to allow him to continue to work for the short time that he has before he retires. Finally, he asked the Board not to award any costs because the application sought does not provide the appropriate documentation. Additionally, he asked the Board to subtract any costs associated with Counts II and III which have been dismissed.

DAG Gelber concluded by noting that the allegations of the Complaint in Count I and the costs sought only relate to Count I. The certification of costs and the work sheets of the Enforcement Bureau have been submitted. Additionally, she argued that Mr. Gorrell never raised an objection to the application for costs prior to the hearing before the Board.

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Concerning the penalty, the ALJ recommended a penalty of \$10,000 and the Board has affirmed his findings of fact and conclusions of law on Count I. DAG Gelber urged the Board to do the same with the recommended costs and penalty.

**MOTION MADE AND SECONDED TO MOVE INTO CLOSED SESSION FOR  
ADVICE OF COUNSEL AND DELIBERATIONS.**

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

Returning to open session, the Board announced its decision.

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO AFFIRM  
THE RECOMMENDED SUSPENSION OF SIX MONTHS, THREE MONTHS  
ACTIVE, AND THE PENALTY OF \$10,000, HOWEVER, IT REDUCED THE  
COSTS TO \$25,000, INCLUDING ATTORNEY'S FEES.**

Motion Made by Dr. Stanley, Seconded by Dr. Scott. It Carried Unanimously.

Respectfully submitted,

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

WVR/dt/br