

January 12, 2005

MINUTES

THE STATE MEDICAL BOARD OF OHIO

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Patricia J. Davidson, M.D., President, called the meeting to order at 11:00 a.m., at the Vern Riffe Center for Government and the Arts, 77 S. High St., Columbus, Ohio 43215, Room #1960, with the following members present: Andrew F. Robbins, Jr., M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Carol L. Egner, M.D.; Anant R. Bhati, M.D.; David S. Buchan, D.P.M.; Deepak Kumar, M.D.; Anquetette Sloan; and Anita M. Steinbergh, D.O. The following joined the meeting at a later time: R. Gregory Browning, Ph.D.; and Anand G. Garg, M.D.;

Also present were: Thomas A. Dilling, Executive Director; Diann K. Thompson, Assistant Executive Director; Terrill D. McLaughlin, Assistant Director, Investigations; Lauren Lubow, Senior Executive Staff Attorney; Shannon F. Baldwin, Executive Staff Attorney; Lori S. Gilbert, Chief Enforcement Attorney; Mark R. Blackmer, Marcie P. Burrow, Sallie J. Debolt, David P. Katko, Rebecca J. Marshall, Karen H. Mortland, Kathleen S. Peterson and Charles A. Woodbeck, Enforcement Attorneys; Rebecca J. Albers, Kyle C. Wilcox, Gregory A. Perry and Tara L. Berrien, Assistant Attorneys General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Coordinator for Assessment and Development; Danielle Bickers, Compliance Officer; Barbara Jacobs, Public Services Administrator; Jacqueline A. Moore and Annette Jones, Disciplinary Information Assistants.

REPORTS AND RECOMMENDATIONS

Dr. Davidson announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Ghassan Haj-Hamed, M.D.; Valerie Ann McLin, M.D.; Daniel Howard Brumfield, M.D.; Jeffrey James Fierra, M.D.; Steven Franklin Greer, M.D.; Felicia K. Howard-McGrady, M.D.; Willie L. Josey, M.D.; Thomas R. Pickett, M.D.; and John Alexander Tripoulas, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye

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Dr. Steinbergh - aye
Dr. Davidson - aye

Dr. Davidson asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Bhati	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Steinbergh	- aye
Dr. Davidson	- aye

Dr. Davidson noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Davidson stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

GHASSAN HAJ-HAMED, M.D.

Dr. Davidson directed the Board's attention to the matter of Ghassan Haj-Hamed, M.D. She advised that, prior to the October 2004 meeting, objections to the original Report and Recommendation, along with attachments considered as additional information, were distributed to the Board. The Board moved to accept the additional information at the October meeting. Objections were filed to Hearing Examiner Clovis' Report of Remand and were previously distributed to Board members; however, these objections were not received in a timely manner. Dr. Haj-Hamad's attorney submitted a motion requesting that the Board accept the untimely objections. Dr. Davidson asked whether the assistant attorney general objected to the admission of these objections into the record.

Mr. Perry advised that he did not object.

DR. BHATI MOVED TO ADMIT THE OBJECTIONS TO THE REPORT OF REMAND INTO

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THE RECORD. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Davidson advised that the objections will be admitted into the record and considered by the Board.

Dr. Davidson continued that a request to address the Board has been timely filed on behalf of Dr. Haj-Hamed. Five minutes would be allowed for that address.

Dr. Haj-Hamed was accompanied by his attorney, Douglas E. Graff.

Mr. Graff stated that he believes that there are some preliminary matters that need to be addressed before the Board addresses the Report and Recommendation. He advised that the State of Ohio has filed two motions in this matter that should be considered beforehand. One motion is for a final order on the summary suspension, which was filed before the October meeting and still remains pending with the remand. The second is for a ratification of the determination of the Secretary and Supervising Member on the summary suspension, which was filed before this meeting. Mr. Graff added that he also filed a motion earlier in the day to review the procedural and evidentiary rulings of the Hearing Examiner and the Substitute Hearing Examiner. These matters are timely and should be considered before the Report and Recommendation. Mr. Graff asked that they be considered at this time, before Dr. Haj-Hamed's oral address. He added that, if the Board asks for additional information on the motions, counsel should be given that opportunity to enlighten the Board.

Mr. Dilling stated that the Board will discuss the Report and Recommendation and will entertain the motions as well. He explained that, at this time, Dr. Haj-Hamed is being given five minutes to address the Board on the Report and Recommendation itself; then the Board will take up the issues raised in the objections.

Dr. Davidson stated that Dr. Haj-Hamed will have an opportunity to speak again.

Mr. Graff stated that, as the Report and Recommendation may be subject to change due to the ruling on the motions, he would like to defer consideration of the Report and Recommendation until those rulings have been made by the Board, according to the provisions of the hearing rules. The motions and procedural matters, as well as evidentiary matters, are subject to review by the Board. Those would affect whether or

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not the Report and Recommendation, as it stands, is timely before the Board or whether it will be subject to a remand, as it was in October. Mr. Graff added that he'll work with the Board however the Board wants. He just wants to make sure that they have an opportunity to discuss all these issues timely.

Mr. Dilling stated that there will be that opportunity. He stated that he understands Mr. Graff's recommendation. If, in fact, the Board does decide to remand this matter later, he apologizes in advance for wasting anybody's time.

Mr. Graff thanked Mr. Dilling and addressed the Board. He stated that he is here on behalf of Dr. Haj-Hamed, who is also present today. He remarked that this is an unusual case, and it has caused great controversy between himself, the State and, unfortunately, also with members of the Board at the October meeting. Mr. Graff apologized for his behavior at that meeting, but added that this is a matter of significance. This is the first time the Board has handled a matter like this differently. This was a summary suspension, based on a determination of the Secretary and Supervising Member. That written determination talked about a violation of Section 4731.22(B)(16), the failure to pay license renewal fees. Mr. Graff stated that, clearly, that was in error. He added that, unfortunately, that is the only written determination of the Secretary and Supervising Member. That is what Mr. Schmidt put forth in the hearing, and that's what he said the Secretary and Supervising Member determined. That was all that they had.

Mr. Graff continued that, in the hearing, the original Hearing Examiner specifically said that they would not be able to look at the intent of the Secretary and Supervising Member, but would be bound by their written word. She ruled that in accordance with the Consent Agreement, but it goes to all writings of the Secretary and Supervising Member, and parol evidence was excluded from the entire hearing. However, Mr. Graff noted, the Hearing Examiner, based on Mr. Schmidt's discussion of parol evidence – about a document that he didn't prepare, that he didn't know about, that he hadn't seen and that the Secretary and Supervising Member had not informed him about – decided to take and change the intent of the written word, based upon her understanding of the parol evidence. Mr. Graff stated that that's wrong and can't stand.

Mr. Graff stated that he has filed objections in this case. Dr. Haj-Hamed was also charged with a violation of his consent agreement with the Board for failing to have adequate supervision and for writing prescriptions. He was brought before the Hearing Examiner, and the prescriptions were brought before the Hearing Examiner and the pharmacist. The pharmacist said that she received a piece of paper from Dr. Haj-Hamed's office that was unsigned, that did not have a DEA number on it, that had the listing of "Lomotil OTC 2mg.," and she wrote Dr. Haj-Hamed's name on the prescription, added his DEA number, which was both inactive and from the State of Kentucky, and decided it was a prescription, after which she dispensed Lomotil, a Schedule V controlled substance, at 2.5 mg. Mr. Graff stated that that is the only prescription alleged against Dr. Haj-Hamed. Mr. Graff stated that the pharmacist admitted in the record that she made an error.

Mr. Graff stated that those in practice know that, without signing a prescription or putting your DEA number on a prescription, it can't be a valid order for a pharmacist to dispense any controlled substance,

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which Lomotil is. It doesn't come in 2 mg. Unfortunately, it doesn't come over-the-counter, either, and that's why the pharmacist was confused. She admitted on the record that she didn't call and that she changed it, but it's being charged against Dr. Haj-Hamed as a violation of his consent agreement. Mr. Graff stated that he doesn't know of anyone anywhere who has ever been before the Board who would risk the loss of a license by prescribing Lomotil to someone. He stated that was absurd.

Mr. Graff stated that, because they had forgotten to ask the pharmacist about certain things, the State decided to bring in a surprise expert witness, Tim Benedict. Mr. Graff stated that that is specifically precluded by the Board's rules. All evidence and witnesses must be disclosed in a summary suspension hearing at least three days in advance. During lunch of the first day of the hearing, the State's representatives went down and got Mr. Benedict from his office and brought him up as an expert witness on that prescription. Mr. Graff stated that that's wrong and against the Board's rules. He stated that that can't stand. It presents great prejudice to his client.

Mr. Graff stated that he's not saying that this isn't a serious matter. What is before the Board is someone who failed to have appropriate supervision. There is evidence of that in the record. Mr. Graff stated that there was confusion about what should have happened. Terms were used in this consent agreement differently than they had been in other consent agreements. Mr. Graff asked that those who drafted the agreement tell them what the words were supposed to mean and how it was supposed to work, that there would be a "supervising physician" – a term that is generally used for someone who oversees urine screens – to be "on-site," but to have no contact with the patients, no requirement to oversee the client's work, but only to do retrospective chart review, all of which the State agrees was done on 100% of the charts in fulfillment of the terms and conditions of the Consent Agreement.

Mr. Graff stated that he and Dr. Haj-Hamed don't try to downplay what the Board needs to do to protect the public, but what they have here is that the public was well-protected. There's not one instance where anyone is alleging that his client didn't adequately serve his patients. Clearly, this matter arose out of something in Kentucky that was a concern. The Board took an action. Dr. Haj-Hamed has resolved Kentucky, and he has his Kentucky license back. They have appropriately dealt with the issues in that state. Ohio now seeks to do something far beyond that which Kentucky did, not based on any action that happened in Ohio, but on the concerns of patient care that were raised in Kentucky, about which Kentucky said that Dr. Haj-Hamed is entitled to go back to work. Mr. Graff stated that this case involves more procedural problems than anything else.

Mr. Graff stated that this is the first time that the Board has ever handled a summary suspension in this manner, and it's difficult trying to figure out how to do them differently. There has been no change in the statute, case law, or in how the Board has done summary suspensions for the last 20 years that he's had the privilege to appear before the Board, and yet this one is being handled differently. Mr. Graff stated that that's a concern, and that's why they have raised so many procedural issues. Mr. Graff stated that he thinks that the Board needs to deal with Dr. Haj-Hamed fairly. He doesn't believe that the process that has taken Dr. Haj-Hamed out of practice for more than 257 days before he had the opportunity to address the concerns on the summary suspension, that according to the determination of the Secretary and Supervising Member was for the failure to pay renewal fees, should stand before the Board today as a preclusion from

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his practice.

Mr. Graff again stated that they have a concern, and he asked that the Board address their motions, take a look at the evidentiary rulings, and deal fairly with his client. Mr. Graff added that they also ask that the Board look to the protection of the public because here the public has been adequately protected. He also asked that the Board do it expeditiously.

Dr. Haj-Hamed thanked the Board for allowing him to appear before it today. He stated that, as Mr. Graff indicated, he is here because Kentucky took an action against his license. That's been resolved and he's practicing in Kentucky. He has an educational plan that he's following there.

Dr. Haj-Hamed stated that he was brought here because of alleged changes and the misapplication of his Consent Agreement. Dr. Haj-Hamed stated that he thinks he made mistakes on that, and he's fully responsible for making those mistakes on his consent agreement on the supervision part. He apologized for causing any problems for that. Dr. Haj-Hamed stated that he would like a second chance to resume his practice because he has many, many patients in Ohio who rely on him. He'd like to start taking care of them. He has been out of practice since April 2004, and he would like to go back to practice under the conditions the Board set forth for him. He promised he would apply them very well.

