

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 1
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, December 9, 2009 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor Conference Center, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by Dr. Jordan, Chairperson for Open Disciplinary Matters.

PRESENT

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

EXCUSED

Board Member Bender, Nussbaum and Weiss.

ALSO PRESENT

Deputy Attorneys General Flanzman, Gelber, Warhaftig, Ringler, Puteska; Executive Director William V. Roeder.

RATIFICATION OF MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE MINUTES FROM THE NOVEMBER 4, 2009 BOARD MEETING.

HEARINGS, PLEAS, AND APPEARANCES

- 1. MAKKER, Ram Swaroop M.D., pro se 25MA05987200
RINGLER, Kim D., D.A.G. - Prosecutor**

In November 2009, the Board granted the Attorney General's Application for Temporary Suspension of Dr. Makker's New Jersey license. The suspension was based on the New York State Department of Health, State Board for Professional Medical Conduct's April 24, 2009 Order which found that Dr. Makker was an imminent danger to the health of the people of New York after an investigation of eight separate instances of negligent and incompetent handling of patients whom he treated in a hospital emergency department. A hearing on the charges was held in April, May and June of 2009. A Determination and Order sustaining specifications of professional misconduct and revoking Dr. Makker's medical license followed on September 2,

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 2
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

2009. The Board also considered a letter dated October 26, 2009 in which Dr. Makker advised that he filed an appeal with the Administrative Review Board of the New York State Board for Professional Medical Conduct and that the process was ongoing. Dr. Makker sought to rebut the accusations and requested that the matter be held in abeyance pending the final outcome of his appeal.

Based on N.J.S.A. 45:9-19.16a and the documentation developed in New York, the Board determined that Dr. Makker's practice demonstrated that his continued practice would endanger or pose a risk to the public health or safety pending a determination of final findings by the Board. The Board, in addition to ordering his suspension, granted Dr. Makker an opportunity to present evidence in mitigation at the December 2009 Board meeting.

At the onset of the hearing, Dr. Jordan reminded the parties that the Board convened this mitigation hearing following its entry of a temporary suspension of Dr. Makker's license based on the action taken by New York. The parties put their appearances on the record. Dr. Jordan reminded Dr. Makker that he was entitled to have an attorney, however, Dr. Makker acknowledged that he was choosing to represent himself.

Dr. Makker first thanked the Board for the opportunity to appear before it and for the opportunity to present mitigation evidence. Dr. Makker presented a background of his training and experience.

He recounted that in April, 2009, the New York Board summarily suspended his license. At the time, he was working at the hospital and a retired ICU nurse came to him for some pain medications for injuries she sustained in a fall. He performed an examination on her and gave her a Fentanyl patch, which she requested. After about a half an hour or so, she requested another patch. He continued by explaining that after two hours she requested a third patch and he cautioned her that he would not prescribe anymore. Three hours later, she requested another and he refused. Instead, he admitted her and the next day, she signed herself out against medical advice. When she left, she reported him to the Hospital Board. He met with the Board, discussed the case, and believed that it was not of a serious nature. Unbeknownst to him, the hospital referred it to the New York Board, which investigated over 17 years of his cases. Eventually, the New York Board concluded that he merited a summary suspension.

Since April of 2009, he has been out of practice. He was asking this Board for another chance because he did not believe that the cases on which New York Board reviewed were problematic in light of the fact that none of the departments at which he worked ever questioned the care he was providing.

Dr. Makker requested that the Board consider that the penalty issued by New York was not proportionate to the ""wrong," if any, committed. According to the doctor, no hospital ever questioned the care or medical services that he was providing. He again asked the Board for another chance.

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 3
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

Upon questioning, Dr. Makker clarified that he was not aware of why or how the eight cases that were reviewed were selected. He again stressed that the cases were never subject to any peer review.

