

**THE NEW JERSEY STATE  
BOARD OF MEDICAL EXAMINERS  
HEARING COMMITTEE REPORT  
AUGUST 10, 2011**

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**LEE, Sylvia, MD 25MA05331700**

Jay Joseph Friedrich, Esq. For the Respondent  
DAsG Jeri Warhaftig and Wendy Leggett Faulk, Prosecuting  
SDAG Sandra Dick, Counseling

An Order to Show Cause; Notice of Hearing and Requirement to File Answer, and a Verified Complaint and Letter Brief were filed with the Board by the Attorney General on or about July 29, 2011, seeking an emergent temporary suspension of Dr. Lee's license to practice medicine and surgery in the State of New Jersey. The matter was originally scheduled before the Board at its meeting on August 10, 2011, however, due to a lack of a quorum, the matter was heard before a Committee of the Board consistent with the well-established policy to convene a Committee of the Board to hear and act upon an Application for a Temporary Suspension filed by the Attorney General. The minutes and recommendation of the Hearing Committee are subject to ratification, modification or rejection at the next regularly scheduled Board meeting.

Members of the Committee included: Drs. Baker, Berkowitz, Cheema, Criss, Krauss, Lambert (Chair), Lomazow, Rajput, Scott, and Stanley.

At the onset of the Hearing, the Answer, received the day prior, was handed out. Additionally, the Committee considered and rejected a settlement offer proffered by Dr. Lee.

Counsel put their appearances on the record.

DAG Warhaftig requested that the Committee order the name of the victim to be kept under seal. Hearing no objections, the Committee granted the request and instructed the parties to only use the initials of "T.K." when referring to the victim. In furtherance of that request, DAG Warhaftig provided to the Committee members a copy of P-5 which had been sealed in envelopes and provided the Board office with a redacted copy for its files. She also asked that the Committee move into closed session to stipulate to whom T.K. is and asked that the Respondent also be instructed to redact his documents as required by the Committee's ruling. Mr. Friedrich did not object to the order of sealing the identity.

As to proceeding without a quorum, however, Mr. Friedrich objected to the Committee moving forward as a Hearing Committee and believed that the full Board should hear such an important issue. He again stressed his objection to the Board proceeding further as patently unfair and depriving his client of a full hearing before the Board. In response, the Attorney General informed the Committee that she did not object to the Board proceeding as such and recognized that the Board has proceeded in a similar fashion in the past and, in particular, in emergent

matters as the one pending before the Board.

THE COMMITTEE, 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.

The Committee returned to open session and noted for the record that it has been a long-standing policy passed by the Board by motion in prior years that authorized the Board President and/or a Committee to hear a matter in emergent cases such as the application before it.

**THE MEMBERS PRESENT, UPON MOTION MADE AND SECONDED, VOTED TO MOVE FORWARD ON HEARING THE MATTER AS A COMMITTEE OF THE BOARD WITH DR. LAMBERT TO ACT AS THE CHAIR.**

Motion made by Ms. Criss, and seconded by Scott. It carried unanimously.

Dr. Lambert also acknowledged receipt of the settlement offer proffered by Dr. Lee and the Attorney General's response thereto. She informed the parties that the offer has been rejected and that the Committee was ready to proceed with the hearing. She also noted that the Committee members did receive a copy of the Answer filed on behalf of the Respondent.

Dr. Lambert asked the parties if there were any other stipulations agreed upon by the parties. DAG Warhaftig asked that the stipulation be discussed in closed session as it would deal with the identity of T.K. Chairperson Lambert acknowledged the request and told the parties that it would be discussed in closed session at a later point in the proceedings.

