

**Open Minutes  
New Jersey State  
Board of Medical Examiners  
Disciplinary Matters Pending Conclusion**

November 13, 2002

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, November 13, 2002 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 Mr. Farrell, Esquire, Acting Chairperson for Open Disciplinary Matters.

**PRESENT**

Board Members Chen, Criss, Farrell, Haddad, Harrer, Moussa, Perry, Ricketti, Robins, Rokosz, Trayner, Walsh and Weiss

**EXCUSED**

Board Members Desmond, DiFerdinando, Huston, Lucas, Patel, and Wallace

**ALSO PRESENT**

Deputy Attorneys General Dick, Ehrenkrantz, Gelber, Joyce, Kenny, Levine, Palan and Warhaftig, Executive Director Roeder and Medical Director Gluck

**RATIFICATION OF MINUTES**

The Minutes from the October 9, 2002 Board meeting were approved as submitted.

**HEARINGS, PLEAS, RETURN DATES, APPEARANCES**

**11:00 a.m. - NAPOLEON, John J., D.O.  
IAVICOLI, Mario A., Esq., for Respondent  
KENNY, Paul R., D.A.G., for Complainant**

This matter was set down for oral argument on exceptions in the matter of John J. Napoleon, D.O. Enclosed for Board review was the August 6, 2002 Initial Decision of Administrative Law Judge Joseph F. Fidler. This matter was initiated based upon an 11-Count Complaint filed June 21, 1995 seeking the suspension or revocation of Respondent's license to practice medicine and surgery in connection with his treatment of several inmates at various institutions. The Complaint alleged that Respondent's treatment of these patients constitutes gross malpractice, gross negligence, gross incompetence and professional misconduct. Also, enclosed were the Complaint filed June 21, 1995; Respondent's Answer filed May 30, 1996; Respondent's Notice of Motion to Dismiss Complaint; Respondent's Exceptions and Brief on Behalf of Dr. John J. Napoleon and Executive Director's Roeder's November 8, 2002 letter to the parties.

Dr. Ricketti recused from discussion and vote in this matter and left the table.

Mr. Farrell opened the hearing by informing the parties the Board granted thirty minutes per side for oral argument.

Mr. Iavicoli opened by arguing that the Administrative Law Judge did not apply the appropriate standard in reaching his decision. According to Mr. Iavicoli, he should have used the average, general practitioner faced with the same daily activities as Dr. Napoleon. Additionally, the State failed to produce experts based on this standard.

For example, the State produced specialists who testified to a "higher" standard of practice than that of a general practitioner. This testimony was grossly unfair and should be discounted by the Board in considering this case. He referenced the skin cancer case. The Judge found that Dr. Napoleon committed malpractice for his failure to prescribe prednisone. Mr. Iavicoli argued that this was not supported by the record. The record indicated that after Dr. Napoleon referred Patient ME to the dermatologist, ME was diagnosed as having Darier's Disease. Prednisone is contraindicated for this diagnosis. Mr. Iavicoli urged the Board to overturn Judge Fidler's decision on this Count as the record did not support his conclusion.

Turning the Board's attention to Patient JE, Mr. Iavicoli thought it was significant that the prison officials never conducted an internal investigation into this matter. He posited that no investigation was conducted because there was no harm to the prisoner. People observed JE within twenty-four hours of the alleged incident and no burns were noticed. According to Mr. Iavicoli, the circumstances concerning the examination of JE were that he was in solitary confinement and complained of numbness in his hands. Dr. Napoleon first performed a sensory test with a pencil and then attempted to test with a heat and ice source. Medical equipment was not available in the unit, so Dr. Napoleon utilized a match for a heat source. The record indicated that Dr. Napoleon recalled putting the match approximately a foot and a half below JE's hands and then moved it up slowly. He noted that the prisoner did not object, nor did he react in pain.

Mr. Iavicoli submitted that the Judge's conclusions with each patient were not supported by the evidence in the same manner as the two examples discussed.

