

**FILED.**

MAY 13, 2004

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS  
EFFECTIVE**

MARCH 24, 2004

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

IN THE MATTER OF THE  
SUSPENSION OR REVOCATION OF  
THE LICENSE OF

**LALITKUMAR H. MEHTA, M.D.**  
License No. MA 40545

TO PRACTICE MEDICINE AND  
SURGERY IN THE STATE OF  
NEW JERSEY

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS

Administrative Action

ORDER CONTINUING **TEMPORARY  
SUSPENSION OF LICENSURE**

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This matter was initially heard before a Hearing Committee of the State Board of Medical Examiners on March 10, 2004, which Committee entered an Order temporarily suspending the license of respondent Lalitkumar H. Mehta to practice medicine and surgery in the State of New Jersey pending the completion of plenary proceedings in this matter (see Order Imposing Temporary Suspension of License, filed April 5, 2004, effective March 24, 2004, appended hereto and adopted. in its entirety herein). The Order of the Hearing Committee, together with the record from the hearing below, was presented to the full Board of Medical Examiners on April 14, 2004 for review, so as to afford the full Board an opportunity to determine whether to ratify, reject or modify the action taken by the Hearing Committee.

The full Board has reviewed the Order of the Committee and the record below, and unanimously votes to ratify and adopt, in its

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entirety, the Order of the Hearing Committee. The Board finds the reasoning of the Committee, outlined at length in the Committee's order, convincingly supports the Committee's conclusion, and now this Board's conclusion, that a palpable demonstration has been made that respondent's continued practice would present clear and imminent danger to the public health, safety and welfare, and the concomitant conclusion that no measure short of the temporary suspension of respondent's license would be sufficient or appropriate in this case. The license of respondent Lalitkumar H. Mehta, M.D. shall therefore continue to be temporarily suspended, pending the completion of plenary proceedings in this matter, for the reasons set forth at length in the Order of the Hearing Committee.

WHEREFORE, it is on this 12<sup>th</sup> day of May, 2004

ORDERED:

1. The Board adopts, in its entirety, the Order of its Hearing Committee filed on April 5, 2004.

2. The license of respondent Lalitkumar H. Mehta, M.D., shall continue to be temporarily suspended, pending the completion of plenary proceedings in this matter.

STATE BOARD OF MEDICAL EXAMINERS

By:



David M. Wallace, M.D.,  
President/Committee Chair

**FILED**

April 5, 2004

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

**EFFECTIVE**

March 24, 2004

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

IN THE MATTER OF THE  
SUSPENSION OR REVOCATION OF  
THE LICENSE OF

**LALITKUMAR H. MEHTA, M.D.**

License No. MA 40545

TO PRACTICE MEDICINE AND  
SURGERY IN THE STATE OF  
NEW JERSEY

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS

Administrative Action

**ORDER OF TEMPORARY  
SUSPENSION OF LICENSURE**

This matter was opened to the New Jersey State Board of Medical Examiners (the "Board") on February 25, 2004, upon the concurrent filing of an Administrative Verified Complaint with Exhibits, an Order to Show Cause, the Certification of Counsel and a letter brief seeking the emergent temporary suspension of the license of respondent Lalitkumar H. Mehta, M.D., to practice medicine and surgery in the State of New Jersey.

Within the two count Verified Complaint, the Attorney General alleges that respondent violated the Board's statutes and regulations by his offensive and sexual touching, hugging and kissing of two (2) female patients during the course of purported medical examinations.' Specifically the Attorney General alleges in Count I that during 'the course of providing medical services on

<sup>1</sup> We have granted the Attorney General's motion to protect the identity of each of the patients named in the Complaint. Said patients shall be referred to by initials only.

February 27, 2003 respondent repeatedly and for inappropriately prolonged periods of time placed his hands upon his 32 year old female patient's breasts including cupping, squeezing and grabbing of patient M.M's breasts. Further he placed his hands on her buttocks, inserted his fingers in her labia and vagina and then kissed her on her cheek while squeezing both breasts. Additionally, while he kissed her on the mouth he inserted his tongue in her mouth and his finger in her vagina.

