

**New Jersey State Board of Medical Examiners
Open Disciplinary Minutes
December 11, 2002**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, December 11, 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 Dr. Wallace, Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Criss, DiFerdinando, Farrell, Haddad, Harrer, Huston, Lucas, Moussa, Perry, Ricketti, Robins, Rokosz, Trayner, Wallace, Walsh and Weiss

EXCUSED

Board members Chen, Desmond, and Patel

ALSO PRESENT

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

RATIFICATION OF MINUTES

The Board Minutes from the November 13, 2002 Board meeting were approved as submitted.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

**10:00 a.m. - PATEL, Chandrakant, M.D.
LABUE, Anthony F., Esq., for Respondent
EHRENKRANTZ, Kay, D.A.G., for Complainant**

This matter was before the Board in order to consider Mr. LaBue's November 25, 2002 Motion to modify the enclosed Interim Consent Order filed June 12, 2002, to allow Dr. Patel to resume the clinical practice of medicine without restriction, under such terms and conditions as may be required by the Board. Also, enclosed is the Interim Consent Order filed June 12, 2002.

This matter was adjourned because Mr. LaBue withdrew his motion for modification.

**10:30 a.m. - BURKE, William M., M.D. (Counseling Deputy: FLANZMAN)
HOLTZMAN, Deborah, Esq., for Respondent
GELBER, Joan D., D.A.G.**

A hearing on the Attorney General's application for the temporary suspension of Dr. Burke's license was held before a Committee of the Board on November 26, 2002. At this meeting, the parties were afforded an opportunity to give oral argument concerning whether the Board should approve, modify or reject the action taken by the Hearing Committee. Enclosed were copies of the evidence presented at the Committee Hearing; the Order to Show Cause and Second Supplemental Complaint, Verified as to Count 13 filed November 18, 2002, D.A.G. Gelber's November 18, 2002 Certification and letter brief submitted in support of the Attorney General's application for emergent temporary suspension of the medical license of Dr. Burke on allegations that his current medical practice of using unsterile syringes and hypodermic needles to inject medication and vaccines palpably demonstrates a clear and imminent danger to the public health, safety and welfare; and Ms. Farber's November 25, 2002 letter brief with attachments. The

Hearing Committee's Order of November 26, 2002 was also enclosed.

Mr. Farrel recused from discussion and vote in this matter and left the table.

D.A.G. Gelber opened by asking the Board to reject the Hearing Committee's Order and to grant her application for the temporary suspension of Dr. Burke's medical license, or in the alternative, to place certain restrictions on his license. According to D.A.G. Gelber, Ms. Hernandez' testimony was credible and supports the Attorney General's assertion that Dr. Burke's practice is a danger to the health, safety and welfare of the citizens of New Jersey. Ms. Hernandez' was Dr. Burke's medical assistant and office manager. Among her duties, she was responsible for laying out the vials, needles, and syringes for Dr. Burke. For the first time in three years, she was in the room while Dr. Burke was administering an injection for patient DM. During this occasion, she observed Dr. Burke place a needle into one vial, inject the patient, and then insert the same needle into another multi-dose vial and inject the patient again. The second multi-dose vial was not empty and Dr. Burke did not discard the vial. At first, Ms. Hernandez believed that this was just an isolated incident until a few weeks later, she realized Dr. Burke had done the same thing, namely, used one needle into two different vials that were not emptied. On the second occasion, she laid out two needles and two different multi-dose vaccines. Although she was not in the room during the administering of the vaccine, when she returned to the room, she observed that only one needle had been inserted into each vial. She questioned both the patient and Dr. Burke and both confirmed that two vaccines had been given with the one needle. The following day, the same thing happened. During the third incident, Ms. Hernandez observed Dr. Burke pop off the seals of two multi-dose vials, used the same needle in each vial. She estimated that there were about nine doses left in each vial and Dr. Burke did not discard them. D.A.G. Gelber reminded the Board that the State's expert clearly states that this is inappropriate and far from the standard of care.

