

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 1
DISCIPLINARY MATTERS PENDING CONCLUSION - MARCH 10, 2010

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, March 10, 2010 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. Mendelowitz, Chairperson for Open Disciplinary Matters.

PRESENT

Board Members Baker, Berkowitz, Ciechanowski, Criss, DeGregorio, Howard, Jordan, Lambert, Lomazow, Mendelowitz, Paul, Scott, Stanley, Tedeschi and Walsh.

EXCUSED

Board Members Cheema, Iannuzzi, Rajput, and Weiss.

ALSO PRESENT

Acting Attorney General Joyce, Senior Deputy Attorneys General Dick, Flanzman, and Gelber, Deputy Attorneys General Ehrenkrantz, Hafner, Krier, Levine, Puteska, Ringler, Silva, Warhaftig, and Executive Director Roeder.

RATIFICATION OF MINUTES

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO
APPROVE THE MINUTES FROM THE JANUARY 13, 2010 BOARD MEETING.**

HEARINGS, PLEAS, AND APPEARANCES

1. **LAHIRI, Swapnadip MD 25MA06313700**
GORRELL, Joseph Esq. for the Respondent
GELBER, Joan S.D.A.G., Prosecuting
DICK, Sandra S.D.A.G., Counseling_____

Administrative Law Judge Barry E. Moscovitz' decision in this matter was rendered on or about December 24, 2009. Oral argument and final decision making in this matter was scheduled before the Board on March 10, 2010 at 10 a.m. or as soon thereafter as the matter may be heard.

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

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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.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MOVE INTO OPEN SESSION AND BEGAN THE HEARING.

Dr. Jordan reviewed the contours of the proceedings and the attorneys put their appearances on the record.

Beginning his oral argument, Mr. Gorrell referred the Board to the voluminous record that it had before it and asked the Board to concentrate on the care provided to the patient LM. While the ALJ spent many pages on the testimony, the ALJ never specifically made findings in each case, but rather made summarily findings on the record as a whole. On an individual basis, the case does not support the summary findings. LM was previously treated by a chiropractor and was referred to Dr. Lahiri for examination and testing. In 2004, LM consistently complained of lower back pain and neck pain. After Dr. Lahiri's examination, he did not perform any electronic diagnostic testing. This behavior illustrates that his pattern of practice did not include unnecessary testing or fraudulent ordering of tests for his own profit. In this case, as well as others, he did not perform the electro diagnostic testing. Subsequently, it was the orthopedists that found radiation down the leg, numbness, tingling and he prescribed an MRI. He then referred the patient back to Dr. Lahiri and it was the orthopedist that wrote the prescription for the electro diagnostic testing. Dr. Lahiri saw the patient, confirmed the complaints found by the orthopedist and performed the testing. His findings were consistent with the orthopedist. Dr. Lahiri, according to Mr. Gorrell, could not be criticized for the treatment of this patient and certainly did not violate any tenants of good practice. While the ALJ criticized Dr. Lahiri, for inadequate documentation, he did not find that he engaged in willful or knowing conduct. In fact, Mr. Gorrell argued, that the judge found the complete opposite. During the eight days of testimony, the one independent individual that assessed his conduct and credibility, namely the ALJ, made specific findings that any misconduct of Dr. Lahiri were not willful or knowingly done.

DAG Gelber argued that the matter involved a complaint filed for Dr. Lahiri's engagement of serious misconduct of his examination of patients and his performance of electro diagnostic testing. The complaint was then amended based on violations alleged by New York which included unnecessary testing, which was also part of the New York case, which ultimately struck his name from the records. This essentially is a revocation in New York. Supported by expert testimony, the judge properly concluded, she continued, that Dr. Lahiri's practice of medicine posed a danger to his patients. For example, he scored the tests in such a way that it presented information that was not necessarily what was happening with the patient. He also manually moved portions of the testing devices to create abnormal results. DAG Gelber also argued that the two experts found inadequate testing and misinterpretation of data. The ALJ found the

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expert testimony persuasive and based his findings on the Attorney General's expert testimony, not the defense. In almost every case, Dr. Lahiri tested the same four muscles, regardless of the patient or the presenting condition. The same was true for the upper nerve conduction testing. In many ways, it was "cookie cutter" medicine. This all led to inflated billings, improper testing, and inadequate patient care. Turning the Board's attention to the LM case, she noted that in the referral letter, the orthopedist noted the negative findings which somehow Dr. Lahiri, as part of his consultation, just followed what the orthopedist found. The expert testimony noted that this is never the job of the referred physician who is to perform his/her own, independent examination. She also asked the Board to remember that the post hearing brief submitted by the Respondent is not really helpful in arguing exceptions because it was already submitted to the judge, who rejected those arguments in writing the initial decision. She urged the Board to find that the doctor, given his age and experience, willfully and knowingly performed this inadequate testing for his own gain.