The Verified Complaint alleges in Count II that during a medical evaluation of J.N. on April 23, 2003 respondent inserted his fingers in a 30 year old female patient's labia and vagina repeatedly and for a long period of time, placed his hands on her buttocks and anus, and repeatedly commented on the "cleanliness" of her vagina and "what a good girl" she was. Further that he hugged her three times and kissed her on the mouth while grabbing her and mumbling "one more time."

On or about March 1, 2004 respondent filed an Answer to the Verified Complaint wherein he generally denied all material allegations of sexual misconduct and admitted that he was indicted on February 18, 2004 by the Grand Jury in Hudson County which, charged him with two (2) counts of fourth (4<sup>th</sup>) degree criminal sexual contact in violation of N.J.S.A. 2C:14-3(b) regarding the two female patients who are the subjects of the allegations in this matter.

The matter was set down for hearing upon the application for temporary licensure suspension on March 10, 2004. Deputy Attorney General Alexandra Garcia appeared for complainant Attorney General of New Jersey and Zulima V. Farber, Esq., appeared for respondent. On that date the Board determined on its own motion to delegate to a Committee of Board members the authority vested in the Board by N.J.S.A. 45:1-22 to hear the application brought by the Attorney General for the temporary suspension of the license of Lalitkumar H. Mehta, M.D. Further, if the Committee should find cause to do so, to order that a temporary suspension of licensure be entered or that other authorized actions or limitations be imposed. The Board ruled that any Order of the Committee shall be effective immediately upon pronouncement, and shall have the full force and effect of an Order of the full Board. The Board further directed that following the hearing, the Committee shall prepare a written Order to the full Board detailing findings made by the Committee, which Order shall be presented to the full Board for consideration. Following review of said Order and the record before the hearing Committee, the full Board shall then adopt, modify or reject the Order of the Hearing Committee. Respondent consented to the hearing before a Board Committee and waived any right to object to the proceedings as outlined herein and agreed that the full Board would consider the matter on the papers at the April 14, 2004 Board meeting.

Complainant's application was supported by certifications from the two women, each of whom explicitly recounted within their certifications the sexual misconduct of respondent. Complainant further relied upon the certification of H.B. the husband of J.N. He attests that his wife reported to him when he came home from work the evening of the occurrence, respondent's sexually abusive examination and untoward behavior. Additionally, the State relied on a certification from Joyce Booth, Esq., the attorney representing both patients in a civil law suit, stating that the two patients named in the complaint herein are to the best of her knowledge independent and do not know each other. Further, that each retained her separately after they had made their complaints to the police and the Board. Additionally, the State provided a notarized letter by J.N. wherein she swears she does not know and has never met M.M., nor is she aware of the details of the allegations M.M. made against respondent. The record also included Joint exhibits consisting of the medical records of the victims which corroborate that the women had office visits on the dates of the alleged conduct .

Respondent did not testify before the Board, but argues through counsel that the proofs are insufficient to meet the State's heavy burden of palpably demonstrating that respondent's continued practice constitutes a clear and imminent danger to the public health, safety and welfare. He suggests that the Board deny at this

junction the relief the Attorney General is seeking and instead place restrictions on respondent's practice that would ensure the public's safety.

Respondent further relies on his good reputation in New Jersey, including medical practice since 1984 with no prior complaints. He also asserts that the indictment against him charging him with criminal sexual contact against M.M. and J.N. is based solely on the allegations of the two patients and at this point there has been no conviction. He argues that the certified statements have not been the subject of cross-examination or scrutiny and given his denial of the material allegations and lack of other evidence the Board should impose a less drastic means of ensuring patient safety. He also relies on the certifications of his medical technician, Vanessa Ramirez and his secretary Yandy Feliciano that it is respondent's general practice to leave the examining door unlocked whenever he is examining a patient. He further asserts that although M.M. claims she was deeply disturbed by the February 27, 2003 events she waited until May 13, 2003 to complain to the Enforcement Bureau and until June 1, 2003 to file a police report. Respondent questions M.M.'s credibility as she states in her certification that on the date of the occurrence she had a regularly scheduled office visit when the log book for that date lists her as a "walk in" patient.