Dr. Makker then called his first witness, a colleague of his for a number of years, Dr. Rashid. He has known the doctor for eight or nine years. At the hospital, he informed the Board, Dr. Makker worked very hard and was a very compassionate doctor to all his patients. According to the witness, he could not cite one case of mismanagement of any of Dr. Makker's patients. He concurred with the doctor that the conditions at the facility were less than optimal and in spite of these conditions, performed exemplary medicine. He assured the Board that if it could give Dr. Makker another chance, he would continue to provide excellent medical care for all of his patients.

Dr. Makker then called Dr. Kiran Dave, a colleague since 2001. She has worked with him at a number of hospitals. She testified that she especially appreciated the sign out information that she got from Dr. Makker. Over all these years, she never found any mis-management with any of his patients that were handed off to her. She also remarked at his ability to manage a number of patients at the same time and was extremely impressed with the care that he provided. Dr. Dave asked the Board to give him an opportunity to continue to practice and would welcome the opportunity to continue to work with him.

Suzhash Ahuja, after being sworn in, explained that he is his brother-in-law and has known him for 30 years. He testified that he is confident in Dr. Makker's medical knowledge and has consulted with him on many occasions concerning medical advice. The entire family, according to the witness, have experienced some hard times since April 2009 because of his inability to work and provide for his family. He expressed hope that the Board would see its way to give Dr. Makker a second chance because the patients need a doctor with his knowledge and compassion.

Dr. Makker's wife, Shan Makker, was called to testify. She recounted the extensive time he spent in preparing himself for his career, which he loved. Over the years, he worked hard even at facilities that were not equipped appropriately. She has always supported him in his efforts. Mrs. Makker could not understand in the 100,000 or more patients that he has had how the care of eight patients could take away his license and no one can explain what he did wrong. She feared the impact that this will continue to have on her family if he is not allowed to go back to practice, which is the only thing he loves. Without a medical license, their life is over. She asked the Board to be human and to allow him to provide him another chance to return to practice.

Dr. Makker's sister asked the Board to consider that her brother is hard working, a dedicated professional. Not being able to work is creating an extreme hardship on him and his family. She begged the Board to provide him with another opportunity to work and perform the medical services that he loves.

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 4
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

Ms. Subhash Ahuja, his sister in law, has known him for over 35 years and has never met a more compassionate and loving man. She believes that he is an excellent doctor and over the years, she has always sought his medical advice. Ms. Ahuja also could not understand how his license could be taken away based on eight cases when compared to the number of patients he has treated over the years. According to this witness, Dr. Makker is completely devoted to medicine and has worked all of his life to be the best doctor that he can be. She asked the Board to give him another chance.

Dr. Makker also mentioned that his nephew wanted to testify, however, he asked them not to come because he did not want too many people to testify.

Upon Board questioning, Dr. Makker acknowledged that after six months of investigating the matter, the New York Board suspended his license in April. Dr. Makker said that he was not as prepared as he could have been and believed that he was at a disadvantage at the suspension hearing because of his lack of preparation. Part of the reason, according to Dr. Makker, that he was not prepared was because he hadn't had the information for sufficient time. Since April, he is studying for his ER Boards for 2010 and within the last three weeks, he updated all his life support certifications.

The status of his appeal in New York is still pending.

In conclusion, Dr. Makker asked the Board to consider that he is a very highly qualified physician who has been more than adequately trained. He is Board certified. While he admitted that his record keeping or charting had not been sufficient, he assured the Board that he would correct that deficiency immediately.

DAG Ringler reminded the Board that the matter is before the Board upon a mandate that the Board act when another State makes a finding that the Doctor's continued practice constitutes a danger to the health, safety and welfare and an imminent danger to the public. New York made such a determination after sufficient notice and hearing and with an opportunity to defend by Dr. Makker. The New York Board made its findings, which formed the basis of the Board's Order from last month.

In addition, while the doctor presented a number of mitigation witness, unfortunately, not one witness testified, or was able to testify, about any remedial measures that have taken place that would assure the Board that Dr. Makker's continued practice does not pose an imminent danger.