Dr. Lambert also noted that the sealed record of P-5 would be handed out during closed session. Mr. Friedrich objected to the introduction of P-5 because there was not any foundation laid as to when the pictures were taken, how they were taken, or the chain of custody. They have been in dispute, according to Mr. Friedrich, as to the authenticity. DAG Warhaftig responded that the pictures were part of the moving papers in the case and certified by DAG Leggett Faulk. In an abundance of caution, and to address Mr. Friedrich's concerns, they have been placed under seal. She also noted that a foundation for the introduction is established through Exhibit "D," as well as the certification of Sergeant O'Connell that they were electronically transmitted to DAG Leggett Faulk. Mr. Friedrich countered by arguing that the DAG who affirmed the application is certified on double hearsay and, therefore, not admissible. She cannot verify the accuracy of the photographs because she was not present at the time they were taken. Additionally, the person that took them only states that they were taken. There are no foundations that establish the who, when, what, or how much. All of these necessary elements are required to authenticate the pictures. Unless there is testimony as to the origin of the photographs, they should not be viewed

without proper proof. DAG Warhaftig again stated for the record that the Committee will be evaluating the evidence before it. There has been a duly verified application, according to DAG Warhaftig, filed with the Board containing official documents on file with the police department. She would rely on a stipulation of the identity of the child in closed session. This is the only link missing with the introduction of the photographs. She asked the Committee to use its own expertise to judge the photos based on the totality of the evidence presented.

The Committee moved into Executive Session to discuss the identity of "T.K." and P-5.

The Committee returned to open session and continued with the hearing.

Mr. Friedrich objected to the Committee proceeding further because he believed that the Committee's rejection of his client's offer to turn in her license demonstrated that the Board is looking for more than just her license. She offered to quit practicing until she is evaluated, however, the Committee was not satisfied with that offer. He continued by arguing that if it is the Committee's intent to protect the public, the offer to cease practicing until an evaluation would appear to achieve that goal. DAG Warhaftig countered by arguing that the offer is essentially a preemptive surrender to avoid hearing the matter on the merits and urged the Committee to move forward with the matter. Even from a resource issue, this just permits the licensee to come back within a week or so and decide that she changed her mind. She also believed there was precedent to move forward, even if in a default proceeding.

Mr. Friedrich reiterated his argument proffered before stressing that this was a family conflict. There have not been any allegations that Dr. Lee has harmed, or for that matter placed in harms way, any patients and therefore, the Committee's rejection of his offer he believed to be incredulous. She has offered to turn in her license and will return when she has the reports he offered to provide.

DAG Warhaftig basically believed this offer created a situation where Mr. Friedrich wants to enter into a settlement offer with himself. He dictates all the terms, and Dr. Lee returns to practice when she decides she can.

There was ample notice given to the parties that the Board would hear this matter and the Chair ruled that it would proceed at this time. With the greatest respect, Mr. Friedrich expressed his opinion that the application was patently unfair only aimed at vengeance for his client. The Chair noted his objection. She requested that the parties proceed.

DAG Warhaftig opened by reminding the Committee that this was an application for Temporary Suspension based on allegations that Dr. Lee engaged in conduct that demonstrated her judgment posed an imminent danger to the public. Her conduct erupted, according to the deputy, against a 13-year old child. The case is being offered on the papers, but she believed that the Committee

would conclude at the end of the case, that Dr. Lee's actions were reprehensible and created an imminent danger to the health, safety and welfare of the citizens of New Jersey.

Mr. Friedrich in his opening statement argued that if the Committee has read the application by the Attorney General then it cannot conclude anything short of the fact that the moving papers are lacking in valid proofs. They contain, at best, certifications which attest to the fact that the Attorney General is submitting documents from various sources. Mr. Friedrich characterized the whole unfortunate incident as a family situation in which Dr. Lee is being punished by alleged actions against her medical license. The Committee, he continued, has an incomplete version of the facts. The Board, if it metes out a punishment, would be making a decision on her guilt in the criminal investigation. Respondent's hands are tied, and it has nothing to do with protecting patients or the way she treats her patients. This has been one unfortunate occurrence of a family dispute, he argued, that is void of any proof or a scintilla of evidence of any harm to patients.

DAG Warhaftig, as part of her case in chief, offered into evidence the following. She noted that the documents were marked as Exhibits A through E, P-1 through P-5 respectively.