all within the context of a purported medical examination. We believe there is sufficient detail and consistency to deem the

statements regarding conduct which took place in the span of little more than two months to be credible. At this point there has been an unrebutted showing that the patients did not know one another, and were unaware of the details of the allegations made by the other. We further considered that both women were ongoing patients of respondent and had been examined by him before. Each knew what a proper examination was and that what had occurred on the dates of the reported incident was different. We find based on the record before us at this preliminary hearing, that the conduct described by the patients, including for example a locked examination door, squeezing and grabbing of breasts, kissing on the mouth, and in one case with insertion of a tongue and while inserting a finger in the patient's vagina, were simply not part of a legitimate medical examination.

We reject respondent's argument that the statements are not credible because they were not made immediately. Indeed, in the case of J.N., her husband's certification details that she told her husband of the occurrence immediately when he came home that night and that they reported it that very evening to the authorities. In the case of M.M. we do not find at this juncture that the fact that she waited a period of time to complain impugns her credibility. We are aware that victims of sexual misconduct may need time to assimilate their feelings and to find courage to report.



We reject respondent's contention that the sworn statements of his employees contradict the victims statements. On the contrary, the employees have no independent recollection of the examinations of J.N. or M.M. and do not certify that they were present in the exam rooms or aware of whether the exam door was locked on the dates of the incidents alleged herein. His employees merely certify that it is respondent's general practice to leave the examination room doors unlocked.

Finally, we reject respondent's argument that the Board should allow him to practice subject to conditions which would protect his patients. We find that no monitoring or treatment program we could craft would adequately protect his patients from respondent's sexualized examinations.' The physician's lack of control demonstrated on this record and the very poor judgment respondent used causes us to believe that nothing short of a suspension will provide the protection patients expect and deserve. Respondent's predatory conduct runs afoul of the ethical obligation of all who are licensed to practice medicine to do no harm. Accordingly we herein order that respondent's license to practice

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<sup>2</sup> We do not deem the two week transition period ordered herein which requires respondent to have a female monitor present for all physician/patient encounters, as adequate safeguard beyond that time period. It is put in place as a short term measure only as a convenience to current patients in order to effectuate an orderly transfer of their care.

medicine and surgery in the State of New Jersey shall be temporarily suspended pending the conclusion of plenary proceedings.

**WHEREFORE**, it is on this 5th day of April 2004

**ORDERED** effective immediately upon its announcement on the public record on March 10, 2004,

1. The license of respondent Lalitkumar H. Mehta, M.D., to practice medicine and surgery in the State of New Jersey is hereby temporarily suspended, pending the completion of Board review of plenary proceedings in this matter before the Office of Administrative Law.

2. The temporary suspension is to become effective two (2) weeks from the March 10, 2004 oral announcement of this Order on the record - that is, on March 24, 2004.

3. In order to permit an orderly transfer of patient care, on March 10, 2004 the Committee orally ordered that during the two (2) week transition period the following protections were to be put *in place*:

a. Respondent was to see no new patients nor was he to accept any new patients into his practice.

b. A female monitor was to be present at all times during any physician/patient encounter. The monitor was required to be a health care

professional licensed by the New Jersey Division of Consumer Affairs. The monitor, who could be an employee of respondent, was required to sign the medical record to serve as an attestation that she/he was in the room with the patient at all times during any physician/patient encounter.

- 4. Respondent shall comply with the directives applicable to disciplined licensees.