She also asked the Board to realize the gravity of the New York matter, as well of its own, findings that clearly found that his continued practice posed an imminent danger. Given the lack of any evidence of remediation, in order to continue to protect the public, the Board should not return him to practice.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 5
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

**APPROVE TO MOVE INTO CLOSED SESSION FOR ADVICE OF
COUNSEL AND DELIBERATIONS.**

All parties, except the Administrative and Counseling staff, left the room.

Returning to Open Session, the Board made the following announcement.

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO
CONTINUE THE TEMPORARY SUSPENSION. THE BOARD WOULD NOT
ENTERTAIN A RE-APPLICATION UNTIL AFTER THE NEW YORK MATTER
HAS BEEN FINALIZED AND HIS LICENSE HAS BEEN RESTORED.**

2. AHLAWAT, Ranvit, M.D., *pro se* 25MA07472700
RINGLER, Kim D., DAG - Prosecutor

On or about November 5, 2009, the Attorney General filed a Verified Complaint and Notice to file an Answer. For the most part, Dr. Ahlawat has admitted the allegations, however, he has submitted information in mitigation. The Board is asked to rule on the Attorney General's Complaint and to determine whether liability exists and, if so, what penalty should be imposed.

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

All parties, except Administrative and Counseling staff, left the room.

Returning to open session, Dr. Jordan began the hearing.

The parties placed their appearances on the record. Dr. Ahlawat acknowledged the he was aware of his right to counsel but wished to proceed pro se.

Dr. Jordan also put on the record that the Board understood that he was not going to contest the record.

Dr. Ahlawat further acknowledged that he did not contest the allegations, as to Counts I and II. He did not contest Count III except to correct the record that Costco was not the place he was arrested.

The Board found that the Attorney General satisfied her burden on the complaint on all counts and determined that there is a basis to find liability and assess a penalty.

The Board then moved to the mitigation phase. The Attorney General submitted Exhibits AG1 through AG9. Dr. Ahlawat did not object and the exhibits were admitted into evidence.

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 6
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

AG1 - Federal Indictment PA
AG2 - Federal Indictment LA
AG3 - Federal Indictment IA
AG4 - Transcript
AG5 - Judgments of Convictions
AG6 - Transcript of Sentencing
AG7 - NC Medical Board Consent Order
AG8 - CA Medical Board Consent Order
AG9 - Brick Township Police Reports

Dr. Ahlawat asked the Board to consider the sequence of events from 2001 through 2004. After his residency, he took some time off and in 2002, he was contacted by a company out of Washington, DC that provided medical consultations on the internet. He was told that he would be providing medical advice for non narcotic prescriptions. He was further told that an initial evaluation and diagnosis had already been made and this was more in the way of follow up. Dr. Ahlawat did some research on the internet and this led him to believe and understand how it worked. Although he was not sure and somewhat skeptical, he wrote a letter to the Board concerning tele-medicine but he did not receive a response. At the same time, he also inquired at some other states and because he did not get a response, he wrote a letter to the Division of Consumer Affairs. He did not hear back from it either. The company told him that he did not get a response because there were no regulations on tele-medicine. At the time, he rationalized his due diligence because he wanted to do this. At the same time, he suffered the death of his father and because of this additional trauma, he was looking for an easy way. He signed up and provided consultation for “lifestyle” medical conditions in good faith. He relied solely on the questionnaire. Dr. Ahlawat stressed that he did not provide any consultations for pain management, diabetes, high blood pressure, or other life threatening disease. He was assured that all patients for which he prescribed had been fully worked up by another physician and that the reason they were using the service was because they lost their health insurance. He asked the Board to believe that he did not believe that he was doing anything wrong and never had any mal intent. Because the regulations did not exist, he asked the Board to consider that as a mitigating factor. He also pointed out that the federal law prohibition is also very recent.