In response, Mr. Gorrell rebutted with asking the Board to consider that Dr. Lahiri's license in New York, while it is true he did not contest the allegations, was surrendered by consent agreement. As the Board is well aware, there are a multitude of reasons why a doctor would be willing to settle a case through a consent agreement, which did not necessarily include any admissions.

Mr. Gorrell also reminded the Board that the State's expert, Dr. Carmickle, works for the insurance industry and argued that she has not performed many of the tests for a number of years, almost twelve. Her testimony should be viewed against that context.

While Mr. Gorrell tried to discredit Dr. Carmickle's testimony, DAG Gelber outlined her qualifications and referenced the appropriateness of her testimony. In particular, DAG Gelber informed the Board that she is Board certified and is more than capable to review the records and make a determination that this testing was inappropriate. The second expert for the State reached a similar conclusion and the two experts reviewed this information independent of one another.

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

The Board returning to Open Session, announced the following decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ADOPT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH ONE MODIFICATION. BASED ON THE TOTALITY OF DEFICIENCIES IN HIS PRACTICE IT STRAINS CREDULITY TO CONCLUDE THAT THE CONDUCT WAS SOLELY THE PRODUCT OF INCOMPETENCE AND THEREFORE MODIFIES THE FINDINGS RECOMMENDED AND CONCLUDES THAT THE ACTIONS OF DR. LAHIRI WERE PERFORMED AS A RESULT OF WILLFUL

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AND INTENTIONAL MISCONDUCT.

Motion made by Dr. Paul and seconded by Dr. Scott. It carried unanimously.

The Board then began its mitigation hearing. Mr. Gorrell called Dr. Lahiri, who was sworn in. At the onset, Dr. Lahiri outlined his medical education and training, including his CME activities. On an annual basis, he took course work at Columbia where he attended lectures and had practical experience with patients. In addition, he received written materials which he referred to often. This occurred from 2005 to the last time he practiced. The doctor testified that he never performed a test that he knew was not needed. He would not do that because it was not in the best interest of the patients and was unnecessary. It was his practice that he would examine the patient and then determine what test were necessary. He has never been involved in any malpractice cases.

Dr. Lahiri described his own medical condition insofar as he is a diabetic and has suffered a Jones fracture. He has consulted with a number of doctors and they have not approved him for surgery. They are reluctant to perform the surgery because of his diabetes and the surgery is risky, without guarantees that it will address the issue. He is not able to practice until after the fracture has resolved itself. At present, he is on disability. He asked the Board to recognize that he did make some mistakes. Primarily, he admitted that he should have supervised his technician better. He asked the Board to realize that he never had any intention to commit fraud or do anything untoward.

On cross examination, he admitted that he failed part I of the Board certification. He also acknowledged that he reviewed the work product of his technician and he had an opportunity to see the errors that were on the results.

No other witnesses were offered.

Mr. Gorrell, in his closing, noted that while the Attorney General has suggested that six cases were representative of his practice, there is no evidence to support that. These cases were selected by Dr. Carmickle, who later testified as an expert, and were not selected as random. The cases selected, according to Mr. Gorrell, were identified and specifically selected. He saw no reason why the Board needed to take any action against his license as he was prohibited from practicing based on his disability.

DAG Gelber argued that these cases were selective of his overall practice and there is evidence that pre-dated and post dated these cases that demonstrate that this is the way that he practiced. He basically had a "cookie cutter" practice and he did not present any testimony that demonstrated or even suggested that they were an aberration of the way that he practiced. She reminded the Board that the judge assessed costs, and as itemized, \$114,284.00 and reimbursement of payments made to all the carriers, which was just over \$5,000. An aggregate penalty of \$85,000 was assessed by the judge, however, DAG Gelber asked the Board to assess a

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penalty for each violation for a total of \$263,000. An additional sanction of a revocation is proper based on the findings of facts and for the double risk posed to the patients.

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

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

Returning to open session, the Board announced the following decision.

THE BOARD, UPON MOTION MADE AND SECONDED, FOLLOWING CONSIDERATION OF THE ENTIRE RECORD HAS MODIFIED THE RECOMMENDATIONS OF THE ALJ AND VOTED TO REVOKE DR. LAHIRI'S LICENSE IMMEDIATELY AND ASSESS A PENALTY IN \$85,000 (\$10,000 FOR THE FIRST PATIENT AND \$15,000 FOR THE VIOLATIONS FOUND FOR THE ADDITIONAL FIVE) AND COSTS IN THE AMOUNT OF \$114,284 IN ATTORNEYS FEES; EXPERT FEES (\$21,382) AND TRANSCRIPT COSTS (\$4,638.66) FEES. HE WOULD HAVE TO APPEAR BEFORE A COMMITTEE OF THE BOARD TO DEMONSTRATE HIS COMPETENCY TO PRACTICE AFTER A CPEP EVALUATION AND COMPLY WITH ANY RECOMMENDATIONS AND COMPLETE COURSES IN ETHICS, RECORD KEEPING AND CODING COURSES. DR. LAHIRI SHALL PAY RESTITUTION AS DOCUMENTED BY THE STATE WITHIN FIFTEEN DAYS AND HE WILL HAVE TEN DAYS TO SUBMIT A RESPONSE THERETO.