STATE BOARD OF MEDICAL EXAMINERS

By:   
 David M. Wallace, M.D.,  
 President/Committee Chair

**EVIDENCE LIST**

- J-1 Medical Record maintained by Respondent for M.M.
- 5-2 Medical Record maintained by Respondent for J.N.
- 3-3 Court Action-Dismissal without prejudice State v. LALITKUMAR H. MEHTA, M.D., Union City, New Jersey dated 2/17/04
- P-1 Sworn Statement of M.M. dated March 13, 2003
- P-2 Union City Police Department Investigation Report dated June 1, 2003
- P-3 Sworn Statement of J.N. dated March 23, 2003
- P-4 Sworn Statement of M.B. (husband of J.N.) dated 5/23/03
- P-5 Union City Police Department Investigation Report dated April 23, 2003
- P-6 Certification of Joyce Booth, Esq., dated March 9, 2002
- P-7 Certification of Alexandra Garcia, DAG dated March 9, 2004
- P-8 Certified Letter from J.N. dated March 4, 2004
- D-1 Page from patient log book retained by Respondent dated Thursday, February 27, 2003
- D-2 Transcript of Dismissal, Union City Municipal Court, State of New Jersey v. Lalitkumar H. Mehta, M.D., dated July 10, 2003
- D-3 Certification of Vanessa Ramirez dated March 8, 2004
- D-4 Certification of Yany Feliciano dated March 8, 2004

**DIRECTIVES APPLICABLE TO ANY MEMCAL BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED**

**APPROVED BY THE BOARD ON MAY 10, 2000**

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

**1. Document Return and Agency Notification**

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license **has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take** affirmative action to stop advertisements by which **his/her eligibility** to practice is represented. The licensee must **also take** steps to remove **his/her name** from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group **practice title, it** shall be deleted. Prescription pads bearing the **licensee's** name shall be destroyed. A destruction report form obtained from **the** Office of Drug Control (973-504-6558) **must be filed. If no** other licensee is providing **services** at the location, **all** medications **must** be removed and returned to the manufacturer, if possible, **destroyed or** safeguarded. (In situations where a license has been **suspended for less** than one year, prescription pads and medications **need not** be destroyed but must be **secured in a locked place for** safekeeping.)

### 3. **Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies**

A licensee shall not charge, receive or **share** in any **fee** for professional services **rendered** by **him/herself** or others while barred from **engaging** in the professional **practice. The licensee may be compensated for the reasonable value** of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation **organized to engage** in the **professional** practice, whose license is revoked, surrendered or suspended for a **term of one (1) year or more** shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company **organized** pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation **forwarded** to the Secretary of State, Commercial Reporting Division, demonstrating that **the interest has** been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must **be dissolved within** 90 days of the licensee's disqualification.

### 4. **Medical Records**

**If, as a result of the Board's** action, a practice is **closed** or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising **where** records may **be** obtained. The **message** should inform patients of the names and telephone numbers of **the licensee** (or his/her attorney) assuming custody of the records. The same information **shall also be** disseminated by means of a notice to be published at least once per month **for three (3) months in a newspaper of**

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

## **5. Probation/Monitoring Conditions**

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

**NJ License #** \_\_\_\_\_

**ADDENDUM**

Any licensee who is *the* subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it ~~is~~ entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here *is* necessary for the Board to fulfill its reporting obligations:

Social Security Number': \_\_\_\_\_

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

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List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:

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Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

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<sup>1</sup> Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board *is* required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.



**NOTICE OF REPORTING PRACTICES OF BOARD  
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 80.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.

STATE OF NEW JERSEY  
DIVISION OF CONSUMER AFFAIRS

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

*MEMORANDUM*

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**TO:** Board Members

**FROM:** Hearing Committee  
Drs. Rokosz and Wallace  
Also attending D.A.G. Debra Levine and Executive Director Roeder

**DATE:** April 12, 2004

**RE:** Report of Hearing Committee

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MEHTA, Lalitkumar H., M.D. (License #MA 40545)  
(LEVINE, Debra W., Counseling D.A.G.)  
FARBER, Zulima V., Esq. for Respondent  
GARCIA, Alexandra, D.A.G. for Complainant

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Both parties waived any right to object to having this matter heard before a committee of the Board.

D.A.G. Garcia requested that the records in this matter be sealed until redacted copies could be provided for the public record. The Committee instructed the court reporter to only record initials even if there were an inadvertent mention of the patient's name.

