

I. ROLL CALL

PRESENT

Board Members Angrist, Berkowitz, Carniol, DeLuca, Haidri, Kubiel, Maffei, Miller, Parikh, Scott and Shah.

EXCUSED

Board Members Lopez, Metzger, McGrath and Rao.

ABSENT

ALSO PRESENT

Assistant Attorney General Joyce, Senior Deputy Attorneys General Dick, Flanzman and Gelber, Deputy Attorney's General Cordoma, Hafner, Palan, Puteska and William V. Roeder, Executive Director of the Medical Board, Robert Petronglo, Assistant to the Executive Director.

II. RATIFICATION OF MINUTES

The Minutes from the March 8, 2017 Board meeting are submitted for Board approval, amendment, or correction.

THE BOARD, AFTER A MOTION FROM DR. BERKOWITZ AND SECOND FROM DR. ANGRIST, MOVED THE MINUTES.

III. HEARINGS, PLEAS AND APPEARANCE

**10:00 AM ENRICO, Anthony, Jr., D.P.M.
25MD00172300, Complaint #108866
Steve L. Bennet, Esquire for Respondent
Delia A. DeLisi, DAG for the Attorney General**

Tobey Palan, DAG, Counseling

The Attorney General filed an Order to Show Cause, Verified Complaint and supporting Documents seeking the Temporary Suspension of Dr. Enrico's license to practice podiatry. It is alleged in the Verified Complaint, among other things, that Dr. Enrico's continued over prescribing and inappropriately prescribing narcotics; his failure to properly monitor his Patients; his maintaining incomplete medical records; his prescribing outside his scope of practice and his failure to refer his patients to specialists presents an imminent danger to the citizens of New Jersey.

Dr. Shah outlined the history of the matter before the Board as well as the events leading to the hearing which revolve around his lack of compliance with previous Board orders. As a matter of procedure, Dr. Shah asked if there were any members who would need to be recused. With no recusals, the hearing proceeded. Before her opening statement, DAG DeLisi told the Board there was one pre-hearing motion, orally amend a complaint from the PMP report ran by the Attorney General.

DAG DeLisi opened for the Attorney General arguing there is clear and imminent danger in the continued practice based on a review of patient files by the Attorney General's office with focus on prescribing of narcotics, particularly as a podiatrist. Upon further review, DAG DeLisi argued that Dr. Enrico was prescribing outside the scope of practice of a podiatrist.

DAG DeLisi discussed patient RK who had an extensive debridement and had to have a toe removed after an infection developed. The Attorney General argued that Dr. Enrico's records were also incomplete as PMP reports show prescriptions were being filled while care wasn't being rendered. Dr. Enrico 'wears the hat' of a physician without the training and skills of one she told the Board. DAG DeLisi also told the Board that he wasn't using the PMP and patient records do not include notations as to why dosages and medications changed.

DAG DeLisi told the Board the Attorney General was seeking a plenary hearing before an OAL judge.

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Mr. Steve Bennet for the respondent first thanked the Board for their time. Mr. Bennet reminded the Board the burden the state had in bringing this matter to the Board. Mr. Bennet told the Board that Dr. Enrico will be tasked with defending himself but the sole job of the Board today is to identify whether his practicing of podiatry presents an imminent danger to health, safety and welfare of the public. Mr. Bennet explained that Dr. Enrico has looked forward to speaking directly to his peers and hoped that among them, the treatment of his patient's problems will be seen as "positive" and not "dangerous".

Mr. Bennet added that the doctor, as a matter of compliance with the Board, has an ethics course and has developed new prescribing methods and procedures. He has taken previous actions of the Board very seriously including completing the continuing education requirements.

An important consequence of the January 2016 Consent Order was a monthly report sent to the Board by way of an approved monitor. Mr. Bennet argued the because of these monthly reports, the Attorney General will also find it difficult to prove imminent danger as there is no negative information included.