Motion made by Dr. Lomazow and seconded by Dr. Paul. The vote was unanimous.

2. **HAKIMI, Farid , DPM 25MD00241000**
PUTESKA,David D.A.G.,Prosecuting
FLANZMAN, Steven D.A.G., Counseling

On or about February 10, 2010, the Attorney General moved before the Board for an order enforcing litigants rights as contained in the May 10, 2006 and March 20, 2009 Board Orders. Specifically, the Attorney General moved for the immediate suspension of Dr. Hakimi's license to practice Podiatry in the State of New Jersey. This matter was to be heard by the Board on March 10, 2010 although the parties agreed to a settlement in the matter and therefore, the hearing was not needed.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT A SETTLEMENT OFFER WHICH INCLUDED DR. HAKIMI'S VOLUNTARY SURRENDER OF LICENSURE WHICH WILL PRECLUDE HIM ANY

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PRACTICE OF PODIATRY PENDING A PLENARY HEARING AT THE OFFICE OF THE ADMINISTRATIVE LAW. UPON THE FILING OF RESPONDENT'S ANSWER, THE MATTER WILL BE TRANSFERRED TO THE OAL.

3. **LIONETTI, Anthony L., MD 25MA04444800**
METZLER, Laurent W., Esq. for the Respondent
DICK, Sandra D.A.G., Counseling
SILVA, Carla D.A.G., Prosecuting

A Motion for Summary Judgement was filed in this matter on December 21, 2007. Rather than proceed with the hearing on January 9, 2008, the Respondent entered an Interim Consent Order where he agreed to cease and desist from the practice of medicine pending disposition of his criminal convictions at issue. The convictions and sentence have since been affirmed. The Attorney General renewed the application for Summary Decision in this matter. The matter was to be heard on March 10, 2010, although the matter was adjourned because Dr. Lionetti is no longer represented by his counsel and effective service had not effectuated. This matter was postponed for two months

4. **CORWIN , David MD 25MA04336100**
KEATING, Michael Esq., for the Respondent
FLANZMAN, Steven D.A.G., Counseling
SILVA, Carla D.A.G., Prosecuting

The Attorney General filed a Motion for Summary Decision in this matter on or about January 21, 2010. This matter was scheduled to be heard by the Board on March 10, 2010.

Dr. Mendelowitz recused from discussion and vote in this matter.

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 began the hearing and Dr. Jordan outlined the procedures to be followed. DAG Silva and Mr. Riveles placed their appearances on the record. Beginning her opening argument, DAG Silva asked the Board to consider that this case is one in which Dr. Corwin was convicted of molesting a patient during a medical evaluation. He touched the patient, that it was unwanted and was determined to be offensive. This is a crime of moral turpitude and violates the Board's sexual misconduct rule and sexual harassment. The Attorney General relied on the exhibits attached to her motion. She submitted a redacted copy of a page

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where the patient's initials have been redacted. Her counsel consented to the admission of the exhibits as evidence.

The facts, according to DAG Silva, are simple: Dr. Corwin was found guilty of a disorderly offense of harassment and improper touching. He has appealed the judgment of conviction and this has been affirmed. The facts are not disputed and there is no genuine issue of material facts. While Dr. Corwin claims that he is innocent and is entitled to a hearing, his argument is misguided as there have been finding of facts made at both the municipal trial court and affirmed on appeal. Her co counsel has stipulated to the admission of the Appeal Court's decision. Again, she noted for the Board that the findings of fact are articulated in that decision and summary judgment in this case was appropriate. She read portions of the record from the Superior Court and the highlighted facts in the Appellate Court's decision, including the findings of credibility of the witness. The Court also found that his touching was sexual in nature and that the patient was alarmed by it. He used his position as a psychiatrist, according to DAG Silva, for his misconduct and seeking sexual contact. Through this multiple level of review, Dr. Corwin has received his due process rights and the case is ripe for entry of liability against the licensee. Based on his conviction and the findings of fact, Dr. Corwin committed offensive touching and committed sexual misconduct against his patient.