The Attorney General reminded *the* Committee that it was seeking the temporary suspension of Dr. Mehta's license based on the allegations of the Verified Complaint which was filed on February 25, 2004 following Dr. Mehta's indictment on two counts of criminal sexual contact. The indictment **was** based on allegations of two patients, M.M. and J.N., that Dr. Mehta improperly touched ~~them~~ during their physical exam. D.A.G. Garcia believed that based on *the* evidence to be submitted that Dr. Mehta posed a clear and imminent danger to *the* safety of *the* citizens of New Jersey and therefore, his licensed to practice medicine should be temporarily suspended pending a plenary hearing in this matter.

Ms. Farber, in her opening statement, reminded the Committee that the Attorney General must meet a high burden in sustaining its burden in this application for a temporary suspension. She argued that the Committee must perform a balancing act between protecting the public against the right of a licensee to practice and *earn* a living. She submitted, however, that the Attorney General could not meet its burden in this case because there would not be *my* findings of fact that would prove that Dr. Mehta posed an imminent danger to his patients. Ms. Farber further argued that the Attorney General would rely on statements of the alleged victims, however, the evidence relied upon by the Attorney General is simply three ways of saying the same thing. She continued by pointing out that the Attorney General could have brought the witnesses forward at this hearing to provide Dr. Mehta with an opportunity to cross examine and have the Committee judge their credibility. The statements, in and of themselves, do not meet the heavy burden which the State must prove and she argued that they have little to no probative value. For example, Ms. Farber reminded the Committee members that one of the witnesses kept silent for a number of months. Allegedly the incidents occurred early in the morning, yet she did not tell anyone about it until later that night. Ms. Farber opined that it was incredulous for one to keep silent all day about such a traumatic incident. She urged the Committee, based on the evidence that would be presented, to reject the Attorney General's application for a temporary suspension of Dr. Mehta's license.

D.A.G. Garcia entered the following documents into evidence.

J-1 A copy of MM patient record.

J-2 A copy of JN patient record.

P-1 The certified statement of MM to the Enforcement Bureau dated May 13, 2003.

P-2 The certified copy of a police report made by MM dated June 2003.

Ms. Farber objected stating that Dr. Mehta was not stipulating to the content of any of the Attorney General's exhibits. The Committee noted the on-going objection on the record.

P-3 The certified statement of JN to the Enforcement Bureau dated May 2003.

P-4 The certified statement of MB (husband to JN) to the Enforcement Bureau dated May 2003.

P-5 The certified copy of the police report made by JN on April 23, 2003.

P-6 The certification of Ms. Booth, Esquire dated March 9, 2004.

P-7 The certification of D.A.G. Garcia attesting to Ms. Booth's signature by facsimile.

Ms. Farber entered the following exhibits into evidence.

In rebuttal, Ms. Garcia referred the Committee to J.N.'s statement in which she certifies that she does not know M.N. She believed that this issue was a red herring as there was not a scintilla of evidence to support Ms. Farber's claims that J.N. and M.N. know one another and are in collusion as it related to the allegations at issue in this case.

D.A.G. Garcia reminded the Committee that Dr. Mehta was indicted on February 11, 2004 based on allegations of two witnesses. J.N. and M.N.'s visits to Dr. Mehta are supported in the patient records. She continued by directing the Committee's attention to M.N.'s statement in which she describes the touching of her breasts for a prolonged period of time. She also stated how he palpitated and cupped her breasts from behind when he had her lay down. Dr. Mehta then, according to her statement, put his hand down her pants and once again, cupped her breasts. M.N. continues by certifying that he attempted to kiss her and place his tongue into her mouth. While Ms. Farber makes a point about the delay in M.N.'s reporting, the Attorney General submitted that what is important is that it was reported, not when. D.A.G. Garcia also noted the inconsistencies between M.N.'s statement to the police and to the Enforcement Bureau as another reason the Committee should afford significant weight to the statements made by her.

Again, directing the Committee's attention to the patient record, D.A.G. Garcia noted that J.N. was seen by Dr. Mehta in May 2003 as a follow-up for a urinary tract infection. According to her statement, she was ushered to an examination room, Dr. Mehta locked the door, proceeded to put gloves on, inserted his fingers into her vagina, pulled her panties down further, and continued to insert his fingers into her vagina. J.N. also certified that Dr. Mehta commented about the cleanliness of her genital area. J.N. continued by explaining that while they were going over her test results, Dr. Mehta attempted to hug her, put his arm around her and attempted to kiss her on more than one occasion, including attempting to place his tongue in her mouth.