- A/P-1 – Emerson Police Department Injury Report dated July 3, 2011 (Clark)
- B/P-2 – Emerson Police Department Incident Report dated July 3, 2100 (Mazzo)
- C/P-3 – Recorded Interview of Dr. Lee dated July 3, 2011
- D/P-4 – Emerson Police Department Incident Report dated July 3, 2011 (Lenins)
- E/P-5 – Photographs of T.K (disclosed under seal)

Mr. Friedrich objected to the introduction of these exhibits. In response, DAG Warhaftig argued that the documents offered were prepared at the time of the incident and were certified copies of official police records on file. She reminded the Committee that all documents are permitted under the hearsay objection and, even more appropriately, entered on applications for a temporary suspension. Moreover, the case relies on admissions of Dr. Lee and photographs, which the parties have stipulated are of T.K, the victim. This is standard and the general format of evidence for an Order to Show Cause according to the deputy. She also directed the Committee to the certification of Lenins (Exhibit D/P-4) which is the missing link establishing the nexus of Exhibit E/P-5 to this case.

Mr. Friedrich argued that as a prosecutor, DAG Warhaftig has an obligation to provide the complete record. He also objected to the hearsay upon hearsay that the Attorney General was trying to have admitted into evidence. He directed the Committee to Exhibit A and noted that there were not any signatures on the documents and questioned whether this was contrary to the usual practice. He then noted that the certification of O'Connell (Exhibit E) represented that the pictures were taken at the time of the arrest, yet Mr. Friedrich noted that it was dated July 12, 2011. DAG Warhaftig noted that it is a mis-characterization because that date refers to the date of transmission, not the date the pictures were taken. Mr. Friedrich viewed her response as an

attempt to manipulate the certification to meet her needs.

He further argued that while it is acknowledged that this is a terrible family incident, there is no evidence that establishes that his client caused any injuries. He also objected to the evidence insofar as the certification reached conclusions about her guilt and which make it improper to even consider. He continued to point out various mistakes about the failure to establish the proper chain of custody of the reports and information. Concerning Exhibit C, he noted that his client had cooperated throughout the investigations and further noted that no decision has been made as to the reliability or credibility of the statements made by his client. He found it difficult to defend against the statements because of the other on going investigations and court matters that are in process. He continued to raise a number of areas in which he was unable to determine the accuracy of the information contained in a document because he was not able to cross examine the drafter of the reports and/or certifications submitted.

Objecting to the introduction of the photographs, he again argued that he had no idea when, how, why, or of whom the pictures were taken. While there is some indication, although not subject to further examination, that the pictures were taken by Carol Lenins, there is no nexus that the photographs have any relationship to his client.

He posited that if you accept the documents into evidence, the Committee has deprived the doctor of the right to defend herself against the charges. There is no evidence that any patients have been, or will be, harmed by Dr. Lee. In essence, there is a lot of hearsay upon hearsay, and unreliable statements, that do nothing more than suggest, not prove, that his client caused some type of harm.

In reply, DAG Warhaftig noted that in this day of electronic transmissions, not all information necessarily comes through the traditional pathway. She argued that it was the Board's job, and within its own expertise, to assess the credibility of a document, but this does not modify the decision as to whether or not it should be admitted. The Board routinely admits documents or testimony during an application of temporary suspension without the luxury of cross examination and then assesses its credibility and gives it its proper weight in its deliberations.

She informed the Committee that she had a copy of the recording of Dr. Lee's statement to the Emerson Police Department and certified to the Committee that the transcription provided to the Committee was true and accurate. She also argued that the child told the police about her injuries and who inflicted them. Moreover, DAG Warhaftig noted that the transcript established that Dr. Lee admitted injuring T.K. during her testimony, and the certification about the photographs established the necessary nexus between the injuries and Dr. Lee. She urged the Committee to accept P-1 through P-5 into evidence.

The Chair ruled, based on the arguments of counsel, to accept P-1 through P-5 into evidence and

cautioned the members of the Committee to give the exhibits their appropriate weight in its deliberations.