In conclusion, Mr. Iavicoli posited that the entire case should be dismissed because the statute of limitations has passed. The action should have been brought within two years because in essence the Board's action is penal in nature. The incidents at issue here date back as far as 1984, with the original complaint only filed in 1995. The complaint then was amended in 1999 and it is now 2002 when the Board is making its final decision. Mr. Iavicoli renewed his motion to dismiss.

D.A.G. Kenny then addressed the Board. He reminded the Board that Dr. Napoleon is asking this Board to accept his argument that holding a lighted match to a person's hands is an acceptable medical procedure. Turning the Board's attention to Patient E.P., D.A.G. Kenny argued that this patient was an obese smoker, who cried out in pain, and was ignored by Dr. Napoleon. He kept him in his cell for more than nine hours prior to his passing away. Dr. Napoleon would have the Board believe that this was good medical care. In another case, Patient AZ, although the prisoner made it known that he was diabetic and received insulin injections twice a day, Dr. Napoleon ordered the guard to not administer any insulin to him. In spite of AZ' failure to eat and continued vomiting, Dr. Napoleon simply ordered a clear, liquid diet. D.A.G. Kenny continued by reminding the Board that Dr. Napoleon never saw or examined AZ. Upon release to his father, AZ was taken to the ER in severe diabetic ketacidosis. Again, Dr. Napoleon would have this Board find that this was appropriate medical care. Patient VB, argued D.A.G. Kenny, suffered unnecessarily because of Dr. Napoleon's abandonment of his responsibility. VB was a known IV drug user and blood test results indicated a low white blood count, abnormal liver function and a positive test for syphilis. Yet with all these factors, Dr. Napoleon never ordered any follow-up tests and completely missed the significance of the factors. Eventually, VB died of AIDS. Again, if the Board believes Dr. Napoleon's explanations, he would have the Board determine that this was the appropriate standard of care. In each case before the ALJ, the overwhelming evidence supported the findings of gross negligence in treatment of each patient. D.A.G. Kenny submitted that the evidence in the record, upon which the Judge relied in reaching his decision, simply does not support the defense arguments.

Addressing defense counsel's argument concerning the statute of limitations, D.A.G. Kenny argued that it was nothing more than a red herring. There is significant case law which supports the proposition that the Board's statute is remedial in nature, and not penal. Additionally, D.A.G. Kenny argued that the doctrine of laches equally does not apply. For that doctrine to be available to Dr. Napoleon, he continued, Dr. Napoleon must come forth with "clean hands." D.A.G. Kenny concluded by reminding the Board that every delay was caused by Dr. Napoleon and his counsel. It would be patently unfair to now invoke the doctrine of laches in favor of the party who actually caused the delay.

D.A.G. Kenny concluded with stating that he was confident that after review of the decision and the evidence, the Board would conclude that the ALJ's decision was well reasoned. He urged the Board to uphold and adopt ALJ Fidler's decision in its entirety.

In response, Mr. Iavicoli directed the Board to the evidence. He argued that what the prosecution fails to tell the Board is that for the majority of patients, the record is void of evidence that supports the findings of the ALJ. For example, Patient EP had no prior history of heart disease or prior complaints about chest pain. In fact, EP only complained about his chest hurting after playing ball. At that time, Dr. Napoleon restricted him from playing ball. When he received the phone call about the chest pain, Dr. Napoleon associated it with this injury from ball playing. He requested that he be monitored at fifteen minute intervals. Dr. Napoleon assumed that was done and never heard back from the guard until much later. He also instructed the nurse to examine him when she came on duty and she failed to do so until it was too late. Mr. Iavicoli asked the Board to believe that Dr. Napoleon was concerned and ordered the appropriate action.