Ms. Holtzman opened by asking the Board to approve the Hearing Committee's report in its entirety without any modification. She reminded the Board that the Committee who heard the testimony determined that there was not a danger to the health, safety or welfare of the citizens of New Jersey. She directed the Board to the certification of Dr. Burke in which he stated that part of Ms. Hernandez' duties included the discarding of the medication. And in fact, Ms. Hernandez even admitted to throwing away the vial that was used during the second incident at issue in this matter. Ms. Hernandez also acknowledges that this was part of her responsibility. In looking at the entire record, there is no testimony that even indicates that Dr. Burke ever instructed anyone to save vials that had been used. Finally, she urged the Board to conclude as the Committee did that Ms. Hernandez' testimony was not credible. The record includes certification from other employees that attest that they never saw Dr. Burke use the same needle on a different patient, nor use a multi-dose vial that had been "contaminated" on another patient. Ms. Holtzman also stressed that Ms. Hernandez also had issues during her employment and suggested that her motivation might be less than honest. She closed by urging the Board to accept the Committee's recommendation to deny the State's application for a Temporary Suspension since the State has not met its burden of proof. She also asked the Board to conclude as the Committee did that Dr. Burke did not pose a danger and therefore, no restrictions were necessary to protect his patients from harm.

The Board voted to go into Executive Session. Deputies, other than counseling staff, and Mr. Farrell and D.A.G. Dick 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 motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE HEARING COMMITTEE'S REPORT IN ITS ENTIRETY AND RATIFIED THE COMMITTEE'S RECOMMENDATION TO DENY THE ATTORNEY GENERAL'S APPLICATION FOR A TEMPORARY SUSPENSION.

Dr. Robins abstained from vote in this matter.

**11:00 a.m. - KAUL, Richard A., M.D. (Counseling Deputy: JOYCE)
LABUE, Anthony F., Esq., for Respondent
VOLKERT, Susan E., Esq., for Respondent
NIEDZ, Alan, D.A.G., for Complainant**

This matter was set down for an evidentiary and mitigation hearing. A Provisional Order of Discipline (POD) was filed September 20, 2002 in the matter of Dr. Kaul. At the request of counsel for Dr. Kaul, the Board, at its November 13, 2002 meeting, granted an evidentiary and mitigation hearing in this matter. Subsequent to this decision, Mr. LaBue further requested that the matter be heard before a Committee of the Board or transferred to the Office of Administrative Law (OAL). Dr. Harrer reviewed the request and denied it. Enclosed for Board consideration were the POD filed September 20, 2002; Mr. LaBue's November 11, 2002 letter with attachment requesting that the POD concerning Dr. Richard Kaul be dismissed with prejudice; Executive Director Roeder's November 19, 2002 letter scheduling this matter; Mr. LaBue's November 21, 2002 letter requesting that the matter be heard before a Committee or OAL; D.A.G. Niedz' response to Mr. LaBue's November 21, 2002 letter; Executive Director Roeder's November 27, 2002 letter to counsel informing them of Board President Harrer's denial of the request; and D.A.G. Niedz' December 4, 2002 letter providing the Board with a certification with attached exhibits. Under separate cover, D.A.G. Niedz provided the Board with his letter brief dated December 5, 2002.

Ms. Volkert began by reminding the Board that there were three preliminary motions before the Board: Motion to Strike the POD in its entirety, Motion to exclude the December 2, 2002 Attorney General's letter and affidavit; and a Motion to strike Dr. Kaul's answers to a Demand for Statement Under Oath. Ms. Volkert believed that these motions were not just procedural, but had further legal and constitutional issues. For example, to permit the introduction of the Attorney General's December 2, 2002 letter and accompanying affidavit and exhibits would be a denial of Dr. Kaul's due process. Ms. Volkert continued by arguing that prior to December 2, 2002, the Attorney General's office informed counsel for Dr. Kaul that it would only be relying on the information as contained in the POD. Counsel never saw any of the documents attached to the affidavit and to introduce the letter into evidence would be prejudicial and unfair. Similarly, Ms. Volkert argued that Dr. Kaul's answer to the Demand for Statement Under Oath should be stricken. The Attorney General's office failed to inform Dr. Kaul that he had the right to seek counsel prior to responding. To put everyone on the same playing field, she posited, the answer should be excluded from evidence. She continued by also arguing that all the documents relied upon for the conviction in England should be excluded. In this country, at best, the England matter would have been a malpractice case. She informed the Board that the motivation for the English action was based on political issues. Prior to the action, Dr. Kaul attempted to convince the Royal College to accept his credentials and his application was denied. He appealed the Royal College's decision, something which was unheard of, and the matter went to trial. Ms. Volkert believes the action taken in England was done out of retaliation for the appeal. Additionally, the conviction shouldn't be considered because the jury decision was not unanimous and the State has failed to produce any evidence to demonstrate that the English action is the equivalent of a criminal conviction in this country. She concluded by urging the Board to grant all three motions.