Mr. Friedrich did not offer anything into evidence and again noted that he could not produce any witnesses because of the nature of the other on-going proceedings and investigations in the matter. This posed a similar problem in having his client testify. He also informed the Committee that he was unable to obtain any evidence from the Bergen County Police and/or Prosecutor's office.

In her closing, DAG Warhaftig thanked the Committee for their attention to the items offered into the record. She argued that the evidence established that Dr. Lee's continued practice posed a clear and imminent danger to the public. She recounted that in July, the doctor and TK were attending to the chores around the house. Dr. Lee instructed TK to wash the dogs' outfits AFTER the dogs were washed; however, TK washed the items out of order. With this mistake, Dr. Lee became angry because, as she told the police, "TK knew the right way to do it." The Deputy added that this wasn't the first time an incident like this occurred. In the past, when TK made a series of mistakes, Dr. Lee hit her with an open hand. In fact, three or four days prior to July 3, she hit her so hard, she thought she left a mark. On July 3rd, as she admitted in her police statement, she repeatedly stabbed TK with the metal end of a screw driver. Anger, DAG Warhaftig continued, is a disorder and anger management, or the lack thereof, is a serious problem for one practicing medicine. Moreover, she posited that all rational people would agree that no amount of anger justified the continuous stabbing of a 13-year old and even less, over not washing the dog's clothes out of a proper order. Dr. Lee admitted that she had stabbed her one other time prior to the instant incident. The Attorney General maintained that the argument that this was just a momentary lapse in judgment is specious because according to the doctor's testimony, she planned to stab TK. She had done it before, and in fact, she jabbed herself the day before to test what it felt like. Unbelievably, Dr. Lee also claimed that she didn't realize that this type of jabbing would cause injuries. While she acknowledged that TK cried and covered her head, and this is consistent with the placement of the injuries, Dr. Lee continued to stab her more than twenty times. While the doctor would like the Committee to believe that this was just one unfortunate incident, TK actually told police that it happened on at least two other occasions, the second one being after she carried dog hair onto a cleanly vacuumed carpet. The Deputy acknowledged that there has not been any report of problems in Dr. Lee's medical practice; nonetheless, she argued that Dr. Lee's continued practice represented a clear and imminent danger because it was premeditated. She thought about the stabbing before she did it. This, according to DAG Warhaftig, is illustrative that Dr. Lee cannot control her anger and poses a risk of harm to her patients. She recounted a number of cases in which the Board determined that such lapses of judgment were contrary to the practice of medicine because who knows when or where that explosive anger would result and escalate. From admitted slaps in the past, to the use of a screw driver, Dr. Lee performed irrational acts when something set her off. The public does include T.K. even if she is not her patient. Even absent a patient complaint, she asked the

Committee to conclude, based on the degree of admitted poor judgment of Dr. Lee, that her continued practice posed an imminent danger and risk to the public.

Mr. Friedrich reminded the Committee that no statement of TK has been offered into evidence and any statements about what TK said or did not say should be ignored. For this reason, he argued, the Committee does not have the full story. He posited a number of scenarios that could have happened that would explain the behavior of Dr. Lee. Under any one of them, he maintained, the Committee should reject the information that has been proffered by the AG. He stressed that there was no evaluation of TK that permits the Committee to assess the credibility of her statements and without the entire investigation and/or information, the Committee could not make an informed decision. He acknowledged that this is an unfortunate family situation, but, he believed, that at best, Dr. Lee over reacted a bit. The Committee, he further argued, owed it to his client to get the whole story before it takes away her professional career.

He countered the Attorney General's argument that Dr. Lee "could" or "might" act this way in the future or with a patient, by reminding the Committee of Dr. Lee's past history: She has treated thousands of patients and not one incident has ever been reported. He suggested that this should be used as a guide as to what "might" happen in the future and to conclude otherwise would be speculative. Mr. Friedrich urged the Committee not to look at this case in a vacuum and asked it to consider the totality of the circumstances, including her past behavior. This was one irrational moment, nothing more. Dr. Lee's actions, he concluded, do not indicate whether in the present or past that any of her patients within her practice of medicine have ever been, or will be, harmed.