Concluding his opening statement, Mr. Bennet told the Board that the Attorney General selected 7 patient records to review among thousands and they are perhaps the patients with the worst diagnosis. Making a determination on less than 1% of Dr. Enrico's patient universe is hardly a complete finding and the drugs prescribed were related to conditions below the knee well within the scope of practice as a podiatrist. Whether documented or not, and it's clear there is a record keeping issue, Dr. Enrico is improving his practice.

DAG DeLisi had no witnesses for the State however she did have documents for submission to evidence.

After entering the documents PA to PCC (which included patient records and pharmacy records) into evidence, the State ceased.

Mr. Bennet asked Dr. Enrico to speak to the Board and he was sworn in for direct examination.

Starting off with some biographical information, Dr. Enrico told the Board he went NY College of Podiatric Medicine and has been practice since 1987. In the last four years he's likely had 20,000 to 25,000 patient interaction with roughly 8,000 to 10,000 unique charts. Of course, he told the Board, not every patient gets pain

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medication. In addressing the allegations relating to CDS prescribing, he told the Board that he doesn't prescribe to just anyone and does so on need. While, from time to time, he does encounter drug seekers, he told the Board he refuses to engage and treat.

Dr. Enrico explained that he very rarely prescribes oxycodon and only to patients who, at a minimum would indicate a 7 or more on the 10 level pain scale. Before prescribing, he told the Board he completes a physical examination and assessment of the patient which includes a review the patient's medical history. Prior to issuing the script, Dr. Enrico explained to that he also discusses the risks and and potential for dependencies.

Dr. Enrico told the Board the 7 patients reviewed by the Attorney General's office were some of his worst pain cases. Many of his patients work in jobs that require extended periods of time on their feet and he would prescribe pain medication to help them get through their day to day activities.

Moving to patient RK, Dr. Enrico tried to explain to the members of the Board why he prescribed sleeping aides. RK's conditions included severe diabetes in conjunction with multiple issues with feet, leading to painful ulcerations. RK was seen on a weekly basis and, because he has no insurance, Dr. Enrico sees him free of charge. RK is over 300 pounds and suffers from diabetes related severe neuropathy. Dr. Enrico prescribed to improve quality of life and he told the Board there were never any indications of diversion. While Dr. Enrico did refer RK to a pain management doctor, RK was not treated because of his draining chronic ulcer in a bandage.

Other physicians would not accept RK, Dr. Enrico opined, because he didn't have the cash upfront for a co-pay. Dr. Enrico believes his treatment is the reason RK still can walk and while he very seriously contemplated suicide, treatment helped him cope with his condition. In November, 2014, Dr. Enrico referred the patient for surgery. A picture of RK's foot was accepted into evidence as R-4. Because of the "cage rage", a "symptom" of the recovery from the surgery which included a cage to enclose a foot as it heals, he provided sleeping aides to the patient.

By December, 2014 Dr. Enrico was still draining the un-healing ulcer that, left untreated, would have likely ended in an amputation due to the bacteria growing in the wound. Dr. Enrico acknowledged to the Board that he is no hero but throughout the years of treatment, he was only trying to improve the quality of life. Had he had any evidence of diversion, he would have stopped prescribing, not just

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to RK, but to any of his pain management patients. Currently, RK is in a nursing home in north jersey and still gets ulcers.

Patient NB, whose treatment started sometime in 2012 or 2013, initially came to Dr. Enrico and was being treated with an ulceration on the stomp of his amputated leg from a car accident. Dr. Enrico first tried to drain it and keep it clean. In addition to treatment, he prescribed Percocet and at no point did NB exhibit behavior consistent with drug diversion. In 2015, however, NB came to Dr. Enrico and requested more medication. When Dr. Enrico denied the request, NB got physical with one of the members of his office staff. This was the last time NB was seen by Dr. Enrico and his was referred to a pain management specialist. This is an instance when he referred out because of potential abuse. When a dependency issue arose, he was asked to leave.

Dr. Enrico explained to the Board that all of the patients being discussed are similar in that they were all assessed for pain and potential abuse. He acknowledged that his record keeping had several flaws and he is working to improve those issues, following specific directions from the record keeping course mandated by the Board. Following the CME courses, including successful completion of Prim~E, he has taken steps to dramatically change his practice. Mr. Bennet entered into evidence R-1 which is the compliance plan worked out with Frier Levitt which includes a Prescriber/Prescribing manual.