Dr. Davidson asked whether the Assistant Attorney General wished to respond.

Mr. Perry stated that he would, and would also like to discuss a couple of the preliminary matters. Mr. Perry stated that he believes that the motion he filed before the October meeting to go back and take evidence on the summary suspension issue was taken care of with the Remand Order. With regard to his second motion, he noted that the Report of Remand does find that the Secretary, the Supervising Member, and the Board did take the appropriate steps. They took the proper procedures under the statute. Mr. Perry stated that he's asking the Board to go one step further and find that they have not only followed the right steps, but also arrived at the correct decision. Mr. Perry stated that he explains that in his memorandum of support.

Mr. Perry stated that, with regard to Respondent's objections, he notes the fact that this case has taken 257 days to resolve. He stated that he wants to make certain that the Board has a clear understanding of why that's the case. On May 27, 2004 Respondent asked for hearings, and he stressed there was a plural request for hearings. On June 8, the Board was fully prepared and intended to give Dr. Haj-Hamed a hearing, not only on the summary suspension aspect, but on the merits and the facts as well. That morning Respondent's counsel walked in with an 18-page brief questioning the authority of the Hearing Examiner to even hear the summary suspension part of it. After some discussion, the Hearing Examiner took that under advisement, and they were fully prepared and intended to do that. Mr. Perry stated that Respondent asked for "hearings" and the State was going to give him one hearing that addressed both issues. Mr. Perry continued that at that time Respondent's counsel asked for a continuance, not because the patient records had been given to him the day before, but because he wanted to wait until the next week, when the Kentucky Board had met and he'd gotten what he anticipated to be a favorable decision that he could later use as evidence in front of this Board. The matter was continued until July 29.

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Mr. Perry continued that, after two days of hearing, the matter was not concluded. Both he and the Hearing Examiner offered to come in a third day, a Saturday, to get this case concluded, but Respondent's counsel was not able to do that. The hearing was continued to August 13. It finally came before the Board on October 13. The Board remanded it to November 9. Mr. Perry stated that he would stress that that was a result of the Board's overruling the Hearing Examiner's original ruling that Respondent's counsel had invited her to make, that the hearing couldn't even address the issue of summary suspension. Now, after 257 days, Respondent is saying that he's being denied what he first asked for in the very beginning, what the Board was prepared to do on June 8.

Mr. Perry stated that, with regard to the evidence taken at the Remand hearing on November 9 regarding the determination by the Secretary and Supervising Member, Mr. Schmidt testified that they had an April 26 office conference, after which he met with the Secretary and Supervising Member and investigative Board staff. At that time, the Secretary and Supervising Member instructed them to go forward. That was their determination. Mr. Perry stated that there was no written determination because that is not required by the statute. What was admitted as State's Exhibit 17, as Mr. Schmidt testified, was an internal memo that merely memorialized that determination. There was absolutely no evidence in this case that Respondent failed to pay his renewal fees. That was never even discussed. Throughout the investigation by Mr. Schmidt and Douglas Edwards, Supervisor Investigator, the April conference, the investigative staff meeting afterwards, the notice of opportunity, the Board's telephone conference, not once was the failure to pay license fees ever mentioned or discussed. Nobody ever gave a thought to it. Now the Board is being asked to believe that the Secretary and Supervising Member made this deliberate decision to falsely accuse this man of not paying renewal fees and then instructed the Board to go forward and take his license over something so innocuous. Mr. Perry advised that this was simply a typographical error.

Mr. Perry stated that at hearing Dr. Haj-Hamed testified that he's a Board-certified internist who doesn't need anybody looking over his shoulder. Their basic position is that the law does not require a useless gesture, so why hold Dr. Haj-Hamed to his consent agreement. He doesn't need it, nobody got hurt, so what's the problem? Mr. Perry referred to the attachments included with the objections filed for the initial Report and Recommendation. He stated that he had first considered objecting to their admission into the record, because he didn't think they were relevant, but they really are. They go right to Dr. Haj-Hamed's attitude. Dr. Haj-Hamed thinks that the Board is going to be so impressed that it will overlook the fact that he totally blew off his Ohio consent agreement. Dr. Haj-Hamed thinks that the Board should give him credit for his Kentucky reinstatement and overlook the facts. Mr. Perry stated that Dr. Haj-Hamed didn't misapply the consent agreement, he blew it off. He didn't even try to comply with it.

Mr. Perry stated that, as the Report and Recommendation points out, there is a pattern of conduct here by the Respondent. Half-truths or outright misrepresentations appear in his consent agreements. He knowingly signs them, failing to correct them at that point. He'll say that he understands his obligations, but then when he's caught, he'll say that he didn't understand. But then he'll ask, "What's the big deal? I don't really need somebody looking over my shoulder, nobody got hurt." Mr. Perry stated that Dr. Haj-Hamed just doesn't get it. The public harm here is that the Board is dealing with a person who does not believe that he's accountable to the Board. Mr. Perry stated that he can't be any more serious than that.

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Dr. Haj-Hamed simply doesn't recognize the authority of this Board to regulate his practice.

Mr. Perry continued that, as the Hearing Examiner pointed out, Dr. Haj-Hamed simply cannot be effectively regulated by this Board. For that reason, he asked that the Board adopt the Report and Recommendation and permanently revoke Dr. Haj-Hamed's license in Ohio.

Mr. Dilling stated that just before this meeting, Mr. Graff informed him that he had filed a motion on behalf of Dr. Haj-Hamed for review of procedural and evidentiary rulings of the Hearing Examiner on the summary suspension and administrative hearing of Dr. Haj-Hamed. The Attorney General's office has not had an opportunity to address this motion in writing prior to the meeting today. At this time, he asked that the Board be given the opportunity to read Mr. Graff's motion, to allow Mr. Perry to respond to the motion, and then to consider the motion filed on behalf of Dr. Haj-Hamed.

At this time, Dr. Davidson gave the Board several minutes to review the motion filed by Mr. Graff. After Board members indicated that they had adequate time to read the motion, Dr. Davidson asked whether Mr. Perry wished to respond to the motion.

Mr. Perry stated that the matters raised in the motion were raised during the hearing. He believes that the Hearing Examiner ruled correctly on these evidentiary issues.

Dr. Steinbergh asked whether the appropriate motion would be a motion to accept or deny the motion for review.

Mr. Dilling stated that the motion filed by Mr. Graff has three parts. The Board can take it in whole or in part. An appropriate motion would be to approve or deny each part individually, or to do so in whole.

Dr. Egner stated that this motion doesn't come from the Board.

Mr. Dilling agreed that it doesn't. The motion comes from Dr. Haj-Hamed's counsel, who has requested the Board to consider this motion pursuant to the hearing rules.

Dr. Egner stated that the Board ordinarily needs a motion to say whether or not the Board will consider.

Mr. Dilling stated that this is a procedural matter, and recommended that the Board consider the motion.

Dr. Steinbergh indicated that the Board should consider the State's motion to ratify the determination made by the Secretary and Supervising Member.

Mr. Dilling asked that the Board first consider the motion filed by Mr. Graff today. He stated that the other matter will be addressed. He noted that the Board members can break Mr. Graff's motion down in any way they wish. Mr. Graff has included three issues within his motion.

Dr. Kumar asked for clarification from the Attorney General on the expert witness issue.

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Mr. Perry stated that this was one of those situations that came up as a result of something that came out on the stand. When the pharmacist was testifying, she was asked questions on cross examination about whether she believed that this was intended to be a prescription or whether it was something else. The State then called Mr. Benedict, who is a pharmacist, as well as Assistant Executive Director of the Pharmacy Board, who testified on the very limited factual issue of whether the medication is a controlled substance, available over the counter, what dosage is it commonly prescribed in, and, finally, what the little symbols mean on the prescription form. The State wanted to get that into the record to show that this was written on a prescription pad, it names a controlled substance, includes the proper dosage for that particular controlled substance as opposed to any over the counter drug, and the symbols are consistent with how you would prescribe that particular substance. The State called Mr. Benedict for that specific factual issue, which had not been something that the State had anticipated being an issue at hearing. When that was argued before the Hearing Examiner, since this issue had just kind of sprung to life, she allowed the State to call a witness that was not on the witness list with very little notice to address that specific issue. It wasn't the typical expert situation where someone is given a file and asked to review it and make a written explanation.

Dr. Davidson asked whether that answered Dr. Kumar's question.

Dr. Kumar indicated that it did.

Dr. Davidson asked whether there were any other procedural questions or comments on the motion.

Mr. Dilling again asked that the Board first address the three parts of Mr. Graff's motion.

Dr. Steinbergh asked for clarification of the three parts.

Mr. Dilling stated that: 1. Mr. Graff objects to the use of a surprise witness by the State; 2. Respondent also requests the Board to review the notice of summary suspension adopted against the Respondent; and 3. He objects to the failure of the Hearing Examiner to allow subpoenas for the testimony of the Secretary, Supervising Member, and Assistant Attorney General Albers.

Dr. Kumar stated that he very clearly remembers when this was discussed over the telephone conference. The matter of non-payment of dues didn't enter into the discussion. When he voted for the summary suspension at that time, the issue was not the non-payment of dues at all. It was for the fact that Dr. Haj-Hamed did not abide by the terms of the Consent Agreement. The summary suspension was strictly on that process. Dr. Kumar stated that the reference to (B)(16) in the memorandum in question was merely a typographical error.

DR. KUMAR MOVED TO DENY MR. GRAFF'S MOTION TO REVIEW THE NOTICE OF SUMMARY SUSPENSION ADOPTED AGAINST THE RESPONDENT. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Steinbergh stated that she would address part 1 of Mr. Graff's motion, concerning calling Mr. Benedict as an expert witness. She stated that she's not a procedural attorney, but that was not something considered as summary suspension. The Board summarily suspended Dr. Haj-Hamed because he violated his consent agreement and was practicing without appropriate supervision. For the State to call an expert such as Mr. Benedict to explain this piece of information seems reasonable. Also it was not part of the summary suspension and was not at all a discussion in regards to permanent revocation of his license.

Mr. Dilling stated that Mr. Benedict was a factual witness and was offered in relation to the hearings before the Board. As he reads Mr. Graff's motion, Mr. Graff would like the Board to say that Mr. Benedict's testimony shouldn't have been entered into evidence and the Board shouldn't be considering it today. The motion would be to either accept Mr. Graff's contention and take that testimony out of the evidence, or to reject that motion and move on.

Dr. Kumar stated that, as Mr. Dilling pointed out, the discussion was essentially on the basis of non-compliance with the consent agreement. The issue of prescriptions and so and so forth was not effective. He stated that he doesn't think the State's case changes if it deletes the references to the prescription. That was not part of the discussion. Dr. Kumar asked whether it would be prudent to delete that reference?

Mr. Dilling stated that the Assistant Attorney General has advised that he does not see any basis for this motion and this objection.

DR. STEINBERGH MOVED TO REJECT MR. GRAFF'S OBJECTION TO THE USE OF A SURPRISE WITNESS BY THE STATE. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- abstain

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Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Steinbergh	- aye

The motion carried.

DR. KUMAR MOVED TO DENY MR. GRAFF'S MOTION TO OVERTURN THE FAILURE OF THE HEARING EXAMINER TO ALLOW SUBPOENAS FOR THE TESTIMONY OF THE SECRETARY, SUPERVISING MEMBER, AND ASSISTANT ATTORNEY GENERAL ALBERS.

Dr. Kumar stated that he seriously doesn't see any reason to have the testimony of the Secretary and Supervising Member and Ms. Albers in the hearing. He doesn't think it would change anything.

DR. STEINBERGH SECONDED THE MOTION.

Dr. Bhati noted that Dr. Haj-Hamed is a graduate of Good Samaritan Hospital, and he might have run across Dr. Haj-Hamed at the hospital during his training. He added that he can't recall having any serious conversation with Dr. Haj-Hamed at any time.