Mr. Riveles asked the Board to consider that Dr. Corwin has consistently denied that he improperly touched his patient. He also reminded the Board that recently the appellate court issued an order that he believed supported the position that summary judgment is not proper in this case. He also asked the Board to realize that there are statements, which the prosecutor failed to turn over, contradicted the testimony of the witness at trial. Because this is a case that rests on credibility, Mr. Riveles argued that the Board should make an independent assessment of the credibility of the witness. Continuing, he argued that to grant a piece meal decision, that is, grant partial judgment at this forum and refer the remaining issues to the Office of Administrative Law. He suggested that summary decision in this case is totally improper.

DAG Silva distinguished *In Re Ragi* which was a pre-trial conference without any hearings and with limited admissions on the record. In this case, Dr. Corwin had multiple opportunities to exercise his due process rights. He was able to confront his witnesses and the matter has had a series of appeals. There are transcripts which this Board has been provided and it can review the findings of fact determined within different forums.

In further rebuttal, Mr. Riveles again believed that the guidance offered by *In re Ragi* mitigated against any granting of a summary judgment motion.

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

Returning to open, the Board announced its decision.

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The Board was prepared to settle this matter based on a Consent Order with a finding of liability based on his conviction of offensive touching and this relates adversely to the practice of medicine. In entering the order, the Board was aware that he denies the allegations and there are not admissions of guilt beyond the fact of his conviction.

BASED THEREON, THE BOARD, UPON MOTION MADE AND SECONDED, SUSPENDED HIS LICENSE FOR A PERIOD OF ONE YEAR, THE ENTIRETY OF WHICH SHALL BE STAYED SUBJECT TO THE FOLLOWING CONDITIONS. HE SHALL ONLY TREAT FEMALE PATIENTS WITH A BOARD APPROVED CHAPERONE PRESENT UNTIL SUCH TIME, BUT NO LATER THAN NINETY DAYS, AS HE SUBMITS TO AN EVALUATION BY PETERS INSTITUTE OR ANOTHER BOARD APPROVED ENTITY. HE WILL HAVE TEN DAYS TO OBTAIN THE BOARD APPROVED CHAPERONE. THE BOARD RESERVED THE RIGHT TO FURTHER LIMIT HIS PRACTICE BASED ON THE FINDINGS OF THE EVALUATING ENTITY. HE SHALL SUCCESSFULLY COMPLETE BOUNDARY AND ETHICS COURSES WITHIN ONE YEAR; AND HE WAS ASSESSED COSTS IN THE AMOUNT OF \$16,000. THE ORDER ALSO CONTAINS AN AUTOMATIC PROVISION OF SUSPENSION IN THE EVENT THE LICENSEE VIOLATES ANY TERM OR CONDITION OF THE ORDER.

Motion made by Mr. Walsh and seconded by Ms. DeGregorio. It passed unanimously.

Dr. Corwin was sworn in and acknowledged under oath that he understood the terms of the Consent Order.

The Attorney General opposed the entry of this settlement as it was not viewed as protective of the Public. The findings of fact do not support such a light sanction. The case involved a serious patient group and he abused his position of authority and thereby undermines the practice of medicine. Furthermore, the case was ripe for summary decision as the trial court has heard the evidence and the appellate court has affirmed its findings multiple times. It was a departure from the Board's prior cases and the Attorney General asked the Board to reconsider its decision to enter into this settlement Consent Order.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE REQUEST TO RECONSIDER ITS DECISION.

The Motion was made by Mr. Walsh and seconded by DeGregorio. It carried unanimously.

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IV. OLD BUSINESS

HOWELL, Clifton, MD 25MA04693000
GIAQUINTO, Daniel Esq., for the Respondent
LEVINE, Debra D.A.G. Counseling
EHRENKRANTZ, Kay D.A.G. Prosecuting

An Order to Show Cause, Notice of Hearing, Notice to File an Answer and an Administrative Complaint were filed with the Board of Medical Examiners (the "Board") by the Attorney General on December 3, 2010. Dr. Howell's response was received January 4, 2010. The Board scheduled oral argument in the matter for January 13, 2010 but the matter was adjourned. The matter was then scheduled to be heard by a Committee of the Board on February 25, 2010. The parties reached an interim resolution which is embodied in the Consent Order. The Board was asked to ratify, reject or modify the Order entered by the Hearing Committee.

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

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RATIFY
THE COMMITTEE'S DECISION.**

Dr. Jordan made the motion which was seconded by Ms. Criss. The motion carried unanimously.

V. NEW BUSINESS

Nothing Scheduled.

VI. OFF AGENDA

BRADLEY, Earl MD 25MA04750500

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RATIFY
THE BOARD PRESIDENT'S DECISION TO ENTER THE ORDER FILED ON
DR. EARL BRADLEY SEEKING HIS IMMEDIATE SUSPENSION.**

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Dr. Jordan made the motion which was seconded by Dr. Lambert. The motion carried unanimously.

Respectfully submitted,

Paul Jordan, MD Chairperson
For Open Disciplinary Minutes

WVR/dt/br