

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 1
DISCIPLINARY MATTERS PENDING CONCLUSION -JULY 13, 2011

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, July 13, 2011 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 Paul Jordan, M.D., Board President.

PRESENT

Board Members Berkowitz, Cheema, Ciechanowski, Criss, DeGregorio, Howard, Jordan, Krauss, Lambert, Lomazow, Paul, Rajput, Scott, Stanley, Tedeschi, and Walsh.

EXCUSED

Board Members Baker, Iannuzzi, and Weiss.

ALSO PRESENT

Assistant Attorney General Joyce, Senior Deputy Attorney General Dick, Deputy Attorneys General Warhaftig, Flanzman, Hafner, Silva, Puteska and Ehrenkrantz.

RATIFICATION OF MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE MINUTES FROM THE JUNE 8, 2011 BOARD MEETING.

HEARINGS

GELFAND, Aaron A. MD, 25MA06290200
DAG Jeri Warhaftig, Prosecuting

An Order to Show Cause, Notice of Hearing and Notice to File Answer were filed by the Attorney General on or about July 7, 2011. This matter was scheduled to be heard by the Board on July 13, 2011 at 1:00 p.m., although the matter was settled and the Respondent signed an Order of Temporary Suspension of his license to practice medicine and surgery in the State of New Jersey prior to the meeting. The Consent Order was before the Board for ratification, modification or rejection of the terms approved by the Board President.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RATIFY THE ACCEPTANCE OF THE VOLUNTARY SUSPENSION OF DR. GELFAND'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY, EFFECTIVE ON JULY 13, 2011.

The Motion made by Mr. Walsh was seconded by Ms. Criss, and it carried unanimously.

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LOCATELLI, Sam M.D. 25MA04783200
Michael J. Keating Esq. For Respondent
DAG Carla Silva, Prosecuting

The Respondent in this matter entered a stipulation rendering this matter an uncontested case. Oral argument on the issue of penalty in this matter was heard by the Board on July 13, 2011.

Attorneys Silva and Keating placed their appearances on the record.

Ms. Criss placed on the record that she served on the same medical staff with Dr. Locatelli for many years, although she has not seen him in a number of years. There were no objections raised by either party, and she continued to participate in the hearing.

Mr. Keating also noted for the record that he served as a Hearing Officer for the summary suspension hearing in this matter at Newark Beth Israel. Mr. Keating did not believe that it would impact his ability to adequately represent his client. He further noted on the record that at the time, he was not a voting member of the committee and was serving as a legal advisor for both parties. He did not represent any party who had an adverse interest to Dr. Locatelli. Dr. Locatelli acknowledged that he waived any issue of a conflict and requested that Mr. Keating continue with his representation. The Attorney General did not object to his continued participation, although DAG Silva asked that Dr. Locatelli place on the record his consent to the waiver as required by the Rules of Court.

The Attorney General then presented her case, and P-1 through P-12 were introduced into evidence. After Respondent stipulated to them, the Board entered them into evidence.

DAG Silva requested that the Respondent be placed on the stand so that he could acknowledge his consent to the facts to which his attorney stipulated. Mr. Keating did not believe that was necessary because of his representations that the doctor stipulated to the allegations. Nonetheless, during a *voir dire* by Mr. Keating, Dr. Locatelli admitted on the record the allegations in the complaint. Upon cross examination, he also admitted that he was not truthful in providing a CDS certificate which was not current and making the representation that it was. Moreover, he admitted on the record that he altered the certificate's expiration date to give the impression that it was current.

The Board determined that a basis existed for liability to be imposed and, therefore, it moved to the penalty phase and heard oral argument in mitigation.

Mr. Keating opened by asking the Board to recall that Dr. Locatelli had a stellar record prior to this incident. At the time, he continued, Dr. Locatelli was undergoing a significant number of personal problems that became overwhelming and which led to a series of events that impacted his life and his judgement. His decision, clouded by these events, was unprofessional and out of character Mr. Keating argued. He asked that the Board listen with an open mind and try to

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understand what was happening in the Respondent's life. Dr. Locatelli admitted that he let his license lapse and that, indeed, he faxed an altered certificate to the medical staff at the hospital. Mr. Keating believed that the Board would understand that the circumstances would explain why he did it, and he asked the Board to waive any disciplinary action against him. Mr. Keating reminded the Board that any time out of practice would present a significant hardship to Dr. Locatelli and that even a minimum of three or six months out of practice would have a chilling effect on his professional practice. Prior to the hearing, he submitted the financial information as required by the Board and asked that this information be considered in a sanction if the Board determined one was warranted.