Mr. Friedrich then questioned why he was not provided, or for that matter, informed about the existence of the CD/DVD video. According to him, Mr. Friedrich was led to believe that the CD was audio and this was the first he learned that it contained a video recording of the interviews with the police. He continued by arguing that this was yet another example of his inability to defend his client. In response, DAG Warhaftig addressed the lack of discovery requirements at this juncture of the case, but stressed that in spite of no requirement to do so, the Attorney General did provide all the materials, absent privilege, in her files. Additionally, she asked the Committee to take judicial notice of the medium of a CD Rohm, which also includes video recordings. DAG Warhaftig acknowledged while Mr. Friedrich may not be able to have full discovery from other sources, she has provided all the information that has been provided to her.

The Chair did admit the CD/DVD over the objection of Mr. Friedrich and reminded the members to give it its appropriate weight during deliberations.

Both parties rested. The Committee moved into closed session for deliberations and all parties, except administrative and counseling staff left the room. Returning to open session, it announced the following.

The Committee did not view, nor consider, the contents of P-3A (the CD/DVD) in the deliberations of this matter. It was further noted that counsel for the Respondent objected to its admission in light of the fact that he had not previously been provided with a copy or opportunity to view its contents. The Committee noted that the objection was moot inasmuch as the Committee did not view its contents.

THE COMMITTEE, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ATTORNEY GENERAL'S APPLICATION FOR A TEMPORARY SUSPENSION, BASED ON THE RECORD BEFORE IT, AND IN PARTICULAR, THE STATEMENTS OF THE RESPONDENT. ADDITIONALLY, THE EVIDENCE ESTABLISHED A SERIES OF STATEMENTS MADE BY OTHERS WHICH DEMONSTRATED A VIOLENT ATTACK OF A MINOR BASED ON A TRIVIAL MISTAKE WHEREBY THE ORDER OF DOING THE DOG'S LAUNDRY WAS INCORRECT AND FURTHERMORE, THAT THE ACKNOWLEDGED BEHAVIOR INVOLVED REPEATED STABBING WITH A METAL SCREWDRIVER. ALSO INTRODUCED WERE PHOTOGRAPHS WHICH DEMONSTRATED MORE THAN 100 WOUNDS FROM THE USE OF A SCREW DRIVER AND PRIOR EVIDENCE OF ASSAULT. TESTIMONY ALSO ESTABLISHED THAT DR. LEE USED THE SCREW DRIVER ON HERSELF AT LEAST THE DAY BEFORE TO ESTABLISH THE LEVEL OF HARM THAT IT WOULD CREATE. THE COMMITTEE FOUND THAT THERE HAD BEEN A DEMONSTRATION OF DR. LEE'S IMPAIRED JUDGMENT AND COGNITION SO INTENSE THAT THE COMMITTEE DID NOT HAVE THE ASSURANCE THAT THIS BEHAVIOR WOULD NOT CARRY OVER TO THE WORK PLACE. THE COMMITTEE, THEREFORE, DETERMINED THAT NO MEASURE SHORT OF A TEMPORARY SUSPENSION WOULD PROTECT THE PUBLIC BASED ON THE PALPABLE DEMONSTRATION OF IMMINENT HARM. THE COMMITTEE DIRECTED THAT THE ORDER WOULD BE EFFECTIVE AT THE CLOSE OF BUSINESS ON AUGUST 18TH TO PERMIT A WIND DOWN OF DR. LEE'S PRACTICE AND AN ORDERLY TRANSITION OF HER PATIENT POPULATION. AN ORDER MORE FULLY DETAILING THE COMMITTEE'S RECOMMENDATION WILL FOLLOW AND WILL BE PRESENTED TO THE BOARD FOR RATIFICATION, MODIFICATION OR REJECTION AT THE SEPTEMBER BOARD MEETING.

Motion made by Ms. Criss and seconded by Dr. Stanley. It carried unanimously.

This concluded the hearing.