A vote was taken on Dr. Kumar's motion:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Davidson advised that Assistant Attorney General Perry has filed a motion for an order ratifying the determination of the Secretary and Supervising Member that there was clear and convincing evidence that Dr. Haj-Hamed had violated the terms of his Consent Agreement, and, therefore, his continued practice of medicine constituted a danger of immediate and serious harm to the public, as provided in the Consent Agreement. She noted that Dr. Haj-Hamed filed a response, which was faxed to Board members the previous day. She asked that Board members who did not receive a copy of that response, indicate by raising their hands, advising that staff would distribute the response to those who did not get it, and those individuals would be given a few moments to read it.

All members indicated that they had received the response.

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DR. ROBBINS MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF GHASSAN HAJ-HAMED, M.D. MS. SLOAN SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion concerning the Proposed Findings of Fact and Conclusions of the Report of Remand, and the Motion for an Order of Ratification in the Matter of Dr. Haj-Hamed. She stated that she would like to begin the discussion by addressing the Motion filed by the State and the Response filed on behalf of Dr. Haj-Hamed.

Dr. Kumar stated that the facts were clear in this case that the Secretary and Supervising Member acted appropriately in determining that there was clear and convincing evidence that Dr. Haj-Hamed violated the terms of his Consent Agreement.

DR. KUMAR MOVED TO AMEND THE FINDINGS OF FACT BY ADDING FINDINGS THAT:

- 1. THE SECRETARY AND SUPERVISING MEMBER, AT THE TIME THEY MADE THE RECOMMENDATION TO SUMMARILY SUSPEND THE LICENSE OF DR. HAJ-HAMED, HAD CLEAR AND CONVINCING EVIDENCE THAT DR. HAJ-HAMED HAD VIOLATED THE TERMS OF HIS CONSENT AGREEMENT, AND,**
- 2. THEREFORE, HIS CONTINUED PRACTICE OF MEDICINE CONSTITUTED A DANGER OF IMMEDIATE AND SERIOUS HARM TO THE PUBLIC, AS PROVIDED IN THE CONSENT AGREEMENT.**

DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF GHASSAN HAJ-HAMED, M.D. MS. SLOAN SECONDED THE MOTION.

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Dr. Davidson stated that she would now entertain further discussion in the above matter.

Dr. Egner stated that she would like some discussion on this case. She stated that she believes that the evidence presented to the Board was very clear. Dr. Haj-Hamed did not abide by the terms of his Consent Agreement in a very substantial way. It was very clear in that Agreement that Dr. Haj-Hamed was to have on-site supervision, and he was not to be writing prescriptions for scheduled drugs. He violated his Consent Agreement in the most substantial way that the Consent Agreement was put forth to him.

Dr. Egner stated that she agrees that it is not a lack of understanding on Dr. Haj-Hamed's part, but it's a lack of being able to be monitored and follow the rules of the Board. The Board hasn't seen anything that would lead the Board to think otherwise. Dr. Egner stated that she is very much in support of this Report and Recommendation. It is appropriate.

Dr. Garg joined the meeting at this time.

Dr. Steinbergh agreed with Dr. Egner, and she stated that she would also like to address the issue Mr. Graff raised concerning the roles of the supervising and monitoring physicians. She stated that the language in this case may be different from others where separate supervisors and separate monitors were in place, but in this case, Dr. Sultan was responsible for the total supervising and monitoring of Dr. Haj-Hamed and his medical practice. That means that, without question, Dr. Sultan had to monitor, had to supervise, and had to be present when Dr. Haj-Hamed was practicing. The Board is concerned about the cases where Dr. Haj-Hamed has been without that supervision.

Dr. Kumar stated that he can see the severity of the thing that was done and the lightness with which the Board's Consent Agreement was taken by Dr. Haj-Hamed, and that bothers him. At the same time, he has extreme difficulty in permanently revoking. Could Dr. Haj-Hamed be apologetic? Is it possible?

Dr. Kumar stated that he's tossing and turning on that. Can Dr. Haj-Hamed be rehabilitated? Dr. Kumar stated that he's not sure.

Dr. Buchan stated that now that the Board has peeled back all of the procedural layers and is back to the basic Report and Recommendation, in response to Dr. Kumar's thoughts, he believes that the Proposed Order, as written, is appropriate. He doesn't think that this is a fellow who possesses an attitude that is amenable to correction. What he read and appreciated is Dr. Haj-Hamed's total, absolute, flagrant disregard for the Consent Agreement that he had signed. Dr. Buchan stated that he's grateful that the Board has peeled this back to the simple question of whether this physician is reasonably licensed in the State of Ohio, and his response to that is, "no."

Dr. Egner stated that she always looks at these cases and questions how a reasonable person would react. In the midst of this, here was Dr. Haj-Hamed who had serious allegations brought against him by two state medical boards. He certainly was well aware of how serious both medical boards took their allegations, and he had been through the process. He knew many of the Board staff. He had a qualified attorney. If he had questions as to what things meant, he had so many avenues to check that out and make sure that he was really following it, because he would have known through the process how important it was to follow that

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Consent Agreement. He did not take advantage of any of those avenues. His questions could have been very clearly answered. This is not ambiguous language, it was very clear.

A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

VALERIE ANNE MCLIN, M.D.

Dr. Davidson directed the Board's attention to the matter of Dr. McLin. She advised that no objections were filed to Hearing Examiner Clovis' Report and Recommendation.

Dr. Davidson continued that a request to address the Board has been filed on behalf of Dr. McLin but was not filed in a timely manner. She asked whether the Board wished to allow Dr. McLin to make her address.

DR. BHATI MOVED TO ALLOW DR. MCLIN TO ADDRESS THE BOARD. DR. GARG SECONDED THE MOTION. All members voted aye. The motion carried.

Dr. Davidson stated that five minutes would be allowed for that address.

Prior to the address, Dr. Davidson asked Dr. Garg whether he had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the Reports and Recommendations on this month's agenda, and whether he understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. Dr. Garg responded, "yes," to both questions.

Dr. McLin was accompanied by her counsel, Peter M. Carson.

Mr. Carson stated that Dr. McLin is here as an applicant for medical licensure. The Board has proposed that her application be denied on the grounds that, although she took Steps 1 and 2 of the USMLE sequence, she did not take Step 3 within the required seven-year time limit. Mr. Carson stated that

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Dr. McLin is asking the Board to exercise its discretion, as it has the ability to do, to grant her the same type of exception that would be granted for those in an M.D./Ph.D. program. Dr. McLin is currently pursuing a fellowship in conjunction with her medical degree, and she's asking the Board to consider that under the same exception to grant an extension to the seven-year time limit.

Dr. McLin thanked the Board for the opportunity to talk today. She stated that she's not going to summarize the case, as it is in the information the Board members have. She stated that, in a nutshell, she's here because she missed a deadline. The reason she missed that deadline is because she was practicing under a trainee license and was not obligated to bill. When the time came to bill for her clinical practice, she was made aware of the deadline. Dr. McLin stated that she comes from a system where there is such a deadline but there's no mechanism to make people aware of the deadline in a timely fashion.

Dr. McLin asked the Board to understand, as anyone in a busy clinical practice would understand, how much of a setback carving out a month, or whatever the necessary time may be, to study for the exam would represent. Dr. McLin stated that she thinks that she has demonstrated her ability. She passed Steps 1 and 2 in the first attempt. She's demonstrated her ability both scientifically and clinically. She doesn't think that she represents a threat or danger to the public in any way. Dr. McLin asked that the Board exercise its discretion, as it has in the past, to extend the seven-year rule so that she can meet licensure requirements to bill for her clinical practice and further finance her research.

Dr. McLin added that she's not asking the Board to grant her full exception on Steps 1, 2 and 3. She's just asking for the opportunity to take Step 3 out of sequence. If for some reason the Board doesn't see that as possible, she asked that the Board at least consider meeting her half way and grant her Step 1 and she would retake Step 2.

Dr. Davidson asked whether the Assistant Attorney General wished to respond.

Ms. Berrien stated that she wasn't the counsel of record in this case, Mr. Wilcox was. She read the following statement prepared by Mr. Wilcox:

I support the Report and Recommendation of the Hearing Examiner in this matter. The rule exemption requested by Dr. McLin reads as follows: "A limited exception to this rule must be granted by the Board to an applicant who in conjunction with a medical degree is actively pursuing a doctoral degree in an institution or program accredited by the LCME and regional university accrediting body and the applicant was a student in good standing when enrolled in the institution or program. The doctoral degree must be in a field of biological sciences tested in the Step 1 content." This is a very specific exemption, and Dr. McLin's qualifications do not meet this exemption. She is not enrolled in a doctoral program. She is not, or has not been, pursuing a doctorate or a Ph.D. Even if she has conducted post-doctoral training or fellowship with research activities, she was not performing the lab work while she was enrolled as a medical student at an institution accredited by the LCME because she is an overseas medical graduate.

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This rule is clearly for students who are enrolled in programs to obtain both an M.D. and a Ph.D. Dr. McLin is clearly not a student. She is doing research as a fellow. Because of the demand on a student who pursues an M.D. and Ph.D. simultaneously, the average time required for both degrees being 8.8 years, the exception to the rule was allowed up to a ten-year period. This rule was developed to give research scientists a chance to complete this difficult dual degree that often takes them outside of seven years. The extra three years is crucial to these dual-degree students.

Dr. McLin is doing lab work and research in a fellowship program in Pediatric Gastroenterology, Hepatology and Nutrition at Cincinnati Children's Hospital. She is not enrolled in a Ph.D. program. A fellowship is not a Ph.D. program. A Ph.D. requires many more training components, course work and a dissertation that you must write and defend. Dr. McLin has clearly not met the requirements for a waiver and as such, the Report and Recommendation should be adopted, as written.

Dr. Davidson stated that she's confused by Dr. McLin's request for allowing her to take Step 3 out of sequence.

Dr. McLin stated that the rule states that you have to have taken Steps 1, 2 and 3 of the USMLE within a seven-year time period from the first exam. She was only made aware of this rule one year after the seven years had expired. That's when she realized that she had to take Step 3. Had she known there was a rule, she would have taken Step 3 in seven years. She didn't know there was a rule. She's proven her ability. She's taken Step 1 and Step 2. She understands that this is not a full-fledged Ph.D. program, but it's as close as it gets. Dr. McLin stated that she will take Step 3 tomorrow, if the Board grants her the opportunity to take it out of sequence.

Dr. Egner stated that, when the Board members hear "out of sequence," they think in terms of Steps 2, 3, 1. She stated that Dr. McLin is not saying that she wants to take Step 3 and then she'll go back and retake Steps 1 and 2.

Dr. McLin stated that she took Steps 1 and 2. She asked the Board to grant her a little extra time to take Step 3.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF VALERIE ANNE MCLIN, M.D. DR. EGNER SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion in the above matter.

Dr. Kumar stated that he's not sure that Dr. McLin recognizes that she can take all three parts again. She has to take time off for Step 3, and she's indicated that she's willing to take Step 2 again. Taking Step 1 at the same time isn't going to be all that hard.

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Mr. Dilling stated that Dr. McLin understands that, under the law, to get a license, she has to pass Steps 1, 2 and 3. She's saying that if the Board allows her to take Step 3 outside the seven-year window, she'll pass it and show the Board that she's a good doctor. Mr. Dilling stated that Dr. McLin has argued that her fellowship program is equivalent to a doctoral program. That's the hat she wants the Board to hang its decision on, allowing her to have that extension for a three-year period of time.

Dr. Garg indicated that it is his understanding that the Board really doesn't have discretion in this.