D.A.G. Kenny responded by pointing out that Dr. Napoleon's defense is that it was someone else who is at fault: the nurse, the guard, the prisoner, the system. He fails to take responsibility for his actions. Dr. Napoleon, argued D.A.G. Kenny, showed a consistent pattern of indifference to the prisoners, treating them in a substandard, almost inhumane, medical practice. The Board voted to go into Executive Session. Deputies, other than counseling staff, and Dr. Ricketti left the room, along with all other members of the public present.

The Board returned to open session with all members of the public present and announced the following motions:

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY RESPONDENT'S MOTION TO DISMISS.**

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ADOPT THE FINDING OF FACTS AND CONCLUSIONS OF LAW FOR COUNTS ONE THROUGH FIVE OF ALJ FIDLER'S INITIAL DECISION. AS TO COUNTS SIX AND SEVEN, THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REJECT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW INASMUCH AS THE ATTORNEY GENERAL DID NOT SUSTAIN ITS BURDEN OF PROOF.**

In mitigation, Dr. Napoleon first presented Dr. Salas who testified to the fine moral character of Dr. Napoleon. Dr. Salas had first hand knowledge of Dr. Napoleon as a member in his community, as a personal friend and as a colleague.

Dr. Napoleon testified on his own behalf. He informed the Board that since 1966 he has been fortunate to have a medical license to practice medicine in New Jersey. At all time, he assured the Board, he has practiced good medicine and other than the few complaints of the prisoners, he has had an unblemished record. He pointed out that he has treated more than 100,000 inmates over the course of his career, and the only complaints brought to the Board are those of the seven inmates that are the subject of the matter before the Board. Except in the correctional setting, he has never had any malpractice case filed against him and asked the Board to consider that in the correctional institution, malpractice allegations are common place and generally baseless. Dr. Napoleon continued by telling the Board that at the hospital, he was elected as President for five, two year terms and has chaired the bylaws and credential committees. He also has served on the Board of Governors more than any other member. Overall, he characterized his medical career as exemplary.

Dr. Napoleon additionally asked the Board to consider the prison setting. The inmates span a continuum of behaviors. The jail environment automatically puts one in an adversarial position. It is not uncommon, according to Dr. Napoleon, for prisoners to lie about their health in order to avoid certain situations. Often, complaints are registered and the motivation is really to obtain narcotics when they are not medically appropriate. When a request would be denied, the inmates would become angry and the adversarial nature of the relationship would escalate. In his experience, he believed he was able to distinguish between what was real and what was conjured up by the inmate.

When questioned about JE and the use of the match, Dr. Napoleon explained that it was the only available heat

source at hand. He never intended to do any harm and was sure that although he moved the match up gradually, he would never have gone so far as to burn his flesh. As he recalled, Dr. Napoleon believed that JE was faking his numbness. As far as AZ, Dr. Napoleon admitted that he was aware that AZ was insulin dependent. He further acknowledged that he did not order any tests. As he recalled, AZ was drunk, throwing up, and acting out. Dr. Napoleon believed that the behavior was caused by the alcohol consumed and furthermore, he did not believe that AZ would be in the jail for that long since the family was arranging to bail him out. He had hoped that the tea and toast would help and if it didn't, Dr. Napoleon assured the Board that he was ready to order some tests. Before that happened, he was released from jail.

Dr. Napoleon recalled that EP was at risk for heart disease because of his excessive weight and smoking. He also relayed to the Board that EP had scammed him many times in the past. Dr. Napoleon specifically recalled that one day while he was at home mowing his lawn, he received a call about complaints that EP was making. Immediately, Dr. Napoleon went into the jail and when he arrived at EP's cells, EP looked at his watch and told Dr. Napoleon that he did better on his time to get to the hospital. Based on his experience with EP in the past, and the information reported by the guard, Dr. Napoleon did not believe that EP's complaints were serious. He acknowledged that all directions were given over the telephone and that he never examined EP.

Since the filing of the complaint, he has restricted his practice to acting as a first assist in surgery and covering for other physicians in his area. Although he has admitting privileges, he does not exercise them.