In the absence of guidance he asked for from the government, he respectfully asked the Board to consider that he did not believe that he did anything wrong. He also asked the Board to consider that he is a solo practitioner and that any sanction would devastate his practice. He asked for another chance to demonstrate that he can practice medicine with the proper respect. He is trying to put his life together and a sanction would devastate his family as well, including health problems in his family. Dr. Ahlawat testified that he is continuing with therapy and trying to straighten his life out. He acknowledged that he committed the conduct and did not want to minimize his recognition that he acted on poor judgment. He asked the Board to consider the totality of the circumstances and allow him to continue to practice in the profession for which he has been trained all of his life.

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 7
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

The Attorney General questioned the witness and he clarified that when he wrote the letter seeking guidance, he knew that what he was doing might not be appropriate. He also admitted that in 2003, he had a discussion with an owner of the company about the payment he would be receiving and what appeared to be an acknowledgment that it was improper was, according to the witness, a concern about potential malpractice lawsuits.

Dr. Ahlawat also clarified that originally he worked for two companies, but eventually he ended up working for about seven other companies. Also, after a while, in the last two months, he set up his own internet company for consultations. The witness recognized that what he was doing was illegal only after the DEA came to his office to arrest him. The three checks he wrote to pharmacies was after he started his own website. The pharmacy was going to process the orders for his website. Because this resulted from an illegal activity, it was considered money laundering.

The Attorney General asked the Board to recall this was a brand new doctor who started his career in an illegal practice. He knew enough to think his career or license might be in jeopardy because he had enough sense to write and inquire as to the appropriateness. Basically, she argued that he put his own greed over the appropriate care of his patients. He admitted this in a number of proceedings. Based on his awareness or belief there might be risk, he took a chance and she acknowledged that he has paid a price. However, she asked the Board to realize that he has a federal conviction (felonies) and the Board needs to inform the licensee community of the seriousness of these transgressions.

In closing, Dr. Ahlawat emphasized that he wrote seeking advice on the appropriateness on this practice. While he acknowledged that he did not get an answer, he took a risk and had he known then, he would not have made that decision. He asked the Board to realize that upon learning that he was doing something wrong, he stopped immediately. He assured the Board that he has complied his current practice with laws. Dr. Ahlawat also asked the Board to recognize that the DEA gave him back his license and asked the Board to do the same thing. While he had this error in judgment, in 2007, he shoplifted because financially he was devastated, he panicked and took the tax program because he thought it would help him with his problems that he was having with the IRS.

Dr. Ahlawat admitted that he may have had about 400 consultations a day, although when pressed, he further admitted that his work was not a consultation as ordinarily understood in the medical field. At that time, he believed he was providing a service as described by the company and that the patients had the appropriate work up that was appropriate initially.

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

All parties, except Administrative and Counseling, staff left the room.

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 8
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

Returning to Open Session, the parties announced its decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO REVOKE DR. AHLWAT'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY WITH NO RIGHT TO REAPPLY FOR A PERIOD OF THREE YEARS. AT THE TIME OF HIS APPLICATION OF REINSTATEMENT, HE MUST APPEAR BEFORE A COMMITTEE OF THE BOARD TO DEMONSTRATE HIS FITNESS TO PRACTICE, WHICH SHALL INCLUDE, AT A MINIMUM, SUCCESSFUL COMPLETION OF BOARD APPROVED COURSES IN ETHICS, CDS PRESCRIBING, AND MEDICAL RECORD KEEPING AND A GOOD FAITH EFFORT AT COMPLIANCE WITH THE CRIMINAL SANCTIONS. BASED ON THE PENALTIES ALREADY IMPOSED AND THE FACT THAT HE HAD JUST STARTED HIS CAREER, THE BOARD WILL DECLINE TO IMPOSE ANY FURTHER ASSESSMENT OF PENALTIES OR COSTS AT THIS TIME. THE BOARD IS NOT PRECLUDED FROM IMPOSING ANY FURTHER CONDITIONS AT THE TIME OF REINSTATEMENT, IF GRANTED. THE REVOCATION WILL BE EFFECTIVE IN 30 DAYS IN ORDER TO PROVIDE THE LICENSEE WITH AN OPPORTUNITY TO WIND DOWN HIS SOLO PRACTICE.