Mr. Dilling stated that he thinks that the rule is clear. The Board has read the Report and Recommendation and reviewed the evidence. He asked where the equivalency type of language is. He again referred the Board to the Hearing Examiner's Conclusions of Law that note that Dr. McLin concedes that she has not pursued a doctoral degree, but she argues that a fellowship is equivalent to a doctoral program. Mr. Dilling stated that, legally, the law seems pretty clear on this issue. The Board could go back and change the law, if that's what the Board wants, but that's not going to happen today.

Dr. Steinbergh stated that the Board has had to evaluate clinicians as they come through on this seven/ten year rule. She stated that Dr. McLin's comment about not being aware of it unfortunately goes to the fact that when you are interested in licensure and the practice of medicine, you do have to know the rules and laws of each state in which you intend to gain a license. With the evidence before the Board today, there is no way that you could conclude that her fellowship meets the standards of the Ph.D. program that must go along with her M.D. program. There's no accreditation for the program with which she's been involved. Dr. Steinbergh stated that, although she is very sympathetic to Dr. McLin's desire to be licensed, it's clear that she does not meet the standards for licensure under this rule.

Dr. Robbins stated that he needs some clarification. If the Board says that the fellowship is clearly not equivalent to a doctorate, does the Board have any leeway to help Dr. McLin? He added that it doesn't sound like it does. The law is the law.

Mr. Dilling stated that the Board is making a decision based on the law and its understanding of the law. It must rest its decision on the record before it.

A vote was taken on Dr. Steinbergh's motion to approve and confirm:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

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Dr. Steinbergh - aye

The motion carried.

Dr. Robbins suggested that the Board write a letter to all training programs, advising them that this isn't the first time that a problem has arisen and urging them to tell everyone in training about Ohio's requirements.

Dr. Egner agreed that the suggestion was a good one.

Dr. Steinbergh commented that she doesn't understand an individual deciding not to take Step 3.

Dr. Egner stated that she feels it is part of the program's responsibility to inform the residents and fellows. She stated that the programs know these rules, and they should be on top of it. It's a sad state that they have had such a talented doctor, from whom they got a lot of work and a lot of research, and she's paying an awfully heavy price for this. Had they made her aware of the rule, this would have never happened. Dr. Egner stated that there is no doubt in her mind that Dr. McLin can pass Step 3. There's also no doubt in her mind that she'll be able to pass Steps 1 and 2 again. She is extremely intelligent, and she has done so much in the basic sciences, that it wouldn't be like one of the Board members going back and taking Step 1. Dr. Egner again advised Dr. McLin that she does empathize with her situation.

Mr. Dilling stated that the Board had a physician from the Cleveland Clinic a few years ago who made it through five years of training and came back and said that he didn't realize that he didn't pass Step 3. He said that nobody had ever notified him that he failed, so he just assumed that he passed. He was outside the seven years, but he did go back and take all three Steps and passed within six months.

Mr. Dilling stated that Dr. Robbins' suggestion to write to the training programs is good. He added that the Board could also propose a Federation resolution that programs make people aware of all the different laws. Mr. Dilling suggested also that there might be a rule developed to require individuals to pass Step 3 before beginning year 5 of a residency or fellowship.

Dr. Garg stated that he believes that that is an excellent idea. He added that the Board members all feel bad about Dr. McLin's case, but to him it doesn't make sense for an international medical graduate to not look into the rules and know the requirements for licensure.

The Board adjourned for lunch at 12:13 p.m., and reconvened at 1:10 p.m. with all members present but Dr. Talmage and Mr. Browning.

MINUTES REVIEW

DR. STEINBERGH MOVED TO APPROVE THE MINUTES OF DECEMBER 8-9, 2004.
MR. ALBERT SECONDED THE MOTION. A vote was taken

VOTE: Mr. Albert - aye

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Dr. Egner	- aye
Dr. Bhati	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

REPORTS AND RECOMMENDATIONS

DANIEL HOWARD BRUMFIELD, M.D.

Dr. Davidson directed the Board's attention to the matter of Daniel Howard Brumfield, M.D. She advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

Dr. Davidson continued that a request to address the Board has been timely filed on behalf of Dr. Brumfield. Five minutes would be allowed for that address.

Dr. Brumfield was accompanied by his attorney, Elizabeth Y. Collis.

Ms. Collis stated that, as the Board knows, Dr. Brumfield's license was summarily suspended at the December Board meeting. She thanked the Board and Mr. Porter for rushing this case through as quickly as they did. A hearing was held on December 21, and Mr. Porter prepared the Report and Recommendation in this case when many were on holiday break. Ms. Collis also thanked Mr. Dilling for putting this matter on the agenda today.

Ms. Collis stated that it was important for them that this case was presented to the Board today. Dr. Brumfield's license is suspended. As outlined by Mr. Porter in the Report and Recommendation, this is an unusual case. Although evidence was presented at the hearing to show that Dr. Brumfield tested positive for cocaine, no evidence was presented to show that Dr. Brumfield intentionally ingested cocaine. As Mr. Porter found in the Report and Recommendation, Dr. Brumfield testified that, while he will always be a cocaine addict, his recovery date is November 16, 2002, and he has consistently denied that he intentionally relapsed in this case. As highlighted by Mr. Porter in the Report and Recommendation, no evidence was presented at the hearing to show that Dr. Brumfield intentionally ingested cocaine or relapsed on cocaine in this case.

Ms. Collis reminded the Board of the case of Dr. Tom Starr, another physician who inadvertently ingested medication and was found to be in violation of his Step II Consent Agreement. In that case, Dr. Starr ingested a controlled substance, and this Board ordered a 15-day suspension of his license. In this case, at this point, Dr. Brumfield's license has been suspended for 30 days.

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Ms. Collis stated that she knows that this is an unusual case, but she asked that the Board carefully review the Report and Recommendation of Mr. Porter. There was a nine-hour hearing, and Mr. Porter heard testimony from quite a few different witnesses. At the conclusion of the hearing, Mr. Porter determined that there has been no evidence of a relapse in this case.

Dr. Brumfield thanked the Board for allowing him to appear before the Board today. He stated that he is a recovering addict. His drug of choice was cocaine. He began using cocaine at a very difficult time in his life. His medical practice was struggling because of poor billing and collection procedures; his marriage was falling apart; he was frustrated, angry and depressed. He began using cocaine and things only got worse in his life. By the time he entered treatment, he was near bankruptcy. He had lost his spouse and had closed his medical practice.

Dr. Brumfield stated that treatment was a real wake-up call for him. He has now been sober since November 16, 2002. He has worked very hard on his sobriety, and he has continued to take each day one at a time. In January 2004, he entered into a Step II Consent Agreement with the Board, and his medical license was reinstated. He began working in urgent care settings. This past summer, he was given an opportunity to open a private practice office with the backing and support of Greene Memorial Hospital, where he had undergone treatment in 2002. His private practice opened in October. He also has a new loving and supportive wife. Many old patients were beginning to find him, and his practice was beginning to grow. Finally his life was starting to get back on the right track.

Dr. Brumfield stated that, although he continued to attend A.A. meetings, Caduceus and aftercare, he can honestly say that he has had no cravings or desire to relapse on cocaine. He advised that in November he caught a bad cold. He's always had asthma and has been on daily asthma medications for years. At the time, his wife suggested that he use his nebulizer one evening because he was having difficulty breathing. Dr. Brumfield stated that he hadn't used his nebulizer in over two years, since before he'd gone into treatment, and so he did take a treatment with the nebulizer. At the time he had not remembered that in 2002, when he was using cocaine, he would store the cocaine in one of the cups of the nebulizer.

Dr. Brumfield continued that the next morning he contacted his physician, Dr. Peterangelo, who is also his monitoring physician, and set up an appointment for an examination for his cold. He underwent a physical exam, and Dr. Peterangelo asked him to give a urine specimen, as he had not yet given one that week. Dr. Brumfield stated that he immediately gave the specimen. He received a call from OPEP monitor, Barron Farrier, about two weeks later advising him that the urine specimen he had dropped that day was positive for cocaine. Dr. Brumfield stated that he immediately informed Mr. Farrier and everyone else involved that there must be a mistake, as he had not relapsed. He then racked his brain for days and retraced his steps in the days leading up to the screen. At first he could not figure out how he tested positive. He thought that it might have been a false positive from an injection he received for his cold. He also thought that it might have been from his prostate examination. Dr. Brumfield stated that he could not figure out how he had tested positive.

Dr. Brumfield stated that he then remembered that he had used his nebulizer the night before the urine

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screen. He remembered what he had previously stored in that cup. Dr. Brumfield stated that he had the nebulizer tested and it was determined that there was a trace amount of cocaine in that machine. Dr. Brumfield stated that he has no idea if the use of the nebulizer had anything to do with the positive screen, but he does know that he did not intentionally use, and that he has been sober since November 16, 2002.

Dr. Brumfield stated that his license has been suspended now for 30 days. He has had to close the practice that he had just opened in October. Greene Memorial had initially required him to sign a contract when they assisted him in setting up his practice. That contract required that he would not violate his Consent Agreement with the Board or they would close down the practice. At this point in time, Greene Memorial does not believe that he has relapsed, and they have agreed to allow him to return to his practice, if the Board agrees to reinstate his license.

Dr. Brumfield again stated that his license has been suspended for a month. If he had inadvertently ingested cocaine, he sincerely apologizes. He added that he certainly never intended to violate his agreement with the Board. He asked that the Board follow the recommendation of the Hearing Examiner and reinstate his license under the same terms of his Step II agreement.

Dr. Davidson asked whether the Assistant Attorney General wished to respond.

Mr. Wilcox stated that he does not agree with the Findings and Recommendation of the Hearing Examiner in this case. He asked the Board to look at the evidence that Dr. Brumfield did relapse on cocaine. There was a urine sample that was submitted by Dr. Brumfield on November 3, 2004. The results of the test and a lab report indicate that that sample tested positive for cocaine, which was GCMS-confirmed. The Board knows that Dr. Brumfield was and is a cocaine addict. There is no dispute that Dr. Brumfield tested positive for cocaine.

Mr. Wilcox stated that Dr. Brumfield has given at least three different stories as to how this positive test could have come back, finally settling on the nebulizer story. The only expert testimony the Board has in this hearing is from William J. Closson, Ph.D., Director of the Forensic Toxicology Department at Bendiner & Schlesinger Medical Laboratories. Dr. Closson testified that it is very unlikely that trace amounts of cocaine on a nebulizer would result in a positive screen. Dr. Closson just couldn't rule out the possibility.

Mr. Wilcox stated that, based on the screen alone, there is evidence that Dr. Brumfield has violated his Step II Consent Agreement. He reminded the Board that its standard of proof is reliable, probative and substantive evidence. It is not "beyond a reasonable doubt." Mr. Wilcox stated that, even if the Board members believe that the nebulizer story is plausible, Dr. Brumfield has still violated his Step II Consent Agreement. Specifically, he has violated the section of the agreement on sobriety, which states, "Dr. Brumfield shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Brumfield's history of chemical dependency." Mr. Wilcox stated that he specifically disagrees with the Hearing Examiner's finding that Dr. Brumfield did not violate this part of his Step II Consent

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Agreement. Mr. Wilcox stated that he believes that Dr. Brumfield had to possess cocaine in order to test positive for it. Dr. Brumfield is the addict under the Step II agreement. There are no excuses for him to be in possession of cocaine, whether it is lying on his coffee table in his living room or is boxed up in a closet. It was his responsibility to remove all cocaine from his house. Mr. Wilcox stated that he believes that however Dr. Brumfield ingested this cocaine is irrelevant. Mr. Wilcox stated that, even if the Board believes the nebulizer story, it cannot argue that Dr. Brumfield did not possess cocaine in his house. He violated the strict term in his Agreement regarding possession of drugs. Otherwise, the Board will have to believe that Dr. Brumfield tested positive for cocaine without ever having possessed it. As such, he believes that Dr. Brumfield has violated his Step II Agreement, which would require a finding of a (B)(15) violation.