Dr. Carmen Allamino also testified and informed the Board that Dr. Napoleon is a competent physician. Dr. Allamino has known Dr. Napoleon both professionally and personally for a number of years. He explained that Cape May Courthouse is a small community and if Dr. Napoleon's reputation was less than stellar, he would have heard about it. To the contrary, Dr. Allamino has only heard praise about Dr. Napoleon, who he characterized as committed to his patients. He has used Dr. Napoleon as a first assistant in surgery and has always found him to be competent. Dr. Allamino also addressed the impact that revocation would have at the hospital. He explained that it is sometimes difficult to obtain a first assistant and Dr. Napoleon has always been readily available.

On Dr. Napoleon's behalf, Dr. Facielli spoke to the Board about Dr. Napoleon's commitment to the hospital and the administration. He has known him for a number of years and always has heard nothing but the highest of praise from his patients. Dr. Napoleon, according to the witness, has an excellent reputation in the community and has practiced medicine competently and compassionately over the course of his career.

Dr. NaNaVati, a cardiologist, testified and although he has never used Dr. Napoleon as a first assistant, Dr. NaNaVati is aware through the hospital that Dr. Napoleon is a competent doctor. He is not aware of any complaints or adverse reports lodged against Dr. Napoleon. When questioned by D.A.G. Kenny, the witness acknowledged that he had been the subject of a prior Order from the Board in 1998 wherein he was reprimanded for indiscriminate prescribing and poor record keeping.

Dr. Salasin addressed the Board. He has known Dr. Napoleon for over twenty-four years. Dr. Salasin has received a number of referrals from Dr. Napoleon and is aware that he maintains an excellent reputation within the community. He also stressed the need that Dr. Napoleon fulfills at the hospital in acting as the first assistant in surgery. Dr. Salasin was not aware of any complaints against Dr. Napoleon by any patients at the hospital.

Finally, the Honorable Callinan, a retired Superior Court Judge, Chancery Division, testified on the doctor's behalf. As far as he knows, Dr. Napoleon has an excellent reputation in the community and is a competent practitioner. Judge Callinan has always found him to be a caring and compassionate man. He admitted that he did not review any documents, including the complaint, in preparation of his testimony, but that his testimony is based on personal knowledge.

In the summation, Mr. Iavicoli asked the Board to give considerable weight to the testimony of the witnesses presented. Each witness testified about the excellent reputation Dr. Napoleon has in both the medical and public community. He is well respected as a person, as well as a physician. Based on the testimony and the evidence, Mr. Iavicoli argued that Dr. Napoleon's license should not be revoked. He continues to render quality medical treatment as a first assistant and to take away his license would impact the public. Mr. Iavicoli continued by

arguing that surgeries will be delayed and/or postponed and this would put patients in danger.

Defense counsel also asked the Board to consider Dr. Napoleon's overall career. In this many years of practice, the seven patients at issue in this matter are the only complaints ever lodged against the doctor. There has never been one complaint from his private practice. Mr. Iavicoli pointed out that with the increasing number of malpractice suits that are filed daily, it is unusual for any practitioner to not have any filed against him.

In closing, Mr. Iavicoli argued that when the Board considers the evidence in the case, he did not believe that revocation, or for that matter, any action against Dr. Napoleon's license was warranted. He urged the Board to allow Dr. Napoleon to continue to practice as a first assistant. Anything less, according to Mr. Iavicoli, was equivalent to a death sentence.

D.A.G. Kenny first presented the original certification regarding the costs expended in this case. Mr. Iavicoli objected based on case law which required a more detailed accounting of how the costs were spent. Although Mr. Iavicoli represented that he has requested a more detailed accounting, Mr. Iavicoli stated that he has not received any of the underlying documents to support the certification. The Board accepted the certification and informed counsel that it has the expertise to determine whether the costs were reasonable based on its experience in a multitude of cases that have come before the Board. In admitting it into evidence, it cautioned the parties that it would give the certification the appropriate weight based on the arguments of the parties and its experience in its deliberations.