D.A.G. Garcia also commented on the fact that the statements provided by Ms. Farber whereby employees claim the door always remains open. She posited that neither of these employees have any recollection of being present on the days in which M.N. or J.N. were examined. As such, she urged the Committee to reject any probative value in either statement as they are irrelevant.

In closing, D.A.G. Garcia requested that the Committee grant the Attorney General's application for the temporary suspension of Dr. Mehta's license. She posited that this was the appropriate remedy in this case in light of the egregious behavior of Dr. Mehta. Based on all the evidence before the Committee, the Attorney General argued that it has met its burden of proof that Dr. Mehta poses a clear and imminent danger to the health, safety and welfare of the citizens of New Jersey.

Ms. Farber suggested that the Committee concentrate on the delay in which the Attorney General has proceeded. If Dr. Mehta posed such an imminent risk to his patients, why did it delay close to one year to file this application. In the intervening time, she continued, the Attorney General has not learned anything new. The Attorney General's delay also impacted the ability for Dr. Mehta to mount a defense. For example, Ms. Farber argued, had the employees been asked about the doctor's practice closer in time to the events rather than months later, their recollection may have been different.

Additionally, she questioned why J.N. waited months before coming forward or complaining to anyone about the alleged incident. Ms. Farber argued that this was an important factor in

deciding whether at this juncture, the Committee should accept as true her allegations. The Committee has not had the opportunity to judge her credibility and in light of the delay, that credibility should be seriously questioned. She also asked the Committee to reject the Attorney General's argument that the indictment was another indicia that these events happened. According to Ms. Farber, the indictment is only evidence that information was presented, not that any determinations were made as to the truthfulness of those statements.

Again, Ms. Farber stressed the fact that the witnesses were not present and neither the defense, nor the Committee, could cross examine them or make a credibility determination. She also questioned why the Attorney General did not present all the evidence. For example, MN referenced a taped conversation, yet no copy of that transcription has been provided. She continued by arguing that the evidence presented is subjective, unfair and incomplete.

Ms. Farber concluded by asking the Committee to reject the Attorney General's application. She also requested that if the Committee had any concerns about Dr. Mehta's practice, it could put in place less onerous restrictions, such as a chaperone, to assure that his patients would be protected. In any event, Ms. Farber did not believe that the Attorney General sustained its burden of proof that Dr. Mehta posed an imminent danger to the public.

The Committee, upon motion made and seconded, voted to go into Executive Session for deliberations and advice of counsel. All parties, except counseling staff, left the room.

The Committee returned to open session and announced the following motion.

**THE COMMITTEE, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ATTORNEY GENERAL'S APPLICATION FOR A TEMPORARY SUSPENSION PENDING A PLENARY HEARING IN THE MATTER OF DR. MEHTA INsofar AS DR. MEHTA'S CONTINUED PRACTICE POSES A CLEAR AND IMMINENT DANGER TO THE PUBLIC. THE SUSPENSION WILL BE EFFECTIVE WITHIN TWO WEEKS TO PERMIT THE ORDERLY TRANSFER OF DR. MEHTA'S PATIENTS. DURING THIS TWO-WEEK TRANSITION, DR. MEHTA IS NOT PERMITTED TO SEE ANY NEW PATIENTS AND ANYTIME HE PERFORMS AN EXAMINATION OF ANY PATIENT, HE MUST HAVE A LICENSED HEALTH-CARE PROFESSIONAL PRESENT WHO WILL SIGN THE PATIENT RECORD TO INDICATE THAT (S)HE WAS PRESENT DURING THE ENTIRE EXAMINATION. AN ORDER DETAILING THE COMMITTEE'S REASONING WILL FOLLOW.**

The Committee's decision will be placed on next month's Board agenda for the Board to adopt, modify or reject the decision. The matter will be decided on the papers.

Ms. Farber requested a stay of the Committee's decision until the Board considers the matter at its April meeting. The Attorney General opposed this motion. The Committee denied Ms. Farber's request.