Mr. Wilcox added that he doesn't have a suggested penalty in this matter. He just asks that the Board find that there has been a violation of 4731.22 (B)(15), and order an appropriate penalty.

Dr. Davidson advised that Assistant Attorney General Wilcox has filed a motion for an Order ratifying the determination of the Secretary and Supervising Member that, at the time they recommended the summary suspension, there was clear and convincing evidence that Dr. Brumfield had violated the terms of his Consent Agreement and, therefore, his continued practice of medicine constituted a danger of immediate and serious harm to the public, as provided in the consent agreement.

In order to place the matter on the table for discussion, Dr. Davidson asked for a motion to approve and confirm the Report and Recommendation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DANIEL HOWARD BRUMFIELD, M.D. DR. BUCHAN SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion in the above matter. She asked that the Board begin the discussion by addressing the motion filed by the State.

Dr. Kumar stated that he feels that it is quite clear that the report that came into the hands of the Secretary and Supervising Member talked about the fact that Dr. Brumfield tested positive for cocaine. Without having any other information, it was absolutely proper for them to summarily suspend Dr. Brumfield's license.

DR. STEINBERGH MOVED TO AMEND THE FINDINGS OF FACT BY ADDING FINDINGS THAT:

- 1. THE SECRETARY AND SUPERVISING MEMBER, AT THE TIME THEY MADE THE RECOMMENDATION TO SUMMARILY SUSPEND THE LICENSE OF DR. BRUMFIELD, HAD CLEAR AND CONVINCING EVIDENCE THAT DR. BRUMFIELD HAD VIOLATED THE TERMS OF HIS CONSENT AGREEMENT, AND,**

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2. THEREFORE, HIS CONTINUED PRACTICE OF MEDICINE CONSTITUTED A DANGER OF IMMEDIATE AND SERIOUS HARM TO THE PUBLIC, AS PROVIDED IN THE CONSENT AGREEMENT.

DR. KUMAR SECONDED THE MOTION.

Dr. Kumar again stated that there was clear evidence that the Secretary and Supervising Member had clear information about a positive urine test. Under those circumstances, they had no other choice but to take the action they took.

Dr. Bhati stated that this is a similar situation to when the question is being raised about how the decision is being made by the Secretary and Supervising Member. It seems very clear that the test was positive for the cocaine. How it got to Dr. Brumfield is really not the Board's problem. It got to him and he had a positive test. There was clear and convincing evidence for the Secretary and Supervising Member, and they took proper action to suspend the license to protect the public of the State of Ohio. Dr. Bhati stated that that job was done properly.

A vote was taken on Dr. Steinbergh's motion to amend the Findings of Fact:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF DANIEL HOWARD BRUMFIELD, M.D. DR. BHATI SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion in the above matter.

Dr. Egner stated that this is one time that she does believe the doctor. She stated that, while she was reading this case, she thought that it goes against how she usually feels about things; but whenever the Board has talked about addiction and relapses, usually in retrospect you can see some sort of behavior leading towards it. The physicians didn't make all their meetings, their behavior changed somewhat.

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There were just some small, subtle signs that were there, noticeable in retrospect. With Dr. Brumfield, even in retrospect, there was no one who came forward and said that he or she was a little suspicious, or that Dr. Brumfield didn't seem himself. Dr. Brumfield was doing all the things he was supposed to do. Dr. Egner stated that she did question how Dr. Brumfield could not remember that he had put cocaine in the nebulizer, but she's unsure. She noted that it was two years prior that he had done so, Dr. Brumfield was sick, and he used the nebulizer. Dr. Egner stated that she does think that the nebulizer was the source, and she does believe Dr. Brumfield.

Dr. Egner added that, by adopting the Proposed Order, the Board isn't letting Dr. Brumfield off. He will have to continue under his current consent agreement. Dr. Egner added that if Dr. Brumfield did use cocaine purposely, he'll use it again, and the Board will catch it. She doesn't think that's the case right now.

Dr. Bhati stated that it is really not up to the state to prove the issue beyond any doubt. The Board's charge is to determine the probability. Dr. Bhati stated that, without a doubt, Dr. Brumfield tested positive for cocaine. How he got the cocaine into his system is Dr. Brumfield's responsibility. It is not the Board's job to prove how he got it.

Dr. Buchan stated that, like Dr. Egner, he read this case and thought, here we go again. He expected to hear a tall tale and he had a feeling about where this one would land. However, he read the case most thoroughly, and he commended Mr. Porter for his review and his persistence in seeking what Dr. Buchan believes is the truth. Dr. Buchan stated that he believes Dr. Brumfield is still clean and sober, and he will vote in that way. Dr. Buchan stated that he's disappointed that Dr. Brumfield fell into this, and he's disappointed that the Board has had to review this case. The onus is always on Dr. Brumfield to maintain his clear and clean urines. Dr. Buchan added that this was just an unbelievable case, and upon his final review, he will suggest that the Board proceed with the Proposed Order and Dr. Brumfield's current Consent Agreement.

Dr. Steinbergh stated that she agrees with the State that the evidence is sufficient to support a conclusion that Dr. Brumfield violated the conditions of his Consent Agreement. He had a positive urine screen for cocaine. Dr. Steinbergh added that she agrees with Dr. Bhati in the sense that how that happened is something to be considered. There's not enough evidence to say that it didn't happen. It did happen. Dr. Brumfield had a positive test for cocaine. She stated that she finds that this is sufficient to support a conclusion that Dr. Brumfield violated the conditions of his consent agreement.

Dr. Steinbergh stated that, on the other hand, she takes a look at the impairment piece of this and she thinks it is conclusive that Dr. Brumfield was not impaired by it. She also agrees with the concept that he should have known better. She stated that, if she were a recovering addict, she thinks that at the beginning of the recovery she would know where she had kept her cocaine. She thinks that Dr. Brumfield should have known better.

Dr. Steinbergh stated that she does agree with the Proposed Order in this case. The Board was obligated to look at this case, and it looked at it. Dr. Brumfield had a positive urine screen for cocaine, and she doesn't

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think the Board can excuse that. Dr. Brumfield violated his Consent Agreement by that positive urine screen. Dr. Steinbergh stated that she sees no evidence that there is a current impairment. Dr. Brumfield has been out of practice for 30 days. She agrees with the Proposed Order for no further action and to continue with the current Consent Agreement. Dr. Steinbergh added that she also believes that if, in fact, Dr. Brumfield intentionally abused cocaine, the Board will know that in the future.

Dr. Kumar stated that he agrees with what has been said. The Board knows that Dr. Brumfield was addicted, and it knows that there was a positive urine screen. It appears to be an "innocent mistake," but the fact is that Dr. Brumfield was not careful in what he was doing. Dr. Kumar stated that he agrees with the Proposed Order, but he would like to suggest a little different take here. Maybe what the Board should consider is extending the probationary period of five years by adding another year so that the Board will have another year or so to monitor Dr. Brumfield. Dr. Kumar stated that Dr. Brumfield has had a recent relapse. The Board normally follows physicians for five years after they have been in recovery, and this would give the Board the five years.

Dr. Egner stated that, if Dr. Brumfield were near the end of his probationary period, she would be more in favor of that because that extra year would give the Board additional information. But, he really isn't. She doesn't really see at this point what an extra year would tell the Board. She added that, actually, the next twelve months will provide the Board with the information needed. If Dr. Brumfield intentionally used, he'll use again in the next twelve months. She stated that she doesn't want to change anything.

Mr. Browning arrived at this time.

Dr. Davidson asked whether there is any further discussion prior to the vote to approve and confirm, as amended.

Mr. Browning asked for information about the amendment.

Dr. Davidson stated that the amendment was to ratify the Secretary and Supervising Member's summary suspension.

DR. STEINBERGH MOVED TO AMEND CONCLUSION OF LAW #3 TO STATE:

AS SET FORTH IN FINDINGS OF FACT 3, THE EVIDENCE IS SUFFICIENT TO SUPPORT A CONCLUSION THAT THE CONDUCT OF DR. BRUMFIELD CONSTITUTES A "(V)IOLATION OF THE CONDITIONS OF LIMITATION PLACED BY THE BOARD UPON A CERTIFICATE TO PRACTICE," AS THAT CLAUSE IS USED IN SECTION 4731.22(B)(15), OHIO REVISED CODE.

Dr. Steinbergh stated that she would not amend Conclusions 1 and 2 or the Proposed Order.

Dr. Steinbergh stated that she believes that that positive urine screen is sufficient to support the conclusion that there was a violation of the Consent Agreement.

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Dr. Egner expressed concern that Dr. Brumfield would lose his job.

Dr. Buchan stated that if this physician intentionally used, the Board will know it. What Dr. Brumfield needs to understand today is that the Board takes this business very seriously. Dr. Buchan stated that he has been fooled before and he may be fooled again; however, at this time, he thinks at least a couple of the Board members are suggesting that the Board proceed with the current Consent Agreement, and he's firmly in favor of that. Dr. Buchan questioned penalizing Dr. Brumfield further by amending the Conclusions of Law. He stated that the Board is either in or out with this physician. They're starting a long course of treatment and care for this physician and should proceed as they have agreed to monitor him. Dr. Buchan stated that he is not in favor of any modifications to the current order.

Dr. Steinbergh stated that she's not suggesting amending the Proposed Order, only the Conclusions of Law. She's not proposing a different Order.

DR. KUMAR SECONDED THE MOTION.

Dr. Robbins stated that, although he's inclined to agree with Dr. Steinbergh's proposed amendment, he is concerned that Dr. Brumfield might lose his job. Dr. Robbins agreed with Dr. Buchan that, in this situation, the Board is either in or out. His sense after reading the case and listening to other Board members is that, if he's going to err here, he's going to err on the side of the doctor. Dr. Robbins added that he's been wrong before, but he doesn't think he's wrong here. Dr. Robbins stated that he would be against the motion on the table because he wouldn't want a negative consequence to potentially happen to Dr. Brumfield's practice.

Dr. Steinbergh stated that she's convinced that this won't affect his practice, considering where he's practicing and the fact that Dr. Goldberg is supportive of him. She thinks that this is a technical matter. There was a positive urine screen. The Board knows that there was cocaine. The Board has evidence that it is highly unusual that contamination from a nebulizer would produce this positive screen. The Board can't sufficiently explain the positive screen, and she's willing to go on the light side with that and not change the Proposed Order, but there was a screen that was positive. She can't ignore that positive screen. She can move in favor of Dr. Brumfield, say that 30 days out is enough, and allow him to go back into practice. The Board summarily suspended him. Dr. Brumfield has come before the Board and said that his job is only in jeopardy if the Board doesn't return him to practice. She stated that she believes that to be true. She again stated that there is evidence to support a violation of the Consent Agreement. It was violated.

A vote was taken on Dr. Steinbergh's motion to amend:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- nay

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Dr. Kumar	- aye
Mr. Browning	- nay
Ms. Sloan	- nay
Dr. Robbins	- nay
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion failed.

Dr. Davidson asked whether there was any further discussion on this matter.

Dr. Bhati stated that the Board needs to take into serious consideration the Secretary and Supervising Member, who diligently looked into this case. Dr. Bhati stated that he has a great deal of respect for Mr. Porter, but he also respects the decisions by the Secretary and Supervising Member who felt that there was clear and convincing evidence of a violation. The Board doesn't know how the violation happened. There is a theory that it happened when Dr. Brumfield used his nebulizer, but that is not a proven theory. Dr. Bhati stated that there is clear and convincing evidence that the violation happened. For the Board to totally ignore that is unjustifiable.

A vote was taken on Dr. Steinbergh's motion to approve and confirm, as previously amended:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- nay
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- nay

The motion carried.