Motion made by Dr. Cheema and seconded by Dr. Scott.

3. HOWELL, Clifton M.D.

This matter was scheduled for a hearing on December 9, 2009 but was adjourned conditioned on Dr. Howell's voluntary surrender. The Board's hearing was rescheduled for the January 13, 2010 Board meeting. Dr. Howell's answer is due on January 4, 2010.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RATIFY DR. MENDELOWITZ' DECISION TO GRANT THE ADJOURNMENT.

Dr. Ciechanowski recused from discussion and vote in this matter and left the table.
Motion made by Ms. Criss and seconded by Dr. Paul.

**4. ELAMIR, Magdy MD 25MA04140400
Joseph Gorrell, Esq. for the Respondent
DAG Kay Ehrenkrantz, Prosecuting
DAG Steven Flanzman, Counseling**

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 9
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

Dr. Jordan opened the hearing and the attorneys placed their appearances on the record.

Mr. Gorrell handed out a copy of his Answer and a certification of Dr. Elamir. The Board took time to review the materials that were handed out.

Mr. Gorrell raised a preliminary motion concerning the entry of a document . When the Complaint was originally filed, there were three witnesses whose identity were not known. He asked and the DAG declined to provide those names. He believed that the doctor has been able to piece some information together and further believed he was able to identify one of them. Mr. Gorrell wanted to present the medical record for the patient he believed was part of the allegations in paragraph 21, however, the Attorney General objected to its receipt by the Board. Mr. Gorrell argued that this is important because the Attorney General has offered documents and allegations that purport that Dr. Elamir did not keep notes or records. It is the doctor's contention that his notes are at times on the back of the billing records and this would confirm that supposition. The Attorney General objected because the record is from an unknown source and therefore, should not be admitted. It was further the Attorney General's position that the documents were seized at the time of his arrest and have been maintained there in a sealed vault with the appropriate chain of custody. Additionally, the document identifies a patient and no individual should be identified in the proceedings. The Attorney General informed the Board that she has been limited in her proofs based on outstanding criminal issues. CW#3 should not be identified and because Respondent was attempting to identify CW#3 by the introduction of the record, it should be prohibited.

In response, Mr. Gorrell argued that it was unbelievable that the Attorney General was attempting to bring a case against Dr. Elamir and sought to temporarily suspend his license without the identification of the witness. In essence, he continued, the Attorney General is creating a "star chamber" because the doctor cannot defend himself because he can't learn any information about the identity of any of the witnesses. DAG Ehrenkrantz responded that she just received a copy of what he wished to introduce five minutes prior to the hearing. She further noted in her argument that she was aware of the defense that at times the medical record was on the back of the billing records so she sent an investigator to review the billing records at the vault and that the defense claim could not be confirmed. Mr. Gorrell responded that he is not maintaining that he has the complete medical record of CW#3, only a portion which will refute the assertion that there were not notes. He asked that the original chart be brought to the hearing and the Attorney General refused. Without the Board looking at or considering the document, Mr. Gorrell argued that his client would be prejudiced by its exclusion. DAG Ehrenkrantz clarified two points by noting that the investigator specifically reviewed CW#3's chart in the vault and confirmed there were not notes on the back of billing records. Additionally, she pointed out that the Attorney General cannot produce what she does not have. The documents are within the custody and control of the criminal authorities. Mr. Gorrell posited that without the records, perhaps the Attorney General should have waited to bring her complaint.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 10
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

**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 hearing continued.

Dr. Jordan announced that the Board would admit the document, however, he reminded the parties that nothing has been accepted as evidence at this point.

