

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 1
DISCIPLINARY MATTERS PENDING CONCLUSION - MARCH 14, 2012

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, March 14, 2012 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, Ciechanowski, DeGregorio, Jordan, Krauss, Lomazow, Maffei, Paul, Rajput, Rock, Stanley and Tedeschi.

EXCUSED

Board Members Baker, Cheema, Criss, Howard, Mendelowitz, Scott, Walsh and Weiss.

ALSO PRESENT

David Puteska, Assistant Deputy Director, Division of Consumer Affairs; Assistant Attorney General Joyce, Deputy Attorney's General Dick, Ehrenkrantz, Levine, Goulding and Warhaftig; Executive Director William V. Roeder.

RATIFICATION OF MINUTES

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO
APPROVE THE MINUTES FROM THE FEBRUARY 8, 2012 BOARD MEETING.**

HEARINGS, PLEAS AND APPEARANCES

1. **ACKERMAN, Cheryl 25MA006069100**
Arthur J. Timmins, Esq. For the Respondent
DAG Megan Goulding, Prosecuting
DAG Debra Levine, Counseling

Counsel for Dr. Ackerman requested a Hearing pursuant to paragraph seven of the Order of Automatic Suspension dated February 21, 2012, in order to challenge the suspension of Respondent's license to practice medicine and surgery in the State of New Jersey. The hearing was limited to presentations, testimony and argument concerning the information the Board received on Respondent's noncompliance with the Private Letter Agreement (PLA) entered on or about October 24, 2011. Respondent had the right to apply for removal of the automatic suspension on five days notice. The hearing was limited to her showing that the information received by the Board regarding her violation of the Private Letter Agreement was materially false.

The attorneys placed their appearances on the record.

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Dr. Paul mentioned that she had worked with Respondent's counsel, but did not believe that it would affect her ability to be impartial in the matter.

Dr. Lomazow mentioned that he knew Mr. Timmins many years ago but did not feel it would affect his ability to hear the matter impartially.

There were no objections.

Board member DeGregorio was recused in the matter and left the table and did not participate.

**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. Paul and seconded by Dr. Berkowitz and the vote was unanimous.

All parties (including Ms. DeGregorio) except counseling and administrative staff, left the room.

Returning to Open Session the Board resumed the hearing.

Mr. Timmins opened by detailing Dr. Ackerman's work history as a physician for the last 26 years. Salient points included that she is on the staff of St. Barnabas, Clara Maas and Mountainside hospitals. She also has a private practice. As evidence of her fitness to practice, she has undergone psychiatric and psychological testing during the later part of 2011 and into 2012. Dr. Baxter wrote a letter dated February 14, 2012 to say she was non-complaint, but as Mr. Timmins argued, it said nothing about how she was non-compliant only that she had difficulty finding her way to the appointment with him. The letter, Mr. Timmins continued, only details that she failed to show up because she encountered a detour and lost her way. The only basis for the Order, he concluded, is this "no show" appointment. The PLA was entered into back in October and it was three and half months later that the Board was first notified of any issues concerning her compliance with its terms. He posited that the record was devoid of any evidence of warning or precautions informing her that she was not being compliant. Mr. Timmins asked the Board to realize that his client went to see Dr. Baxter for a routine visit and at that time, there was no discussion of non compliance. The letter notes that he was to discuss something that occurred at Mountainside, however, there is no reference as to what this incident was. He also argued that while the PAP claims reports were not forthcoming, he assured the Board that he has copies of reports from those performing the evaluations and sessions required by the terms of the PLA. He acknowledged that the reports may not have been timely received, but this was the fault of the evaluators, not Dr. Ackerman. The one report, he added, does not mention additional dates in which she saw the psychiatrist. For all these reasons, he asked the Board to find that the act of the PAP, and ultimately the Board, was somewhat harsh. Dr. Ackerman, according to Mr. Timmins, was attempting to comply with the PLA and had no pre warnings that she was not compliant.

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DAG Goulding noted that the burden was on Dr. Ackerman to demonstrate that the information upon which the Board relied was materially false. She provided the history of the matter to the Board. She argued that the PAP notified the Board at the time that it discovered she was non-compliant. In spite of a number of reminders, she continued to disregard her obligations under the terms of the PLA. The PLA, according to DAG Goulding, provided for her immediate suspension based on the noncompliance.

Mr. Timmins offered into evidence the following: Dr. Ackerman's CV, letters dated February 21, 2012 and March 12, 2012 from her treating psychologist, Dr. Susswein. These reports were objected to by the Attorney General because they were received and obtained following the entry of the Order; two reports from Dr. Farber dated July 7, 2011 and February 22, 2012. The Attorney General put a global objection on the record that was continuing on any reports post the entry of the Order. The Board accepted the reports and receipt of appointments and would afford the appropriate weight.

The following is the remainder of evidence entered by Mr. Timmins: Receipt for payment from Dr. Gray dated February 28, 2012; Lab results from Dr. Ackerman's physical examination dated February 28, 2012; CME credits and meetings attended; a February 23, 2012 letter from Dr. Baxter to Respondent and a March 8, 2012 letter from Mr. Timmins to Dr. Baxter regarding Respondent. The Board accepted all that was offered into evidence and it was marked by the Court Reporter.

Mr. Timmins called Dr. Ackerman, who was sworn in, as his first witness. Dr. Ackerman testified that she has been practicing medicine for 25 years, primarily in Dermatology. She is Board certified in dermatology and is on staff at St. Barnabas and Clara Maas. She has taken courses in practice management, although she did not get Board approval on the courses.