Mr. Dilling asked Mr. Browning whether he had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the Reports and Recommendations on this month's agenda, and whether he understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. Mr. Browning responded, "yes," to both questions.

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JEFFREY JAMES FIERRA, M.D.

Dr. Davidson directed the Board's attention to the matter of Jeffrey James Fierra, M.D. She advised that objections were filed to Hearing Examiner Clovis' Report and Recommendation and were previously distributed to Board members.

Dr. Davidson continued that a request to address the Board has been filed on behalf of Dr. Fierra, but was not filed in a timely manner. She asked whether the Board members wished to allow Dr. Fierra's address.

DR. STEINBERGH MOVED TO ALLOW DR. FIERRA TO ADDRESS THE BOARD.

DR. ROBBINS SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Davidson advised that Dr. Fierra would have five minutes for his address.

Dr. Fierra was accompanied by his counsel, Joyce A. Salisbury.

Dr. Fierra thanked the Board for the opportunity to address it today. He advised that he's been a physician for about 35 years and has worked for some clinics as an independent contractor. He had a Workers' Compensation case that involved one clinic. As an independent contractor, he did his medical work and was restricted to that. At the clinic he did not do any billing, nor did he receive any payments from the Bureau of Workers' Compensation. Dr. Fierra added that he didn't have access to the clinic's checking account or savings account. Dr. Fierra stated that he got paid for some of his work, but not all of his work, at a reasonable rate.

Dr. Fierra stated that, when the case came about, the first plea offer was for him to offer information against a personal injury attorney and the investors of another clinic, where he also worked as an independent contractor. He had no knowledge about the particular attorney or the investors of that other clinic. As time went on, right before the trial, they offered him a plea to reduce three felony charges to three misdemeanors and pay a restitution fee of \$150,000. Even though he did not receive any money from

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the Bureau of Workers' Compensation, he did take the plea. He pled guilty to three misdemeanors, in lieu of the possibility of being in prison for up to 15 years. At his age of 61, going on 62, he figured that was a life sentence.

Dr. Fierra asked that the Board understand what he's been through, and why he did take the plea agreement, so that he can try to go on with his life.

Ms. Salisbury stated that Dr. Fierra was caught up in an investigation of the clinic. He was not the target of the investigation, but his belief is that the investigators were trying to put pressure on him, to find information on their target. Dr. Fierra had no such information. They came up with charges against Dr. Fierra, and he maintained then and maintains now that he was not guilty of any of those charges. When Dr. Fierra's attorney during the criminal investigation explained to the Prosecutor how the case against Dr. Fierra was suspect, Dr. Fierra thought that that would be the end of it. However, what the Attorney General's office did do is to reduce the charges against him if he would plead guilty to them. Dr. Fierra asked his attorney in that matter why he should plead guilty to something that he never did. His attorney at that time told him that they were reducing three felony charges against him to three misdemeanors, asking for \$150,000 in restitution, not asking for any jail time. Dr. Fierra believed at that time that he may be able to keep his medical license.

Ms. Salisbury advised that Dr. Fierra entered the plea. She asked the Board members to put themselves in Dr. Fierra's position. He'd done nothing wrong, yet he had the possibility of spending 15 years in prison. She asked whether the Board members would entrust 15 years of their lives to a jury on a matter as complicated as issues involving medical billing and coding. Dr. Fierra decided that he wasn't going to risk that. He would enter the plea. He believed that if he were called before the Board, the Attorney General would have to present evidence to the Board and he would be able to show the Board exactly what happened: What he did and didn't do. That opportunity was never presented to him. He was told that, because he had entered a plea to the misdemeanor charges, that that was automatic grounds for suspension.

Ms. Salisbury stated that nowhere along the way has anybody heard any evidence against him. He has never had an opportunity to refute any evidence. Dr. Fierra is standing before the Board today, asking the Board to please look beyond his plea and try to see what he did and didn't do. He's asking that, if the Board, when considering the Hearing Examiner's Recommendation, believes, as he does, that the Recommendation is severe, the Board not revoke his license nor suspend it. Ms. Salisbury asked that, if the Board feels compelled to suspend Dr. Fierra's license, it stay the suspension. Ms. Salisbury stated that the ultimate irony in this case is that Dr. Fierra entered the plea in order to be able to continue with his life and his practice. He never dreamed that he would be before the Board today at a hearing that could result in the suspension of his license.

Dr. Steinbergh asked Dr. Fierra why he chose to do this type of practice with his background in radiology. She also asked whether the billing was done with Dr. Fierra's tax ID number, versus the clinic tax ID number.

Dr. Fierra stated that billing was done with the clinic's tax ID number. He added that radiology required

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too much visual repetition. He liked dealing with patients a lot better. He liked the communication aspect. He added that he may not have been able to read films as fast as some other radiologists. He was maybe too careful and had some problems with that. He did wind up working for, roughly, three outpatient clinics, and they all went out of business for different reasons, such as mismanagement and so forth.

Dr. Steinbergh noted that Dr. Fierra did say on the record that he very much enjoys the work he's doing now.

Dr. Davidson asked whether the Assistant Attorney General wished to respond.

Mr. Wilcox spoke in support of the Report and Recommendation in this matter. He believes that the record is undisputed that Dr. Fierra pled guilty to two misdemeanor counts of Workers' Compensation fraud and one misdemeanor count of aggravated theft. All of these convictions were directly related to his medical practice. The judge in this case sentenced Dr. Fierra to six months in jail, with Dr. Fierra serving ten days, the remainder of the time being suspended. The Court also ordered Dr. Fierra to pay \$150,000 in restitution.

Mr. Wilcox stated that, although the recommended 18-month suspension is a considerable suspension, he believes that it is warranted because Dr. Fierra did not accept any responsibility for his actions at hearing. As the Board sees today, he still accepts no responsibility for doing anything wrong. In spite of his pleading guilty in the Cuyahoga County Common Pleas Court, which the Judge found to be made knowingly, intelligently and voluntarily, Dr. Fierra came to hearing and denied responsibility for his convictions. Mr. Wilcox advised that the record contains, and he's sure that the Board members have read, the sentencing transcript and the plea hearing transcript. In the plea hearing transcript, the Judge notified Dr. Fierra that this could have adverse effects on his medical license, and that he would report this to the Medical Board. Today Dr. Fierra has denied responsibility and has blamed the charges on the clinics where he worked. Mr. Wilcox stated that if Dr. Fierra wanted a chance to deny the charges, he could have done so at trial. He chose not to do so. He pled guilty. Mr. Wilcox stated that this is a physician who admitted his crimes to a judge in Court and then reversed his spiel today and comes in and tells the Board that he was completely innocent of any improper billing. Mr. Wilcox stated that he doesn't think that this is credible, and he believes that the Order should be supported, as written.

Dr. Bhati asked who owns the clinic. He stated that ownership of the clinic is important because the aggravated charges were against the doctor and not the clinic.

Mr. Wilcox stated that, from his understanding, no one else was indicted in this case and the charges were not against the clinic.

Mr. Browning stated that that doesn't answer Dr. Bhati's question. It's an ownership question. Did Dr. Fierra have an ownership interest in the clinic?

Mr. Wilcox stated that that never came up.

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Dr. Steinbergh stated that it's clear who owned the clinics and that Dr. Fierra was being paid by the clinics.

Mr. Wilcox stated that the hearing didn't retry the case. He didn't have any of the witnesses involved. He added that this was a bootstrap hearing, and he had to go by the evidence that he has.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JEFFREY JAMES FIERRA, M.D. MS. SLOAN SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion in the above matter.

Dr. Steinbergh stated that she appreciates this case and Dr. Fierra's guilty pleas. She felt that the hearing record was very complete and answered all of the questions that she had regarding billing. She also thought that in the record Mr. McGinty pointed out in an appropriate way that, if you worked for the Cleveland Clinic, and the Cleveland Clinic did your billing, and there was a problem, would a doctor expect that he'd be liable for the billing errors and mistakes of his or her employer.

Dr. Steinbergh stated that she absolutely believes Dr. Fierra. She sees no evidence of collusion or a scheme to defraud the Bureau of Workers' Compensation by Dr. Fierra. She found no evidence that he financially benefited in any way. For some reason the Board is not aware of any indictments against these two companies who were responsible for the billing and receiving the monies from the Bureau. Dr. Fierra pled guilty for the reasons that he gave, and she absolutely believes them. He's paid restitution of the money, he's spent a little time in jail, and he denies responsibility. Dr. Steinbergh added that she doesn't believe that Dr. Fierra was responsible.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER BY SUBSTITUTING AN ORDER OF REPRIMAND. DR. EGNER SECONDED THE MOTION.

Dr. Davidson stated that she would entertain discussion on the motion to amend.

Dr. Robbins stated that he has a little different take on this. He stated that Dr. Fierra was employed by the clinic. He was the one doing the care, and he has the responsibility to check those bills, whoever is doing his billing. Dr. Robbins stated that, although he does believe Dr. Fierra when he says that he didn't benefit from this, Dr. Fierra does submit the charges. He does what all physicians do, and he has trust in the billing people that either work for him, or are part of his organization. Dr. Robbins stated that, as far as he's concerned, there is some responsibility there. Dr. Fierra can't just say that he didn't have anything to do with it. Dr. Robbins stated that there is an obligation there that, in his mind, can't be divorced. Dr. Robbins stated that he leans toward the Proposed Order.

Dr. Kumar agreed with Dr. Robbins. If you look at it, BWC, Medicare or Medicaid requires each individual physician to sign an individual attestation that all the billing, etc., that will be done on his or her behalf is appropriate, even in hospitals and places of that nature. There is an individual responsibility to make certain that the billing is correct. Dr. Kumar stated that it is very possible that Dr. Fierra did not pay

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attention because it was billed by the clinic, but it's still a physician who provides the services. The billing is done in the name of the physician. The individual physician does have a responsibility as to how those bills are being sent. Dr. Kumar stated that he does not support a reprimand in this case.

Dr. Steinbergh agreed with Dr. Kumar, physicians are responsible for their billing; however, in this record, two things impressed her: 1. Dr. Fierra stated in the record that he had no access to the billing. Dr. Steinbergh stated that after seeing Dr. Fierra and listening to him, she honestly believes that. 2. Also in the record was a reference to a report by a Dr. Kennedy, which would have discussed the billing errors. There was to have been a State's Exhibit No. 7, which was withdrawn, she believes, because of the objections by Dr. Fierra's attorney. Dr. Steinbergh stated that she would love to have seen that report because, quite frankly, the Board doesn't know the exact errors that have been made. She believes that that might possibly change her mind, although she can't say that.

Dr. Steinbergh stated that when she takes a look at the totality of this case, the amount of money, the fact that this physician is an independent contractor for this group who pays his own taxes and this type of thing, he goes in and does the work. Part of his work, of course, would be to submit an encounter form. He circles what he did, it goes off to the billing department, which submits it to the BWC. Dr. Steinbergh stated that she believes that Dr. Fierra isn't seeing the bill. Dr. Steinbergh stated that, because she does believe that, because Dr. Fierra isn't an integral part of the practice, and because a partner or someone else was hired to do billing, she absolutely, positively believes Dr. Fierra, and she believes that the Proposed Order is much too severe. Dr. Steinbergh again stated that Dr. Fierra has paid restitution for money that she doesn't believe he needed to pay. She feels badly that Dr. Fierra had to enter the plea, but she does understand why he did, and added that she would probably have to do so herself, if she were in the same circumstances. Dr. Steinbergh stated that she thinks that Dr. Fierra has been through enough, and a reprimand on his license is sufficient. She doesn't believe that putting him through anything more protects the public at all, and it's just one more thing that the Board would be doing to a physician who she doesn't think deserves it.