DAG Ehrenkrantz opened by reminding the Board that this application was brought due to the abuse of Dr. Elamir's medical license. She planned to show that he indiscriminately prescribed CDS and on a monthly basis, he met with pseudo patients and issued CDS without an appropriate medical work up or examination. He poses an imminent harm to the citizens of the State through his indiscriminate prescribing practices and for billing for procedures not performed. Additionally, his medical records are devoid of the history and physical, follow ups and/or diagnosis and treatment. In spite of all the CDS issued, no blood tests were ordered to determine whether any harm to the patient was occurring from the over prescribing of the CDS medications. She urged the Board to immediately suspend his license.

Mr. Gorrell, in his opening, clarified that it was his understanding that the Attorney General would be presenting her case through documents. In essence, he argued that the Attorney General was creating a "star chamber" insofar as Dr. Elamir was not given the names of the patients and therefore, not able to mount an appropriate defense. While he acknowledged there were documents that might be entered, there has been no opportunity on the part of the Respondent to challenge the allegations because he cannot learn the names of the patients for which the records correspond. He reminded the Board that the Attorney General must palpably demonstrate an immediate danger or harm to the public. This is a very high level of proof akin to beyond a reasonable doubt. He submitted that there is more than a reasonable doubt to the Attorney General's case. Additionally, without the opportunity to cross examine the witnesses, the Board would be deprived of the opportunity to assess the credibility of the witnesses.

He continued by noting that the Administrative Complaint contained allegations of three patients, comprising eight incidents. In fact, and to the contrary, Dr. Elamir maintains that these were long standing patients of Dr. Elamir and the Board is deprived of the entire history for which they have been treated by Dr. Elamir. Unfortunately, counsel said, Dr. Elamir continues to face criminal charges and at this time, cannot be presented as a witness.

For her case in chief, the Attorney General introduced, P-1 (Ex. A) copies of investigative reports of the audio recording of the CWs with Dr. Elamir. Mr. Gorrell objected on the basis that in order to qualify as a business record the custodian of record must testify. DAG Ehrenkrantz responded that these are certified records from the criminal justice department and it has been the long standing practice of the Board to accept such records. Based on the

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 11
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

certifications, the Board admitted P-1 into evidence.

As to Exhibits B through I, (P-2 through P-9), there were no objections, and they were admitted. Similarly, P-10 and P-11 (Ex. J and K) were admitted into evidence without objections. Previously identified as L, M, and N now marked as P-12, P-13, and P-14 were also admitted without objections.

Mr Gorrell objected to the admission of Exhibit O (now marked P-15) because he questioned the use of the document because no specific patient can be identified. He asked how the Board can determine whether he performed the procedure and what he billed for. DAG Ehrenkrantz referred the Board to the certification provided by the creator of the list.

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

All parties, except Administrative and Counseling staff, left the room.

Returning to open session, Dr. Jordan announced the Board's decision that it would not admit P-16 subject to the Attorney General's removing it and re-entering it with sufficient information that would allow the Board to determine whether the charge was appropriate, for example, restoring the initials of the patient would be sufficient.

Exhibit P (re-marked as P-16), is a complete copy of the records (billing) confirming that there were not any notations on the back which indicated any medical record notations was moved into evidence. After consulting with his client, Mr. Gorrell objected for reasons articulated before concerning the lack of identifying information for patients. He said also has learned from his client that the records submitted are not the complete medical records that Dr. Elamir would have maintained. DAG Ehrenkrantz responded by assuring the Board that these are complete copies of the documents as seized by the criminal authorities and as maintained in the vault. She also noted that the dates of the treatment were specifically requested by the criminal authorities to be redacted so as to protect the identity of the witness. The Board permitted P-17 into evidence but given the dates of service in the Complaint, it requested an un-redacted copy with dates of services listed. Also, it will be given its appropriate weight and the Board recognized that these are copies of what is maintained in the vault and it would accept the affidavit of Marianne Nucci as evidence of that.