The compliance plan was slowly implemented toward the end of last year and fully entered into in February of 2017. Other than changes enumerated in the manual, when he took a CME course he really became aware of the opioid problem and became much more conservative and prescribing has gone down 60-70%.

Mr. Bennet entered into evidence R-3 Letter by Russell McIntyre and an essay he wrote in order to complete the course. In this course he learned that doctors are held to a higher standard in their communities.

Speaking to the allegation that many of the patients have similar diagnoses, Dr. Enrico told the Board that many of the patient problems are similar since there aren't many conditions that would permit pain medication, especially in the limited scope of a pod.

Dr. Enrico told the Board he is genuinely a good, compassionate doctor who serves many who have little or nothing, to pay because he cares about his patients.

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Contrary to the Attorney General's Complaint, he would never put his patients in harm's way.

On cross examination, Dr. Enrico was first asked about his New York license, which is currently expired. Dr. Enrico explained he was, to his knowledge, under any sort of investigation in New York and was never disciplined. Dr. Enrico also told the Board he is Board Certified in Wound Care but not podiatry.

Upon request by DAG DeLisi to elaborate further on his claim that the patients being treated with pain medications were on their feet all day for work, Dr. Enrico told the Board RK was unemployed and a patient for 12 years and was on disability the entire time of treatment; ME was on disability the whole time; KC was a Teacher's Assistant; SC was an electrical contractor; LE was a laborer at Shoprite in Elizabeth. DE-Corrections officers. Dr. Enrico noted that he wasn't sure if that information is in their patient records. He reiterated to the Board that after his record keeping course at the end of last year, he made significant changes to his practice.

RK was a patient of Dr. Enrico for 12 years but the doctor only submitted 5 year's worth of records. Dr. Enrico told the Board that while the investigator was in the office, she only requested the EMR and requested the remaining portion of the record. Similar to RK, all other patient records that were submitted for review to the Attorney General's Office, were from 2012 and on. 2012 was the year in which his office began using EMR.

Returning to RK, Dr. Enrico, referencing the medical records, saw him on July 5, 2013, and not again until September 12, 2013 because the patient went on vacation with family. In June 2013, he had a debridement with two follow-up appointments through July 5, 2013. Again, there was an extended gap in care from September, 2014 to March, 2015 though there were prescriptions written. In December, 2014, Dr. Enrico acknowledged that while he has no note in the record, a script was written for Xanax and he confirmed it was in his handwriting.

In RK's medical record, Dr. Enrico notes the patient was being prescribed Lexapro and Celebrex by his general physician. Because he would treat RK for matters relating to his foot, Dr. Enrico never felt the need to refer out. The doctor told the Board he think it's appropriate to provide hypnotics on an occasional basis, maybe 5 to 6 times a year or as needed because he believes he has the training to prescribe such drugs. Though it is not noted in the medical record, Dr. Enrico told the Board that he advised RK of the risks associated with opioid drugs. Dr. Enrico also

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reiterated to the Board that there was never any indication of diversion. Moving forward, however, as a part of the new compliance manual developed with his attorney, he began using the PMP and pain management contracts.

Regarding NB, the time he was belligerent was the last time he was there. Prior to that incident, no belligerent or negative behavior was demonstrated over the course of his treatment. When he began demanding stronger medication and was referred out, Dr. Enrico referred him to Dr. Wayne Caputo and it was first time he was NB was referred to these physicians.

Dr. Enrico spoke to the course work taken last year as a part of the Consent Order and explained that the ethics class taught by Russell McIntyre was the most influential and inspiring course he's ever taken and really was the catalyst that lead him to overhaul his prescribing. As a result of the course, if he felt the patient truly needed it, he now tries a low dose opioid or high dose anti-inflammatory. Retrospectively, he wishes he prescribed differently but promised this will never happen again. His evaluation has changed, his initial prescribing changed and the threshold which triggers consideration for prescribing has been raised.