Dr. Buchan stated that he does appreciate Dr. Steinbergh's sentiment. As he reviewed this case, he also knows that most of what he appreciates was Dr. Fierra's testimony. The Board doesn't have access to the hard facts because this was a bootstrap case. What the Board does know is that the Courts, having access to all the information, sentenced this physician to six months in jail and fined him \$150,000. Dr. Buchan stated that he doesn't take that lightly. Dr. Buchan stated that he appreciates Dr. Fierra's testimony this afternoon, but noted that most of what the summary of evidence describes and reflects is Dr. Fierra's sentiment. Dr. Buchan stated that he appreciates it, but the fact of the matter is that the hard data suggests that the Board needs to come down on the harder side of things. Although he would agree to a suspension shorter than the proposed 18 months, he can't buy into the proposed reprimand. It's based too much on Dr. Fierra's testimony, which was persuasive, but not in line with what the Court suggested the outcome would be. The Court was firm, and it was hard on this guy.

Dr. Steinbergh asked whether other Board members question why the companies themselves were not indicted. She stated that she doesn't know to this day if they have been, but it bothers her.

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Dr. Buchan stated that it bothers him, too, but added that the Board has to base this decision on a limited amount of information. Most of the information he has to trust was reviewed thoroughly by the courts, who had that information. The Board heard the courts speak, and to suggest something different on more limited information is not the direction in which the Board should go.

Dr. Kumar stated that a possible explanation for Dr. Steinbergh's question is that it's very likely that the business or corporate entity went out of business and there was nothing to indict. The corporate structure protects some of these things. Many times these things do fall on the provider, who actually provided the services. Dr. Kumar stated that even if you're working as an independent contractor, there are forms he must complete appropriately. Dr. Kumar suggested that Dr. Fierra didn't do that. He also agreed that an 18-month suspension is too long, but a reprimand is too mild.

Mr. Browning suggested a six-month suspension as an alternative. He added that accountability is in order here, but there's an issue of intent. Basically, the Board is levying a fine on this person by taking him out of practice for a period of time. The longer it is, the higher the fine. Given the facts in this case, a reasonable middle ground is in order and he recommended six months.

Dr. Davidson called for a vote on Dr. Steinbergh's motion to amend.

A vote was taken on Dr. Steinbergh's motion to amend:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- abstain
	Dr. Bhati	- nay
	Dr. Buchan	- nay
	Dr. Kumar	- nay
	Mr. Browning	- nay
	Ms. Sloan	- nay
	Dr. Robbins	- nay
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion failed.

MR. BROWNING MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF JEFFREY JAMES FIERRA, M.D., BY CHANGING THE 18-MONTH MINIMUM SUSPENSION IN PARAGRAPH "A" TO A SIX-MONTH MINIMUM SUSPENSION. DR. BUCHAN SECONDED THE MOTION.

Dr. Robbins spoke in support of the proposed amendment, stating that he's not tied to the 18-month suspension in the original Proposed Order. Dr. Robbins stated that he agrees with Dr. Steinbergh, and as he reads this, he's compelled more toward leniency without any question. However, for this situation to

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have occurred, there was, at the very least, significant naiveté on Dr. Fierra's part. Dr. Fierra has more of a duty toward billing than to just walk in and abdicate the responsibility to whomever, to charge whatever they want. Dr. Robbins stated that he doesn't think that that's what a reasonable physician in this situation would do. That's a mistake.

Dr. Steinbergh agreed that there was naiveté, but she also feels that the naiveté in this particular physician was understandable. There are a lot of physicians who are going to be in this man's place because they are naïve and they do not understand their responsibilities. Those who sit at the Board table have a lot more experience, not only in practice and business, but there are a tremendous number of physicians who are under the same type of situation that Dr. Fierra is under who absolutely do not understand. She added that she hopes that this will become a wakeup call for Dr. Fierra and that he'll begin to take courses in the appropriate billing for BWC, Medicare, and so forth, because that will be an educational piece for him.

Dr. Kumar agreed that some courses in CPT recording and billing issues are necessary. He also felt that the Board should require Dr. Fierra to take personal and professional ethics courses.

Dr. Steinbergh suggested she doesn't think he needs a personal ethics course. She thinks he will learn something from a professional ethics course and a BWC course.

MR. BROWNING ADVISED THAT HE WOULD ACCEPT THE PROFESSIONAL ETHICS AND BWC COURSES AS FRIENDLY AMENDMENTS. DR. BUCHAN, AS SECOND, AGREED. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF JEFFREY JAMES FIERRA, M.D. DR. BHATI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye

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Dr. Talmage	- abstain
Dr. Bhati	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.

STEVEN FRANKLIN GREER, M.D.

Dr. Davidson directed the Board's attention to the matter of Steven Franklin Greer, M.D. She advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

Dr. Davidson continued that a request to address the Board has been timely filed on behalf of Dr. Greer. Five minutes would be allowed for that address.

Dr. Greer was accompanied by his attorney, John P. Carney.

Mr. Carney stated that he and Eric J. Plinke represent Dr. Greer. They feel that Mr. Porter's Report and Recommendation is reasoned and thorough, and they agree with it.

Dr. Greer thanked the Board for allowing him to come here and speak on his behalf, and to thank the Board for what he feels has been a positive experience so far. Dr. Greer stated that he believes that you could look at his case as a tragedy or as an opportunity. He chooses to look at it as an opportunity.

Dr. Greer stated that he does regret that he was unable to be honest at the beginning of this whole process in March and June. There was a level of fear and anxiety that was immeasurable. He was paralyzed and unable to come and tell somebody about who he really was. This has been an enlightening process, and he's glad that it's all out on the table now.

Dr. Greer stated that he realizes that his integrity has been damaged, and he realizes there are consequences. He fully accepts those consequences. Dr. Greer added that, fortunately, he has a very supportive wife and family in general. He has two sponsors, a church sponsor and an A.A. sponsor. He also has his residency director in his corner. That's helped immensely.

Dr. Greer continued that right now he has a very optimistic outlook, even with what the Board might do today. This is about life for him, and staying sober. It's gone beyond just residency and being a physician. He commented that he couldn't say that in June of last year. He thought the whole world was coming down on him and was going to collapse on his head. Within a relatively short period of time, due to AA,

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his sponsors, Dr. Collins, and Dr. Janesz, he has been given the tools he needs to stay sober every day.

Dr. Greer stated that the most important thing for him is his sobriety. It's the first thing he thinks about in the morning and the last thing that he thinks about at night. He's spent the last seven months immersed in recovery activities. Dr. Greer stated that he's going on his first A.A. retreat in February. He goes to meetings. He's abiding by the Step II Agreement, which he ultimately violated, but he's been doing his weekly random urines, doing saliva testing, attending meetings, and attending Caduceus. Also, in the last seven months he's been taking care of his two-year-old daughter, which has been a good experience for him.

Dr. Greer stated that his wife, who is also a resident, has told him that all she wants for him is to be sober and to be happy. He stated that he agrees with her. Today he is comfortable with whatever decision the Board makes. He has a certain peace about it because he's been in the throes of addiction for 20 years, and this has been a very good and a needed experience.

Dr. Greer stated that his Residency Program Director has been supportive of him. He wrote a letter on Dr. Greer's behalf and has assured him that he does have a spot in the program if and when he does go back. Dr. Greer commented that he takes that to heart.

Dr. Greer stated that he has been given a lot the last seven months. He knows that there will be a lot expected of him by the Board and others, to not relapse, to never use drugs or alcohol again. Dr. Greer stated that he does agree with the provisions of the Proposed Order and the Findings of the Hearing Examiner. He does feel that they are fair and reasonable. He also knows that any future acts of dishonesty on his behalf, or any failure to comply, will result in revocation. He understands that. Dr. Greer thanked the Board for allowing him to come here and speak.

Dr. Davidson asked whether the Assistant Attorney General wished to respond.

Ms. Albers stated that the Report and Recommendation does an excellent job of outlining Dr. Greer's history with this Board and his history, in general, with substance abuse. She stated that it's important to point out, as Dr. Greer admitted today, that he was not truthful with the Board. He went through a Step I consent agreement process with the Board and was not honest. He went through treatment and was not honest with his treatment providers. He did not report his relapse to the Board, as is required.

Ms. Albers stated that she does support the Report and Recommendation as written. She stated that Dr. Greer is a young physician, and she honestly believed at the hearing that he had learned a lesson. Ms. Albers spoke in support of giving Dr. Greer another chance.

DR. KUMAR MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF STEVEN FRANKLIN GREER, M.D. MR. BROWNING SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion in the above matter.

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Dr. Kumar asked when Dr. Greer's current training certificate expires. He expressed concern that the Board might be suspending something that's already expired.

Mr. Dilling asked whether that wasn't part of the record itself.

Dr. Steinbergh stated that the expiration of his certificate wasn't part of the record.

Dr. Garg commented that whether Dr. Greer has a current training certificate is a valid point. If he does not, the Order will need to be different, so that he can't reapply for another three months.

Dr. Davidson stated that staff will find out.

Dr. Steinbergh stated that she agrees with the Report and Recommendation, noting that Dr. Greer has been out now since June 18, 2004. With three months added on for suspension time, it will be mid-April before he can be reinstated. Dr. Steinbergh stated that she thinks that that is appropriate for his relapse.

Dr. Steinbergh continued that she hopes that Dr. Greer understands that the Board does know that he's been dishonest with it. She noted that the Board takes these issues very seriously. She stated that Dr. Greer has indicated that he thinks about it in the morning and again at night, and added that she hopes that he also continues to think about it all day, and that he lives it all day every day.

Dr. Garg stated that the Order is appropriate, but may need amending based upon clarification of his training certificate status. If he does not have a training certificate now, he could not apply for a new certificate for a period of three months.

Dr. Bhati stated that, normally, residency programs start in July.

Ms. Lubow stated that the Board could modify the reinstatement language of the Proposed Order to say that "the Board shall not restore, reinstate or issue any other certificate, unless the following conditions are met." She stated that that language would cover any eventuality.

DR. GARG MOVED TO AMEND THE FIRST PARAGRAPH OF PARAGRAPH C. TO STATE AS FOLLOWS: "THE BOARD SHALL NOT RESTORE, REINSTATE OR ISSUE ANY OTHER CERTIFICATE UNTIL ALL OF THE FOLLOWING CONDITIONS HAVE BEEN MET:" DR. BHATI SECONDED THE MOTION.

Dr. Buchan stated that he agrees with the proposed amendment, but added that, as he read this case, dishonesty was certainly an issue, but he noted that Dr. Greer is severely impaired. He reviewed Dr. Greer's history back to 1990, when Dr. Greer got his first DWI. He noted that Dr. Greer humbly comes before the Board, and he's most interested in getting Dr. Greer back on his feet, but he doesn't know whether Dr. Greer is as low as he can go, and he doesn't know if Dr. Greer will climb out of the box. He stated that he hopes that Dr. Greer does succeed, and added that the Board will be on his team, as long as

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he continues to be forthright.

Dr. Buchan at this time proposed revoking Dr. Greer's license and staying that revocation, noting Dr. Greer's long history of impairment. Dr. Buchan stated that he agrees with all that has been said, but he believes that the message is pretty clear that if Dr. Greer comes back before the Board, there's not a lot of grace that comes back to him. He's lucky to get out of here with 90 days.

DR. GARG ACCEPTED DR. BUCHAN'S SUGGESTION TO IMPOSE A STAYED PERMANENT REVOCATION. DR. BHATI, AS SECOND, AGREED.

Dr. Egner stated that she doesn't know that she's ready to go to a stayed permanent revocation yet, partly because Dr. Greer is so new to the Board. She stated that she thinks that she looks at his first round of treatment as unsuccessful. It's almost a continuation of his addiction, rather than a relapse. She stated that she doesn't think that he was ever in a true recovery process. Dr. Egner stated that she's always hesitant to put the stayed revocation in because, if the Board puts that in, and Dr. Greer relapses, she is a stickler for revoking the license. She doesn't want to include that language unless she really wants to permanently revoke the license after a relapse. She doesn't really look at this time as a relapse as he never really had been in a recovery process.

