

**State Board of Medical Examiners
Open Disciplinary Minutes
June 13, 2007**

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, June 13, 2007 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 Karen Criss, R.N., C.N.M., Chairperson for Open Disciplinary matters.

PRESENT

Board Members Cheema, Ciechanowski, Clemency Kohler, Criscito, Criss, Jordan, Lambert, Lomazow, Mendelowitz, Nussbaum, Paul, Reichman, Salas-Lopez, Scott, Stanley, Strand, Walsh, Weiss and Wheeler.

EXCUSED

Board Members DeGregorio and Haddad.

ABSENT

ALSO PRESENT

Senior Deputy Attorney General Dick, Deputy Attorneys General Ehrenkrantz, Gelber, Jespersen, Levine, Warhaftig, and Executive Director Roeder and Education Director Blanks.

RATIFICATION OF MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE MAY 9, 2007 OPEN MINUTES FOR THE DISCIPLINARY MATTERS PENDING CONCLUSION.

HEARINGS, PLEAS, RETURN DATES, APPEARANCES

10:00 A.M. NIELSEN, Steven C., D.P.M. 25MD2408
GOLDSMITH, Lee, Esq. For Respondent
JESPERSEN, Kevin D.A.G. For Complainant

By way of background, a Verified Complaint was filed against Dr. Nielsen seeking the suspension or revocation of his podiatric medical license because he performed cosmetic laser procedures on some patients. Respondent voluntarily surrendered his license on May 10, 2006.

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

All parties, except administrative office and counseling staffs, left the room. Returning to open session, the Board opened the hearing.

Ms. Criss reminded the parties that the Board has convened this hearing on the Attorney General's Motion for Summary Decision. Prior to the commencement of oral argument, the parties confirmed that they had agreed to the following facts: Respondent is licensed to practice podiatry in the State of New Jersey and that his license is not current. During the time of holding an expired license, he performed liposuction on a number of patients from July 2005 through February 2006. They further agreed that this was beyond the scope of his practice as a podiatrist. Similarly, he performed at least six botox administration on patients' faces, as well as laser therapy on a number of patients ? both of which are also beyond the scope of podiatry. In various media, he advertised these procedures and that a board certified physician would perform all these procedures. The advertisements did not include any

referral to the fact that he was a podiatrist or that his license had expired. Mr. Goldsmith, counsel for Dr. Nielsen, noted that while his client admitted to these facts, he wanted the record to reflect that at no time any of the potential risks that were mentioned by the Attorney General ever occurred and no patient was harmed. DAG Jespersen continued by stating that Dr. Nielsen acknowledged that he was in violation of a number of the Board's statute and regulations. He further agreed to the revocation of his license and that he cannot practice, or apply to practice, until he undergoes a complete psychiatric evaluation (agreeing to comply with any remedial recommendations) and at such time as he can demonstrate that he does not pose a risk of danger to the health, safety, or welfare. Dr. Nielsen, after being sworn in, acknowledged that he understood the terms and the facts that the Attorney General read into the record and that he has discussed these with his attorney.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT THE FINDINGS FACT AND CONCLUSIONS OF LAW THAT THE PARTIES HAVE AGREED TO AND WHICH WERE READ INTO THE RECORD.

With these stipulated facts, the only dispute that remained outstanding was the amount of the penalty or costs to be assessed. Therefore, the Board conducted the mitigation hearing.

In mitigation, Mr. Goldsmith acknowledged that he had not provided the requested documents to the Board because he has had difficulty in obtaining the financial information requested from the accountant. He was able to represent that in 2004 Dr. Nielsen's tax return showed just a bit more than \$70,000; in 2005 his federal income tax income was just about \$65,000. In addition, one of the businesses, Advanced Ankle, in 2004, only showed a gross income of \$105,000 with an ordinary business income of \$410.00. In 2005, Advanced Ankle had an income of \$332,000 with an ordinary business income of \$650.00. The other entity, Laser Me Beautiful Center, posted ordinary income of \$365.00 in 2004 and gross income in 2005 of \$650,000 with a final income of \$650.00 (all numbers were rounded up and are approximate). Dr. Nielsen's certified accountant did provide a certified statement of what his worth is today since no 2006 federal income tax papers have been filed. The statement indicated that since he surrendered his license in May 2006, Dr. Nielsen has little to no assets. His liabilities outweighed his assets and he has a negative value of worth. While he has attempted to find a job and has applied for a pharmaceutical representative job, there have not been any prospects of employment. He has sold some personal items such as a bronze statue and furniture to try and pay his bills. The only item that he believes is in his wife's name is her car and she is not currently employed.