DAG Silva reminded the Board that the Respondent was asked to provide a current, valid CDS registration certificate and that he acknowledged that he sent an altered version. When given the opportunity to tell the truth to the Panel, DAG Silva continued, he vehemently maintained he thought it was valid and continued to misrepresent his actions. While he has made those admissions today, his failure to acknowledge these actions prior to this hearing were indications of his continued attempt to deceive and misrepresent the truth. At each instance in the process, he was afforded an opportunity to tell the truth, yet at each juncture, he failed to proffer any truthful understanding of what really happened. Furthermore, she argued, the continued unprofessional behavior was so egregious that it merited a significant period of active down time.

Mr. Keating called his client to testify, and Dr. Locatelli explained to the Board that since approximately August 2009, he has been employed by a small practice group. He gave the Board some background information on his career path since residency. He talked about his personal life and in particular, the difficult diagnosis and hospitalization of his 6-year old son. He felt that he needed to leave his prior busy practice in order to help his family. He did try to be a solo practitioner, but that proved difficult as well. He recalled that in or about August 2007, he had an opportunity to begin working at Newark Beth Israel. Over these years, he also experienced a number of financial problems and had taken on the responsibilities of additional payments relating to family obligations. Overall, he believed that some of his son's personal medical problems were his fault and his sense of guilt began to cloud his judgment. Overall, he went from a private practice to working as a hospitalist. He was forced to sell his home in 2008 in order to cover expenses. His parents then moved in with him and stayed with him the first couple of years that he had been divorced. After he sold the house, he couldn't keep them with him and they, in spite of a number of health related issues, had to move by themselves. Thereafter, his problems continued and Dr. Locatelli recalled that the hospital let him go because of a reduction in staff due to down-sizing issues. Unfortunately, the termination was immediate. He worked for a period of time providing some surgical services, but that only lasted a few months. Eventually, he did find a job working forty hours a week, which he continues to hold.

He again acknowledged that he altered the CDS certificate when he did not have a valid registration. He further acknowledged that this was inappropriate and that he sent a copy to

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Newark Beth Israel, recognizing that it was improper and unprofessional. He also noted that this was the first time there was such a lapse of judgment and asked the Board to take that into consideration.

According to his testimony, Dr. Locatelli opined that in the event he were to lose his license, he believed that he would lose any financial stability that he is attempting to achieve. He posited that he may have to file bankruptcy. He has been paying his bills, but he struggles from pay check to pay check. He does have a state and federal tax liability, which he also is attempting to negotiate and pay down.

Dr. Locatelli understood that the purpose of the hearing was to determine the penalty that he would receive. He asked the Board to show leniency and understanding. He noted that it took him ten months to find a job, that he is 57 years of age and that he could not stop working as it would potentially end his career. He already exhausted all contacts in his attempts to find work in 2008 and 2009. Any length of an active period would bring him down professionally and personally, as he is still liable for child support and all the expenses of his children. Without an income, there would be consequences to innocent people. He only asked that he be permitted to continue to work so that he could support his children to the best of his ability.

On cross examination, he acknowledged that Newark Beth Israel suspended his privileges based on the altered certificate around March 2009. He further testified that he appeared before a committee at the hospital and that the suspension was upheld. When he appeared before the Panel, he acknowledged that even after being shown the altered certificate, he continued to maintain that it was valid and that he was currently registered. He admitted that while it was wrong, he was desperate and feared losing his livelihood and its impact with all the financial obligations he had at the time.

DAG Silva presented two certifications of costs. Mr. Keating did not object, and the Board accepted them into evidence.

Mr. Keating, in his closing comments, noted that over the past thirty years he has been practicing law, and that he has been representing doctors for a great deal of his career. In all that time, he noted, that he never represented one that truly has presented such mitigating circumstances. He asked the Board to take into consideration that there were personal circumstances that became so overwhelming that it clouded Dr. Locatelli's judgment. The Respondent, he continued, has so many financial issues that any active period of suspension would cripple the doctor both professionally and personally. In fact, he posited that it could end his medical career. The doctor acknowledged his mistake, and the Board was requested to put all of the circumstances into context. Mr. Keating asked that this mistake not be the death knell to a career and personal life that already has faced a number of obstacles.

DAG Silva, in contrast, asked that the Board sanction Dr. Locatelli, even amidst all the difficult and stressful times that he has faced. She noted that the doctor had admitted to a number of

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misrepresentations and a number of failures to be truthful. She maintained that Dr. Locatelli has always acted in a manner to be self serving and to protect his own interests. Contrary to the assertion of Mr. Keating, this was not a sole act. It was a series of acts that demonstrated a lack of candor and truthfulness.