The Board, as stated by D.A.G. Kenny, made significant findings and in review of all the evidence, concluded that Dr. Napoleon committed multiple acts of gross negligence. D.A.G. Kenny asked the Board to consider that Dr. Napoleon's testimony and treatment of the inmates indicate an indifference to prisoners and instead of treating them as human beings, or in the same manner as those in his private practice, Dr. Napoleon treated them as a subclass of human beings. The only appropriate remedy, D.A.G. argued, was to revoke his license to practice medicine and surgery in the State of New Jersey and to impose penalties and costs.

The Board voted to go into Executive Session. Deputies, other than counseling staff, and Dr. Ricketti left the room, along with all other members of the public present.

The Board returned to open session with all members of the public present and announced the following motions:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REVOKE DR. NAPOLEON'S LICENSE EFFECTIVE NOVEMBER 21, 2002 IN ORDER TO ARRANGE THE TRANSFER OF THE FIRST ASSISTANT CASES FOR WHICH HE MAY BE SCHEDULED. THE BOARD ALSO IMPOSED A PENALTY IN THE AMOUNT OF \$35,000 (\$5,000 PER COUNT AS UPHELD BY THE BOARD). COSTS IN THE AMOUNT OF \$9,041 FOR EXPERT FEES AND 9,804.30 FOR TRANSCRIPTS WERE ASSESSED. AS FAR AS INVESTIGATIVE COSTS, THE BOARD DENIED THE COSTS AS DETAILED IN THE CERTIFICATION. THE BOARD, HOWEVER, WILL ENTERTAIN AN APPLICATION WITH A MORE DETAILED ACCOUNTING OF INVESTIGATIVE COSTS FROM THE ATTORNEY GENERAL WITHIN FORTY-FIVE DAYS. DEFENSE COUNSEL WILL HAVE FIVE DAYS AFTER RECEIPT TO RESPOND. THE BOARD WILL DECIDE THE APPLICATION ON THE PAPERS.

## **OLD BUSINESS**

### **1. DAVIT, Samuel, M.D.**

**SAMSON, Andrew, Esq., for Respondent**

**GELBER, Joan D., D.A.G., for Complainant**

D.A.G. Gelber requested that Dr. Davit be listed on the agenda concerning his planned petition to show "good cause" why the Board should delay collection of the \$90,000 assessed in this matter.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO PERMIT THE PAYMENT OF \$10,000 A MONTH ON THE CONDITION THAT DR. DAVIT WOULD AGREE TO THE CORRECTION OF

THE CLERICAL ERROR ON PAGE FOUR.

**2. NOBLE, Paul, M.D. PHAM, Jacqueline, D.A.G.**

A Provisional Order of Discipline (POD) was filed January 28, 2002 which would suspend the above physician's license for three months. Enclosed for Board consideration were D.A.G. Pham's October 21, 2002 letter to the Board, Dr. Noble's undated response, and the POD with attachments filed January 28, 2002.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FINALIZE THE PROVISIONAL ORDER OF DISCIPLINE WITH NO TIME CREDITED IN NEW JERSEY.

**3. POWELL, Omiel, M.D. PHAM, Jacqueline, D.A.G.**

A Provisional Order of Discipline (POD) was filed August 15, 2002 which would suspend the above physician's license for six months, as well as place him on probation for two years. Enclosed for Board consideration were D.A.G. Pham's October 22, 2002 letter to the Board, Dr. Powell's September 12, 2002 response with attachment, and the POD with attachments filed August 15, 2002.