Dr. Enrico then told the Board that he hasn't had the opportunity to fully implement the compliance manual because it was fully entered on February 6, 2017 and the new Complaint that has kept him out of practice came on February 7, 2017.

On re-direct, Dr. Enrico reminded the Board he did not have a reputation of as a pill mill and narcotics were prescribed on a case by case basis prior to the courses he took.

THE BOARD, UPON MOTION BY DR. RAO AND SECOND BY DR. BERKOWITZ, BEGAN A 30 MINUTE COMFORT BREAK.

AT 2:15 P.M., THE BOARD RETURNED TO OPEN SESSION AND MEMBERS OF THE BOARD BEGAN BY ASKING DR. ENRICO QUESTIONS REGARDING HIS TESTIMONY.

Dr. Scott took issue with the prescribing methods and mixing of agents because of their potential for increasing other health risks. Dr. Enrico didn't have a response to Dr. Scott's comment.

In closing for the respondent Mr. Bennet thanked Board members for their time and reminded the Board that they were here to decide if the Attorney General palpably demonstrated Dr. Enrico's continued practice is a danger to the health,

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safety and welfare of the public. The doctor was treating patients while allowing them to recover at their own pace with a quality of life. The doctor has made changes which he hopes represent an evolution of his practice to address societal changes relating to the larger pain medication prescribing crisis in the State.

Closing for the Attorney General, DAG DeLisi told the Board that while all 7 patient files represented gross over prescribing, failure to taper, failure to transition off, failure to enter into a pain management contract, failure to use the PMP and a potential engagement of practice outside the scope of a podiatrist. DAG DeLisi argued the frequent prescription of Xanax shows bad judgment and prescribing without evaluations is not good medicine. Citing the expert report, Dr. Enrico's refusal to refer out patients, may have worsened patient healing. Continuing to cite the expert report regarding KC and SC, there was also no drug monitoring with the exception of KC who was found to have been on CDS in July 2014.

The Attorney General was concerned that it took a remediation course for Dr. Enrico to realize his poor prescribing habits and the Attorney General believes the evidence submitted palpably demonstrates immediate danger to health, safety and welfare of the public.

Upon motion by Ms. Kubiak and second by Dr. Scott, the Board went into closed session for deliberation and advice of counsel; both parties and members of the public left room.

Returning to public session, the Board announced its determination.

THE BOARD FOUND THE ATTORNEY GENERAL'S EVIDENCE SUBMISSIONS OF PHARMACY AND MEDICAL RECORDS AS WELL AS DR. ENRICO'S OWN TESTIMONY MET THE STATUTORY REQUIREMENTS TO PALPABLY PROVE THAT DR. ENRICO'S CONTINUED PRACTICE IS AN IMMINENT DANGER TO THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC. THE BOARD FOUND THE GROSSLY PRESCRIBED ANALGESICS, FAILURE TO PROPERLY EVALUATE AND FURTHER MONITOR PATIENTS TO BE GROSS DEVIATIONS FROM THE PRACTICE OF MEDICINE WITH NO REMEDIAL MEASURE AVAILABLE WITH THE EXCEPTION OF A TEMPORARY SUSPENSION.

MOTIONED BY DR. ANGRIST AND SECOND BY DR. BERKOWITZ. THE MOTION CARRIED UNANIMOUSLY.

IV. OLD BUSINESS

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**BOAMAH, Kwaku O, M.D.
25MA06448200, Complaint #90793
Svetlana Ros, Esquire for Respondent
Joan D. Gelber, SDAG for the Attorney General
Sandra Y. Dick, SDAG, Counseling**

Attached is the Attorney General's Cost Application and Dr. Baomah's response thereto. The matter is being considered on the papers.

THE BOARD, AFTER A MOTION BY MS. KUBIEL AND SECOND BY DR. BERKOWITZ VOTED TO EXTEND THE WIND DOWN PERIOD TO 90 DAYS AND ADJUST THE COST TO \$23,050.

V. NEW BUSINESS

No new business discussed.