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

The motion was made by Dr. Berkowitz and seconded by Dr. Stanely. It carried unanimously.

Returning to Open Session, the Board announced the following decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO IMPOSE A TWO YEAR SUSPENSION, TWO MONTHS ACTIVE, WITH THE REMAINING TIME TO BE SERVED AS A PERIOD OF PROBATION. ANY VIOLATION OF THE TERMS OF HIS PROBATION WOULD RESULT IN A RESUMPTION OF THE ACTIVE PERIOD. HE ALSO WAS ASSESSED A \$5,000 PENALTY AND \$5,100 IN COSTS AND THE REQUIREMENT TO SUCCESSFULLY COMPLETE A PRE-APPROVED ETHICS COURSE. THIS ORDER WAS EFFECTIVE 30 DAYS AFTER FILING.

The motion was made by Mr. Walsh and seconded by Dr. Jordan. It carried 12 in the affirmative and two in opposition.

MUNSIF, Anand N. MD 25MA05136700
DAG Doreen Hafner, Prosecuting

The Attorney General moved before the Board an Order Enforcing Litigant's Rights based upon the Respondent's failure to satisfy the conditions necessary for his continued licensure under a Board Order dated November 12, 2010. This matter was heard by the Board on July 13, 2011.

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

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

Returning to Open Session, the Board began the hearing.

The Attorney General at the onset noted for the record that in the past, given the confidential nature of many of the allegations, she afforded Dr. Munsif the courtesies of proceeding by simply using his initials. However, she continued, because Dr. Munsif has written a number of

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letters to governmental agencies, he has put the issues out in the public arena and any confidentiality protection that was afforded Dr. Munsif is no longer needed, as he put it into the public domain.

DAG Hafner opened her case in chief by arguing that the matter before the Board was simple: Dr. Munsif had not done what the Board ordered and, therefore, the Attorney General brought this proceeding to enforce the terms of the Order in order to protect the public. The Board afforded him more than sufficient time to comply with the Board's terms. She outlined the basis (i.e., his lack of medical experience and the psychological profile offered during the hearing) to grant the Temporary Suspension. The Board's Order clearly outlined the Board's rationale for the imposition of such evaluations. Since that time, Dr. Munsif has not even indicated that he has scheduled such evaluations. Additionally, his behavior in the interim has only further demonstrated the need for such evaluations.

The Attorney General introduced – P-1, the Board Order compelling the evaluations. Dr. Munsif objected based on his argument that the Order was improperly entered because the Board did not conduct a full hearing on the matter. The Chair overruled his objection and accepted it into evidence. Pre marked P-2 Certification of W.V.Roeder and, finally, P-3 Correspondence of Dr. Munsif were proffered. Hearing no further objections, the materials were moved into evidence.

Dr. Munsif argued that this is just another attempt of the Attorney General to keep him from putting food on his table and keeping him from earning a living. He recounted his difficulties with UMDNJ and argued that in spite of his stellar work, he maintained that it was a conspiracy all along to keep him from practicing. He introduced R-1, -2 and -3. The Attorney General objected to the Star Ledger Article (R-2) as being irrelevant. Dr. Munsif argued that the article was relevant as it demonstrated in part how the attack on his ability to practice was unfounded and baseless. When he began to have problems, he went out of state and practiced elsewhere. He recalled that sometime in 2006, he attempted to be reinstated and it was then that the Specialty Board reported him to the New Jersey State Board of Medical Examiners.

Dr. Munsif explained that he did not comply with the Board's Order because he did not believe that the Order was proper inasmuch as the Attorney General's case has no merit and in some ways, the Attorney General has prevented him from doing so. He believed that he has been attempting to comply since 2008 and no matter what he does, the Attorney General brings another case to attempt to discredit his efforts.

DAG Hafner again noted for the Board that Dr. Munsif has not complied and, in fact, in his own words, admitted that he has failed to complete the requirements of the Order.

In response, Dr. Munsif argued that he does not need any evaluation of his medical acumen because he has performed more procedures than most. He urged the Board to tell the Attorney General's office to cease hindering his attempt to be a practitioner. He also asked that the Board take notice that he is not in need of any psychological examination because the assessment

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performed by Dr. Fernandez was not comprehensive and was flawed.

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

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

Returning to Open Session, the Board announced the following decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO INDEFINITELY SUSPEND DR. MUNSIF'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY UNTIL SUCH TIME AS HE COMPLIES WITH THE TERMS OF THE BOARD'S ORDER.

OLD BUSINESS

Nothing Scheduled

NEW BUSINESS

Nothing Scheduled

Respectfully submitted,

Paul Jordan M.D.,
Board President

WVR/dt/br