Finally, Exhibit Q (now marked as P-17) was offered into evidence. Mr. Gorrell questioned whether there are any allegations in the Verified Complaint that relate to P-17. Additionally, he received these records only two days ago and has no idea who the patients are. The Board did not admit the evidence. DAG Ehrenkrantz asked for reconsideration because these patient records indicated the pattern of medical care that is or is not provided to his patients. Additionally, the Respondent has raised the defense that he keeps notes on the back of billing records and these documents demonstrate again that there are no notes on the reverse side of any

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 12
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

of them. Mr. Gorrell responded that the allegations of the Administrative Complaint do not include a "poor documentation" count. Therefore, according to Mr. Gorrell, there is no way to defend against a case that is not part of the Verified Complaint. DAG Ehrenkrantz further argued that a violation of the medical record rule is part of the complaint and moreover, demonstrates that his defense that he makes notes and/or keeps records on the back of the billing records is flawed .

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

All parties, except Administrative and Counseling staff, left the room.

Returning to open session, the Board did not admit P-17 because of the lack of patient identification.

Exhibit R (P-18) was admitted over Mr. Gorrell's objection to the hearsay nature of the document.

The Attorney General rested.

Mr. Gorrell offered R-1 into evidence and it was admitted without objection. While the Attorney General objected to portions of R-2 (Dr. Elamir's certification) because the origin of the records was unknown to the Attorney General. The Board admitted it into evidence, giving it its appropriate weight. R-3 was offered by the Respondent and the Attorney General objected to the characterization that this is the patient record referred to in the complaint. The Attorney General could not affirm or deny whether this related to CW#3 and maintained that question remained open. She did not have an objection if it was being offered as an example of his medical record keeping. Mr. Gorrell again referred to these proceedings as a "Star Chamber." DAG Ehrenkrantz again noted that she was limited in what could be presented because of the open criminal investigation and she recognized that these constraints make the case difficult. However, she wanted the Board to realize that there was more than adequate evidence on which he can defend. DAG Ehrenkrantz reminded the Board that the Respondent has received verified allegations with sufficient certifications about the charges. This is not a plenary hearing, but rather one that Attorney General has brought a temporary suspension because if he continued to prescribe in this reckless manner, he posed an imminent danger to the health, safety and welfare of the public..

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

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

Returning to open session, the Board asked for the Doctor's certification that R-3 was a copy of

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 13
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

the record that he believed corresponded to CW#3.

All the documents were admitted.

DAG Ehrenkrantz, in her closing, argued that the standard of proof was one of demonstrable evidence. The statute allows this proceeding and permits a more relaxed interpretation of the rules of evidence and permits certifications in the place of live testimony. She reminded the Board that the identity of the witnesses is not crucial because there are sworn statements about what the three witnesses experienced when they went to the doctor's office. In each patient visit, as outlined in the investigation reports, CDS was offered without the appropriate medical examination. She also asked the Board to realize that the time spent with the doctor, which includes the waiting time, is listed. The amount of time actually spent with the doctor, according to DAG Ehrenkrantz, was minimal at best. On each exhibit, the certifications provide information that demonstrates the time spent. Also, she posited that the drugs provided are all CDS that have a high street value. In fact, with one witness, it was recorded that he was chastised for coming in too early and if he continued, he would be putting the doctor at risk. DAG Ehrenkrantz argued that when the record is viewed as a whole, this was nothing more than a cash business for CDS prescriptions. The Attorney General was not maintaining that the Verified Complaint was based on every patient record, or for that matter, the complete record. Rather, as certified in the Investigatory Reports, Dr. Elamir prescribed CDS for cash without performing the appropriate medical examination and work up. For example, on one day, he saw 45 patients and there are no progress notes and only one note which was a follow up office visit. Interestingly, he has available a significant number of facilities at which the patients could have been tested; however, he failed to order any follow-up tests, according to DAG Ehrenkrantz, or to use any of them.

She concluded by arguing that patients deserve better. The pseudo patients, she continued, should not be permitted to obtain the CDS and then turn around and sell them on the street. The Attorney General requested that the Board grant the application for a temporary suspension because his continued practice posed an imminent danger to the public.