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

All parties, except administrative and office staff, left the room. Returning to open session, the Board announced its motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO ACCEPT THE REVOCATION AND CONDITIONS PRIOR TO ANY REINSTATEMENT AS AGREED TO BY THE PARTIES. FOLLOWING THE PRESENTATION OF MITIGATION, THE BOARD FOUND THAT THERE WERE SIXTY-EIGHT PATIENT ENCOUNTERS OF THE UNLICENSED PRACTICE OF MEDICINE BEYOND THE SCOPE OF DR. NIELSEN'S LICENSE WHICH POSED A RISK OF HARM TO THE PATIENT IN EACH INSTANCE. THE BOARD FURTHER FOUND THAT THE INFORMATION PRESENTED WAS INSUFFICIENT TO MITIGATE THE EGREGIOUS NATURE OF THESE VIOLATIONS. THE BOARD ASSESSED COSTS IN THE AGGREGATE AMOUNT OF \$74,065.18 (ATTORNEYS FEES OF \$44,667.50 AND COSTS OF \$29,397.68) AND A PENALTY IN THE AMOUNT OF \$680,000 (SIXTY-EIGHT PATIENT ENCOUNTERS AT \$10,000 PER CONTACT). THE BOARD NOTED THAT IT COULD HAVE ASSESSED A PENALTY UP TO TWENTY THOUSAND DOLLARS PER PATIENT.

Ms. Criss voted in opposition.

Mr. Weiss was not present for the discussion or vote in this matter.

NEW BUSINESS

None

OLD BUSINESS

1. PONZIO, Matthew M.D., License #MA23353
LABUE, Anthony F., Esq. For Respondent
JESPERSEN, Kevin D.A.G. For Complainant

By way of background, this matter comes before the Board for discussion as a result of Dr. Ponzio failure to meet the June 1, 2007 deadline for completion of his Center for Personalized Education for Physicians (CPEP) remedial education program. Counsel for Dr. Ponzio, notified the Board via letter dated June 5, 2007 that his client has refrained from practice as of June 1, 2007 and requests an extension of time for completion of the CPEP program.

Ms. Clemency Kohler was not present for this section of the meeting.

Dr. Criscito recused from discussion and vote in this matter and left the room.

The Board office received a request from Dr. Ponzio seeking to extend the time for compliance with the Interim Consent Order until December 31, 2007. The Attorney General cross motioned seeking the revocation of his license for non compliance with the Order. CPEP has not provided a copy of the neuro-cognitive evaluation because it was waiting for a release from Dr. Ponzio specifically for these two assessments. There was some discussion as to whether a specific release was needed as the Order generally provided access to the Board.

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

All parties, except administrative and office staff, left the room. Returning to open session, the Board announced its motion:

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY DR. PONZIO'S MOTION FOR AN EXTENSION OF TIME TO COMPLETE THE REMEDIAL EDUCATION PLANS AND GRANTED THE ATTORNEY GENERAL'S CROSS MOTION TO IMPOSE THE ACTIVE PERIOD OF SUSPENSION AS PROVIDED IN THE JANUARY 12, 2006 ORDER.

The Board reasoned that Dr. Ponzio has been unable to remediate the deficiencies and seems to offer one excuse after another. For example, Dr. Ponzio took the ethics course two times and still was unable to pass the course and the essay showed no cognitive ability to understand his actions. Dr. Ponzio has not completed what was expected in the Consent Order within the time frame that was offered. No reasonable information has been presented to justify an extension and he has not paid his fines. There is no evidence that he can integrate what he has learned in his education with his practice and Dr. Ponzio exhibits a pattern of always looking outside of himself for blame.

2. PROPOSED FINALIZATION OF POD
STAMBAUGH-LUPO, Lynda D.O.

Enclosed was D.A.G. Flanzman's May 31, 2007 memo to the Board regarding a Provisional Order of Discipline ("POD") filed on February 8, 2007 in the matter of Lynda Stambaugh-Lupo, D.O. The matter was subject to finalization 30 days after issuance and, to date, no response had been received. Also enclosed was Executive Director Roeder's Affidavit of Service with respect to Dr. Stambaugh-Lupo. The Attorney General seeks the entry of a Final Order of Discipline ("FOD") without modification.

The matter was discussed in the Closed portion of the meeting and the decision announced in the Open portion of the meeting.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE ENTRY OF A

FINAL ORDER OF DISCIPLINE WITHOUT MODIFICATION IN THE MATTER OF DR. STAMBAUGH-LUPO.

Respectfully Submitted,

Karen Criss, R.N., C.N.M., Chairperson

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