D.A.G. Niedz opened by arguing that counsel for Dr. Kaul has failed to demonstrate an unfair surprise and that it was the intent of the Attorney General to surprise opposing counsel with the "new" evidence. D.A.G. Niedz assured the Board that he informed Mr. LaBue that he would be relying on the papers and therefore, Mr. LaBue was aware at all times concerning the Attorney General's proofs. Similarly, the POD should not be stricken as respondent has offered no evidence or case law that would support the conclusion to strike simply because the events occurred in another jurisdiction. The ability to take "Sister State" action is premised on the reliance on the finding of facts of another jurisdiction. Finally, he argued that the argument to strike the Demand for Statement Under Oath was rather unique insofar as it implies that "Miranda type warnings" must accompany such a demand. Such warnings are only applicable if the responses could subject one to a future criminal prosecution. Accordingly, D.A.G. Niedz advocated that the Board to find Dr. Kaul's Motions to Strike meritless.

The Board voted to go into Executive Session. Deputies, other than counseling staff, 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 motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE MOTION TO DISMISS THE PROVISIONAL ORDER OF DISCIPLINE, TO DENY THE MOTION TO STRIKE THE DEMAND FOR STATEMENT UNDER OATH AND TO DENY THE MOTION TO STRIKE THE ATTORNEY GENERAL'S DECEMBER 2, 2002 LETTER AND UNDERLYING DOCUMENTS.

Although the Board was ready to hear the matter, the Attorney General's office made a motion to adjourn. The motion was not opposed by Dr. Kaul. The purpose for the adjournment was explained as an opportunity to further exchange information between counsel.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ATTORNEY GENERAL'S MOTION TO ADJOURN THE MATTER UNTIL THE JANUARY BOARD MEETING.

Dr. Haddad was not present for discussion or vote in this matter.

**2:00 p.m.- CORRAL, Hector B.,M.D.,License #21257(Counseling D.A.G.: LEVINE)
DeSEVO, Frank, Esq., for Respondent
HAFNER, Doreen A., D.A.G., for Complainant**

Matter was set down for hearing on an Order to Show Cause and Verified Complaint filed by the Attorney General on December 3, 2002 seeking the temporary suspension of the license of Respondent Hector B. Corral, M.D., to practice medicine and surgery and for other relief deemed appropriate. The Four-Count Verified Complaint alleges indiscriminate prescribing of Controlled Dangerous Substances; conduct constituting gross malpractice, gross negligence, or gross incompetence; repeated acts of negligence, malpractice, or incompetence; professional misconduct; that Respondent's alleged conduct demonstrates that he is incapable of discharging the functions of a Board licensee in a manner consistent with the public's health safety and welfare; and that Respondent's continued practice of medicine presents a clear and imminent danger to the public health, safety, welfare. The Verified Complaint further alleges multiple violations and failure to comply with regulations administered by the Board; allegations of issuing prescriptions for Controlled Dangerous Substances when not registered with the Drug Enforcement Administration, constituting both professional or occupational misconduct and violation of Board regulation; and allegations of his failure to provide records requested in a Subpoena in a timely and complete fashion constituting a failure to cooperate.

Under separate cover, the Division of Law provided each Board Member with the Order to Show Cause, Verified Complaint with Exhibits, letter brief in support of the Attorney General's emergent application for an immediate temporary suspension of Dr. Corral's license; D.A.G. Hafner's Certification and an Appendix.

Dr. Haddad left the meeting and was not present for the discussion or vote in this matter.

Prior to the meeting, the Board was informed that Dr. Corral declined to show up for the hearing and that he wished to surrender his license, although he indicated that the surrender was a forced retirement. The Counseling Deputy called out Dr. Corral's name outside the meeting room and no one responded.