Dr. Gorrell started his concluding remarks by noting that charges aren't sufficient to take away a doctor's license. He read from the statute and reminded the Board that the Attorney General had to palpably demonstrate that he poses an imminent harm. He argued, even assuming there was a lower standard such as preponderance of the evidence, he posited that the Attorney General has not even met that burden. While the papers were received only a few days ago, he believes he has been able to determine who the patients are because without that, one cannot defend the case.

He continued that prescribing CDS is not per se illegal. It can be prescribed for a legitimate medical reason. But the Attorney General doesn't focus on this, she focuses on the amount of time the licensee spends with the doctor. Without the identity of the witness, Respondent cannot determine whether the witnesses lied to protect themselves. Mr. Gorrell also noted that often times the perceptions of patients are often incorrect. He also posited that when everything is

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 14
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

looked at together, the same evidence that the Attorney General relies upon is contradicted by other evidence also submitted by the Attorney General. For example, the amount of time he spent with a patient as documented in the investigatory report was contradictory. The Attorney General's own proofs, according to Mr. Gorrell, belie her own case. Another example was the assertion by the Attorney General that there were not additional notes, yet Dr. Elamir produced a document believed to be part of CW#3 file which does contain notes on the reverse. He also submitted that the documents presented by the Attorney General were not complete.

Turning to the suggestion that there was a pattern of behavior, Mr. Gorrell reminded the Board that its own regulations limit the amount of CDS that can be prescribed in a given month. His prescriptions comported to that regulation. In Dr. Elamir's certification, he stated that these were patients with chronic pain and that he had attempted to wean them off the medication in the past. There was no evidence introduced to contradict this statement.

He asked the Board to look at all the evidence and to look at it objectively. There had been only an arrest, he continued, and no indictment has been brought. He requested that the Application for a Temporary Suspension be dismissed.

Mr. Gorrell argued that P-15 (Exhibit O) was irrelevant even with the additional information as it documented tests and had nothing to do with the allegations of the verified complaint. Although as he thought about it, he withdrew his objections because he believed that it supported Dr. Elamir's case insofar as it demonstrated that Dr. Elamir ordered tests and did not just hand out CDS prescriptions. The Board entered it into evidence.

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED 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, it announced the following:

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT
THE ATTORNEY GENERAL'S APPLICATION FOR A TEMPORARY
SUSPENSION BECAUSE IT FOUND THAT SHE HAD SUSTAINED HER
BURDEN OF PROOF IN ESTABLISHING THAT DR. ELAMIR PRESENTED A
CLEAR AND IMMINENT DANGER TO THE PUBLIC HEALTH, SAFETY AND
WELFARE. THIS ORDER IS EFFECTIVE AT THE CLOSE OF BUSINESS
DECEMBER 23, 2009. THE BOARD ALSO ORDERED THAT DR ELAMIR
WILL NOT WRITE ANY CDS PRESCRIPTIONS AND WILL NOT ACCEPT
NEW PATIENTS WHILE ARRANGING FOR THE TRANSFER OF HIS
CURRENT PATIENTS. THE BOARD ENCOURAGED THE PARTIES TO SEEK
AN EXPEDITED HEARING AT THE OAL.**

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 15
DISCIPLINARY MATTERS PENDING CONCLUSION - DECEMBER 9, 2009

Motion made by Dr. Paul and seconded by Dr. Reichman. It passed unanimously.

Mr. Gorrell addressed the Board and reminded the Board that Dr. Elamir is a neurologist and by telling him he cannot prescribe any CDS, this would preclude him from practicing. He requested that the restriction be limited to Schedule II CDS only and allow him to practice Schedule III and IV.

A Motion was made to deny that request by Dr. Lambert and seconded by Dr. Paul.

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED
UNANIMOUSLY TO DENY THE REQUEST.**

Respectfully submitted,

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

WVR/dt/br