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

**4. PROVISIONAL ORDERS OF DISCIPLINE (PODs) BROWN, Joyce, D.A.G. (See Attached List)**

Enclosed was D.A.G. Brown's October 25, 2002 letter to the Board listing 21 physicians who have not responded to the Provisional Orders filed in each matter. Included with D.A.G. Brown's letter were the Affidavits from Executive Director Roeder concerning each physician. The Provisional Orders of Discipline also were available for the Board's review.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FINALIZE THE PROVISIONAL ORDERS OF DISCIPLINE.

**5. SCHWARTZ, David, M.D.  
PHAM, Jacqueline, D.A.G.**

A Provisional Order of Discipline (POD) was filed September 19, 2002 which would revoke the above physician's license. Enclosed for Board consideration were D.A.G. Pham's October 30, 2002 letter to the Board, Dr. Schwartz' September 30, 2002 response with attachments, information submitted by the District of Columbia dated June 10, 2002, and the POD with attachments filed September 19, 2002.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT A MITIGATION HEARING BEFORE A COMMITTEE OF THE BOARD.

**6. YOUSSEF-AHMED, Maged Z., M.D., License #63191 PHAM, Jacqueline, D.A.G.**

A Provisional Order of Discipline (POD) was filed July 26, 2002 which would suspend the above physician's license for four months, retroactive to the date of the New York Order. Following the suspension, Respondent's license is to be placed on probation for a period of two years. Enclosed for Board consideration were D.A.G. Pham's October 21, 2002 letter to the Board, Dr. Youssef-Ahmed's August 23, 2002 response with C.V., and the POD with attachments filed July 26, 2002.

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

**OFF AGENDA ITEM:**

**KAUL, Richard, M.D.**

This matter was opened to the Board with the filing of a Provisional Order of Discipline based on a conviction of criminal manslaughter in England and the revocation of his license in that jurisdiction. Defense counsel has requested a hearing.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE REQUEST FOR AN EVIDENTIARY AND MITIGATION HEARING AT ITS DECEMBER BOARD MEETING.

Respectfully submitted,

---

Glenn A. Farrell, Esquire  
Secretary  
Acting Chairperson for Open  
Disciplinary Matters

**RE: OLD BUSINESS #4 - PROVISIONAL ORDERS OF DISCIPLINE (PODs) BROWN, Joyce, D.A.G.**

The Board voted to finalize the Provisional Orders with Final Orders for the following 21 physicians who have not responded to the Provisional Orders filed:

1. CARBONE, Francisco, M.D. - POD filed 8/1/02
2. CARRABBA, Andrew, M.D. - POD filed 1/28/02
3. DOMINIC, Anthony, M.D. - POD filed 8/1/02
4. FOREMAN, Stewart, D.O. - POD filed 8/1/02
5. GABRIELE, Robert, M.D. - POD filed 8/1/02
6. GILROY, Anne F., M.D. - POD filed 8/22/02
7. GOODMAN, David, M.D. - POD filed 8/1/02
8. JAIKARAN, Jacques S., M.D. - POD filed 7/26/02
9. LEWIS, Frederick, M.D. - POD filed 8/1/02  
a/k/a Abraham Momammad
10. LUPINACCI, William J., M.D. - POD filed 8/15/02
11. PAHNG, Sun Jong, M.D. - POD filed 7/26/02
12. PATEL, Alka, M.D. - POD filed 7/26/02
13. PATEL, Dipakkumar D., M.D. - POD filed 8/1/02
14. RISH, Benito, M.D. - POD filed 8/15/02
15. ROTHE, Desider, M.D. - POD filed 7/26/02
16. SAHA, Kajal, M.D. - POD filed 7/26/02
17. TARABISHY, Imad, M.D. - POD filed 7/26/02

18. TSAI, Jeno-Lo, M.D. - POD filed 8/1/02
19. ZACKIN, Henry, M.D. - POD filed 7/26/02
20. MILORADOVICH, Vadium, M.D. - POD filed 7/26/02
21. RAMINENI, Subbarao V., M.D. - POD filed 8/15/02

[Back to Open Disciplinary Archive Minutes](#)

---