Turning her attention to Dr. Baxter's letter of February 14th, she recalled that she was asked to come down to see him and en route she encountered a detour and she arrived very late to the appointment. She discussed the progress she was making and she did recall a discussion about Mountainside Hospital. She was adamant that Dr. Baxter told her everything was fine. The only discussion that she recalled about Mountainside was simply a question about how things were going. She had no particulars about that subject and Dr. Ackerman did not receive any warnings or any indications that anything was wrong. She did acknowledge that Dr. Baxter asked about some letters from her evaluators, but she informed him that she asked that the letters be sent. She did not understand why he didn't get them. She again stressed that he led her to believe that everything was fine.

Although Dr. Susswein reported that he saw her on a number of dates, according to Dr. Ackerman, his letter was incomplete and did not include all the dates that she saw him. She thinks that she saw him three or four times a month. In his report of March 12, 2012, he noted that he saw her only when her schedule allowed. She denied this and claimed that she was always available.

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She believed that she was compliant and that she asked for letters and reports to be sent to the PAP, and she doesn't know why they weren't. Dr. Baxter told her everything was fine. Before she knew it, she was suspended.

On cross examination, Dr. Ackerman acknowledged that she was not currently undergoing any independent psychiatric evaluations. She also acknowledged that she had not produced a report from Dr. Latimer. Dr. Ackerman attempted to explain this away by claiming that he told her that he was too busy to send a report to Dr. Baxter. She again stressed that she saw Dr. Susswein about three or four times a month and when pressed, she acknowledged that the Private Letter Agreement required sessions to be at least on a weekly basis.

DAG Goulding called Dr. Baxter. After being sworn in, he reminded the Board that he is the Executive Medical Director for the Professional Assistance Program (PAP), which protects the public safety, by identifying, diagnosing and setting treatment programs for physicians with impairments.

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

The Motion was made and seconded and the vote was unanimous.

All parties (including Ms. DeGregorio), except counseling and administrative staff, left the room.

While in Closed Session, it continued with the hearing as it related to Health Related testimony and evidence. When this part of the hearing was concluded, the Board returned to Open Session and resumed the hearing in public session.

Dr. Ackerman addressed the Board and informed it that she was cooperative with the PAP. The letters were sent to the law offices of Brach Eichler and according to Dr. Ackerman she thought that they were sent. She informed Dr. Baxter of this and maintained that the PAP told her that she was doing okay. Dr. Baxter never told her that she wasn't compliant. She asked the Board to believe that at all times she was attempting to comply with the terms of her agreement with the Board and that the evaluators made her compliance difficult insofar as they weren't available for appointments and/or failed to send in the required reports to the PAP.

In closing, Mr. Timmins argued that the only thing that caused the Board to issue its Order of suspension was a letter from Dr. Baxter. He pointed out that there were no letters of warning and that according to Dr. Ackerman, she consistently was informed that she was compliant. He maintained that even when pressed, Dr. Baxter only, in a conclusionary way, stated that she was not compliant. Dr. Baxter, according to Mr. Timmins, was not specific or detailed in his report but simply made a broad-based accusation without any factual support to back it up, with the

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only detail related to Dr. Ackerman being lost. While Dr. Baxter would have the Board believe this is significant, she was lost simply because of a detour encountered on her way to the meeting. He submitted that there was sufficient evidence before the Board to demonstrate her compliance and that the Board's reliance on Dr. Baxter's broad-based assertion was, at best, misplaced.

DAG Goulding closed by reminding the Board that the burden was on Dr. Ackerman to demonstrate that the Board's reliance on the information which caused her to be suspended was materially false. To the contrary, she continued, that the overwhelming evidence and testimony from Dr. Baxter demonstrated that she was not compliant. Dr. Farber's, the Respondent's treating physician, own letter acknowledged that she was non compliant. He saw her twice over the course of nine months. All other evaluations submitted were performed after the Order of Suspension and were irrelevant and not to be considered by the Board. She urged the Board to uphold the Order of Suspension and deny the Respondent's request.

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

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

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

The Board returned to Closed session for advice of counsel and deliberations following the hearing. It announced the following in Open Session.

After the Hearing, but before a Board determination, Dr. Ackerman, through her attorney, withdrew her opposition to the Order and asked to appear before a Committee of the Board to petition for reinstatement of her license. Withdrawing Respondent's objections to the entry of Order, the Board agreed to schedule Dr. Ackerman at the first available PEC meeting (e.g., 3/28, 4/25, or 5/14) in order for Dr. Ackerman to petition for reinstatement. At that time, she must show compliance with the PAP, as well as Dr. Grey's recommendations and those recommendations of her treating therapists. She must also demonstrate fitness to safely practice.

Dr. Ackerman acknowledged on the record that she understood that she was withdrawing her objection to the suspension that was ordered based on her non compliance with the Private Letter Agreement and that she was being afforded an opportunity to seek reinstatement of her license in lieu thereof.

2. I/M/O MARTINO, Rocco M.D. 25MA07493100
DAG Doreen A. Hafner, Prosecuting

On January 11, 2011, Respondent entered into an Interim Consent Order which suspended his medical license pending disposition of criminal charges and further order of the Board. By way

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of background to the basis of the Order, on or about January 3, 2012, Respondent pled guilty before Hon. William H. Walls to a one count of Information charging him with knowingly receiving and distributing child pornography.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT THE SURRENDER TO BE DEEMED A REVOCATION OF DR. MARTINO'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY EFFECTIVE MARCH 15, 2012.

IV. OLD BUSINESS

Nothing Scheduled.

V. New Business

Nothing Scheduled

Respectfully Submitted,

Paul T. Jordan, M.D.
Board President

WVR/dt/br