The Attorney General addressed the Board, highlighting the evidence before the Board. She reminded the Board that Dr. Corral began a practice of pain management after he obtained a few credits in the area and after attending one two-day course at Columbia. In reviewing the evidence, the Board will see that for one patient, Dr. Corral prescribed more than 27,000 painkiller medications over a three-year period. D.A.G. Hafner continued by highlighting the evidence which demonstrated that Dr. Corral failed to assess the addiction level of his patients, failed to complete adequate records, prescribed inordinate amounts of CDS, would write prescriptions for relatives of his patients without examining them, and failed to assess any past addictions. The evidence clearly showed, D.A.G. Hafner continued, that Dr. Corral had been engaging in a pattern of conduct which grossly deviates from the standards of practice. She advocated that the Board grant the temporary suspension application because any continued practice by Dr. Corral would constitute a clear and imminent danger to the health, safety and welfare of his current and potential patients.

The Board voted to go into Executive Session. Deputies, other than counseling staff, 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 motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DECLINE DR. CORRAL'S OFFER OF SURRENDER AS IT VIEWED IT AS A MEANS TO AVOID THE BOARD'S PROCESS AND DID NOT

ADEQUATELY GUARANTEE THAT DR. CORRAL WOULD NOT CONTINUE TO PRACTICE.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ATTORNEY GENERAL'S APPLICATION FOR A TEMPORARY SUSPENSION PENDING A FULL, PLENARY HEARING IN THIS MATTER BASED ON THE UNREBUTTED EVIDENCE WHICH PALPABLY DEMONSTRATED THAT HIS CONTINUED PRACTICE CONSTITUTES A CLEAR AND IMMINENT DANGER TO HIS CURRENT AND POTENTIAL PATIENTS.

OLD BUSINESS

1. CHAO, Tsai Chung, M.D., License #57766 FULLEM, Robert T., Esq., for Respondent PHAM, Jacqueline, D.A.G.

A Provisional Order of Discipline (POD) was filed October 10, 2002 which would place the above physician's license on probation for two years. Enclosed for Board consideration were D.A.G. Brown's December 3, 2002 letter to the Board; Dr. Chao's November 2, 2002 response; Mr. Fullem's letters of November 5, 2002 (with attachment) and November 6, 2002; a November 18, 2002 letter from the State of New York, Department of Health concerning Dr. Chao's compliance with the New York Order; and the POD with attachments filed October 10, 2002.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FINALIZE THE POD AND NOTED THAT THE PERIOD OF PROBATION SHOULD BE RETROACTIVE AND CURRENT WITH THE NEW YORK TIME PERIOD.

2. CITARELLI, Louis J., M.D., License #44506 (Counseling DAG: FLANZMAN) LABUE, Anthony F., Esq., for Respondent HARPER, Douglas J., D.A.G., for Complainant

A mitigation hearing was held in the matter of Dr. Citarelli on September 11, 2002, and the Board issued the enclosed Final Order Revoking License on October 23, 2002. The Board was requested to consider, on the papers, Mr. LaBue's November 13, 2002 motion for the Board to reconsider the revocation of Dr. Citarelli's New Jersey medical license. Mr. LaBue's motion was enclosed for Board consideration along with D.A.G. Harper's Brief and Exhibits in Opposition to Respondent's Motion to Reopen the Proceeding and for Reconsideration filed November 27, 2002. Also enclosed for Board review were a faxed December 5, 2002 letter with attachment from Mr. LaBue which supplements his enclosed December 4, 2002 letter with attachments, and the transcript of the September 11, 2002 mitigation hearing.

D.A.G. Dick recused in this matter and left the table.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE REQUEST FOR RECONSIDERATION OF DR. CITARELLI'S NEW JERSEY MEDICAL LICENSE BASED ON THE REASONS STATED IN THE ORIGINAL ORDER AND BECAUSE NO NEW EVIDENCE HAD BEEN SUBMITTED TO WARRANT A CHANGE.

3. FIELDING, Seth, M.D. PHAM, Jacqueline, D.A.G.

A Provisional Order of Discipline (POD) was filed July 26, 2002 which would reprimand the above physician. Enclosed for Board consideration were D.A.G. Pham's December 4, 2002 letter to the Board; Dr. Fielding's August 5, 2002 and September 17, 2002 responses; and the POD with attachments filed July 26, 2002.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FINALIZE THE POD AND TO APPROVE THE PACE COURSE.

4. GOOBERMAN, Lance L., M.D. (Counseling Deputy: JOYCE)

John S. Sitzler, Esq., for Dr. Goberman
BRADWAY, David, M.D.
Michael E. Riley and Irwin L. Lifrak, Esqs., for Dr. Bradway
HARPER, Douglas J., D.A.G., for Complainant

D.A.G. Harper submitted a December 4, 2002 letter to the Board along with a proposed scheduling Order for the filing of Exceptions and hearing as follows:

1. Initial Exceptions - Due no later than January 14, 2003
2. Responses - Due no later than January 21, 2003
3. Board to consider matter - February 19, 2003 Board meeting

Also enclosed was the November 15, 2002 Initial Decision of Administrative Law Judge Jeff S. Masin concerning the matter of Doctors Goberman and Bradway. As noted above, this matter will heard at the Board's February 19, 2003 meeting. This 255-page decision is being provided to the Board Members at this time so there is ample time for review. Exceptions and responses will be sent to Board Members as soon as they are received in the Administrative Office.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE SCHEDULING ORDER.

5. HORNG, Frank Fang-Shuh, M.D.
PENROD, David A., Esq., for Respondent
PHAM, Jacqueline, D.A.G.

A Provisional Order of Discipline (POD) was filed September 20, 2002 which would revoke the above physician's license. Enclosed for Board consideration were D.A.G. Pham's November 6, 2002 letter to the Board; Mr. Penrod's October 18, 2002 response with attachments; Mr. Penrod's November 1, 2002 letter correcting an error made in his November 6, 2002 letter; and the POD with attachments filed September 20, 2002.

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

6. PROVISIONAL ORDERS OF DISCIPLINE (PODs)
PHAM, Jacqueline, D.A.G.
GARCIA, Alexandra, D.A.G.
BROWN, Joyce, D.A.G.

Enclosed were affidavits of service with respect to each of the below listed Provisional Orders of Discipline (PODs). As the chart below reflects, in each instances the POD was issued and no response has been received to date. Each matter was subject to finalization 30 days after issuance. The Attorney General seeks the entry of Final Orders of Discipline without modification for the following physicians:

1. **CLARK, Norman L., M.D. - POD filed October 21, 2002**
(D.A.G. BROWN)
2. **LEPKO, Ervin E., M.D. - POD filed April 8, 2002**
(D.A.G. GARCIA)
3. **MALLADA, Dan S., M.D. - POD filed October 8, 2002**
(D.A.G. BROWN)
4. **SCHEER, Robert S., M.D. - POD filed June 7, 2001**
(D.A.G. BROWN)
5. **SINHA, Vinaya K., M.D. - POD filed June 26, 2001**

(D.A.G. PHAM)

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FINALIZE THE PODS.

7. TUCKER, Karen E., M.D.
HAMILTON, James D., Jr., Esq., for Respondent
ALBERTSON, B. Michelle, D.A.G.

Enclosed were the Final Order of Discipline filed August 30, 2002 and the Amended Final Order of Discipline filed October 30, 2002 in the matter of Dr. Tucker. D.A.G. Albertson submitted the enclosed November 8, 2002 letter to the Board concerning the enclosed letter with attachments from Mr. Hamilton dated October 15, 2002 letter. As noted, Mr. Hamilton requested that the Board vacate the Final Order of Discipline in the above sister-State action. Also enclosed was Mr. Hamilton's November 21, 2002 response to D.A.G. Albertson's November 8, 2002 letter.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO FINALIZE THE ORDER AND OFFER DR. TUCKER A HEARING BEFORE A COMMITTEE OF THE BOARD.

8. YOUSSEF, Safwat Attia, M.D.
PHAM, Jacqueline, D.A.G.

A Provisional Order of Discipline (POD) was filed October 21, 2002 which would suspend the above physician's license for an indefinite period of time, until Respondent can show that he has an unrestricted license in the State of New York. Enclosed for Board consideration were D.A.G. Pham's December 4, 2002 letter to the Board; Dr. Youssef's November 2, 2002 response with attachments; and the POD with attachments filed October 21, 2002.

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

There being no further business of the Board concerning Disciplinary Matters Pending Conclusion in open session, the Board voted to continue with the meeting concerning Matters Pending Litigation and Disciplinary Action in closed session.

Respectfully submitted,

David M. Wallace, M.D., Chairperson
for Open Disciplinary Matters

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Posted July 2003