Dr. Garg stated that the reason he agrees with Dr. Buchan is for the simple reason that this is a very severe case going over 20 years. More than that, there is a history of lying. If you're going through a treatment program, you have to be truthful with yourself. He not only didn't tell the Board, he didn't tell his treatment providers either. If you're not going to be honest about your addiction, there won't be appropriate treatment. Dr. Garg stated that Dr. Greer realizes that his path will lead to revocation if he doesn't straighten up. Dr. Garg stated that the proposed stayed permanent revocation is not out of line in this case. He noted that the Board doesn't always permanently revoke a license when a stayed permanent revocation is already in place.

Mr. Dilling advised that staff has learned that Dr. Greer had a training certificate, which was summarily suspended, but which is good through June 30, 2005.

Dr. Talmage left the meeting at some point during the previous discussion.

A vote was taken on Dr. Garg's motion to amend:

Vote:	Dr. Egner	- nay
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

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Dr. Steinbergh - aye

The motion carried.

DR. BHATI MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF STEVEN FRANKLIN GREER, M.D. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

Mr. Albert and Dr. Garg left the meeting at this time.

FELICIA K. HOWARD-MCGRADY, M.D.

Dr. Davidson directed the Board's attention to the matter of Felicia K. Howard-McGrady, M.D. She advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendations.

MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF FELICIA K. HOWARD-MCGRADY, M.D. DR. STEINBERGH SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion in the above matter.

Dr. Steinbergh spoke in support of the Proposed Order to take no further action, noting that this case is a bootstrap case from action taken against Dr. Howard-McGrady's Illinois license for failure to pay state taxes. Apparently, there was a misunderstanding about the Illinois income taxes. The matter has been handled in Illinois. Dr. Steinbergh stated that, because of the action taken in Illinois, she does believe that the Board was obligated to go to hearing and to assess Dr. Howard-McGrady's situation, but she agrees with the Report and Recommendation.

Dr. Buchan agreed with Dr. Steinbergh.

Dr. Kumar stated that he also agrees, but pointed out that, usually, when you're delinquent or haven't paid

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your taxes, the state sends you a notice that you haven't paid, and you have the option to correct that at that time. Dr. Kumar stated that the record isn't clear as to whether or not that happened, or how did it go to the extent of being notified by the Illinois Board. Dr. Howard-McGrady needs to be careful in the future that, if there are some issues with taxes, she needs to take care of them right away.

A vote was taken on Mr. Browning's motion to approve and confirm:

Vote:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Steinbergh	- aye

The motion carried.

WILLIE L. JOSEY, M.D.

Dr. Davidson directed the Board's attention to the matter of Willie L. Josey, M.D. She advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

Dr. Davidson continued that a request to address the Board has been timely filed on behalf of Dr. Josey. Five minutes would be allowed for that address.

At this time it was noted that neither Dr. Josey nor his attorney was present.

Ms. Albers advised that when she returned to her office after the Board's morning session, there was a FAX in her mailbox from Mr. Byers asking that this be held over until February as Dr. Josey is still hospitalized. She noted that Dr. Josey is under an agreement not to practice until this matter is fully resolved by the Board.

Mr. Dilling noted that no such request has been received in the Board offices.

Dr. Kumar noted that the Board tabled this case last month because Dr. Josey was in the hospital. If he's truly in the hospital still and can't appear before the Board, it doesn't hurt because he's not currently practicing.

Dr. Davidson advised that the Board could proceed with discussion of this case if it so wished, or it could delay consideration until February.

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It was the Board consensus that the matter would be held over until February.

THOMAS R. PICKETT, P.A.

Dr. Davidson directed the Board's attention to the matter of Thomas R. Pickett, P.A. She advised that no objections were filed to Hearing Examiner Clovis' Report and Recommendation.

Dr. Davidson continued that a request to address the Board has been timely filed on behalf of Mr. Pickett. Five minutes would be allowed for that address.

Mr. Pickett thanked the Board for allowing him to speak. He expressed a willingness to answer any questions Board members may have.

Mr. Pickett added that the only thing that he has to address the Board about is his urine screens. There was a little hitch – miscommunication between his monitor, OPEP and himself. He missed a urine screen the week after Christmas. They have since picked up again. Mr. Pickett stated that he told his OPEP representative and they've cleared up the miscommunication on his part.

Dr. Davidson asked whether the Assistant Attorney General wished to respond.

Ms. Berrien spoke in support of the Report and Recommendation in this case. The Hearing Examiner laid out well-developed, strict conditions for Mr. Pickett. The conditions are appropriate and are what the expert at Glenbeigh recommended before Mr. Pickett practices.

Ms. Berrien commented that Mr. Pickett has had a long history of alcohol dependency. He's been drinking for many years and has had several DUIs; but, as the Hearing Examiner pointed out, Mr. Pickett never received proper treatment until the Board intervened. It's only been roughly four months since Mr. Pickett entered treatment, completed treatment, admitted his dependence and participated in aftercare. As he said, he's having some miscommunications with his current aftercare program.

Ms. Berrien noted that Mr. Pickett has admitted that he's not ready to practice. He's early in his disease, but he's still learning. One day he will be able to practice. As the Board can see from the clinical evaluations he had while in training, his performance was ranked at an above-average and sometimes excellent level. She suggested that one day Mr. Pickett will be a competent physician assistant; however, in order to be able to do so, he will need this Board's help and support and have the Board on his team now. It appears that Mr. Pickett is sincere in his quest to remain sober and to eventually practice, but, as the Board knows, it takes more than sincerity to overcome his current impairment. It's going to take the conditions that the expert recommended, as well as the conditions the Hearing Examiner placed in her Report and Recommendation.

DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF THOMAS R. PICKETT, P.A. DR. ROBBINS SECONDED THE MOTION.

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Dr. Davidson stated that she would now entertain discussion in the above matter.

Dr. Steinbergh stated that she doesn't agree with the Proposed Order in this case. She is very concerned about Mr. Pickett's many decisions to drive while intoxicated. Even in the year, 2000, when he had a six-month suspension of his driver's license, he did it again right after he got his license back. Dr. Steinbergh stated that she thinks the Board should deny Mr. Pickett's request for a license and let him prove to the Board over a year that he has documented his own sobriety. She wouldn't permanently deny him, but she would deny him and discourage him from applying for another year. He needs to prove to the Board that he's going to be a sober, responsible professional. She stated that she has no confidence in Mr. Pickett at this time, and she doesn't feel that the Board should take on this burden.

Dr. Egner stated that she had a whole different attitude toward this case. She had a couple of questions about this. First of all, Mr. Pickett disclosed all of the information to the Board on his application. He then went, because of what he disclosed, for an evaluation. They found that he had alcohol impairment and he went through the 28-day treatment program. Dr. Egner noted that Mr. Pickett appeared on his own behalf, and when she looks at a case like this, she believes that, had he had an attorney, he would have gone into a consent agreement. She doesn't think that he would have gone through the hearing process. This was a pretty run-of-the mill impairment problem. He went through a Board-approved treatment program, and now he is ready to work that program. He would have had a Step 1, and this would have been his Step 2 Agreement. Dr. Egner that, in a Step 2 Agreement, he would have only had a 30-day suspension. Here he has a 180-day suspension.

Dr. Steinbergh stated that first you have to agree that you want to give him a license in this state.

Dr. Egner stated that she does.

Dr. Steinbergh stated that multiple times Mr. Pickett made the decision to put human life at risk. She asked what kind of professional that is.

Dr. Egner agreed, but referred to the case of Dr. Greer, who has three DUIs, and he got a 90-day suspension. Mr. Pickett gets 180-day suspension. He didn't lie when he went to the treatment provider. He's taking responsibility for his impairment. It's a long history, but, to be honest, she'd bet that if all of the impaired probationers would be really honest, the majority of them abused drugs and alcohol way before they went to medical school or P.A. school. Dr. Egner stated that she was going to speak in terms of it being more consistent with the Step 2 agreement, with a 30-day suspension. She added that she doesn't feel strongly about it, but she certainly doesn't think that he deserves more punishment.

Dr. Buchan stated that the question is whether or not the Board is going to partner with the person. He stated that he appreciates Dr. Steinbergh's sentiment. Having seen so many of these, he sometimes wonders whether it's the right course to take. However, he thinks that Mr. Pickett is largely in treatment because of the Board's participation in his program and its acknowledgement of his alcoholism. He spoke in support of the Proposed Order.

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DR. EGNER MOVED TO AMEND THE SUSPENSION PERIOD OF THE PROPOSED ORDER TO 90 DAYS. DR. BHATI SECONDED THE MOTION. A vote was taken:

Vote:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- nay
	Dr. Kumar	- nay
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- nay
	Dr. Steinbergh	- nay
	Dr. Davidson	- nay

The motion failed.

Dr. Garg returned to the meeting at this time.

A vote was taken on Mr. Browning's motion to approve and confirm:

Vote:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- nay
	Dr. Davidson	- aye

The motion carried.

JOHN ALEXANDER TRIPOULAS, M.D.

Dr. Davidson directed the Board's attention to the matter of John Alexander Tripoulas, M.D. She advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JOHN ALEXANDER TRIPOULAS, M.D. DR. BUCHAN SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion in the above matter.

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Dr. Kumar stated that this is a simple, clear-cut case, and there's nothing to say about it. This individual has been playing games. He's been fired and then two days later resigns, as if to show that he resigned instead of being fired. This happened in three different places. The comments of some of the proctors essentially say that Dr. Tripoulas is so bad he shouldn't be allowed anywhere near a patient. Even simple tasks, such as giving antibiotics or changing fluid bags exceed his ability. That's enough to permanently deny him a license.

Dr. Garg expressed agreement.

Dr. Steinbergh stated that she does agree with the Proposed Order and the Conclusions of Law. He's applied for licensure and fraudulently misrepresented himself. Dr. Tripoulas has been disciplined in three different programs, yet denies that that has occurred. He's lied to the programs and fraudulently applied to programs. She added that she particularly agrees with Conclusion of Law # 3, which states that Dr. Tripoulas' conduct constitutes a failure to furnish satisfactory proof of good moral character.

Dr. Egner stated that the most disturbing thing about this case is that Dr. Tripoulas is able to get job after job. She stated that every one of these programs should get a letter from the Board. She added that this should be the impetus that the FCVS should use. These are the kinds of things that can happen if you don't check out somebody's background. They really should be held accountable for hiring people without checking out their backgrounds.

Several Board members indicated agreement with Dr. Egner.

Mr. Browning stated that this physician appears to be profoundly and dangerously incompetent. It's hard to believe he got into programs.

A vote was taken on Mr. Browning's motion to approve and confirm:

Vote:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

Dr. Davidson stated that a letter will be written to those programs and pursue this further with the

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Federation.

Mr. Albert returned to the meeting at this time. Dr. Bhati left the meeting at this time.

EXECUTIVE SESSION

MS. SLOAN MOVED THAT THE BOARD DECLARE EXECUTIVE SESSION TO CONFER WITH THE ATTORNEY GENERAL'S REPRESENTATIVES ON MATTERS OF PENDING OR IMMINENT COURT ACTION. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

Pursuant to Sections 121.22(G) (3), Revised Code, the Board went into executive session.

Dr. Talmage rejoined the meeting during the executive session.

FINDINGS, ORDERS AND JOURNAL ENTRIES

BRAIN INSTITUTE, CLEVELAND CLINIC FOUNDATION

Dr. Davidson advised that, by letter of October 27, 2004, the Board the Board issued its Notice of Opportunity for Hearing to the Brain Institute, Cleveland Clinic Foundation, on October 27, 2004, and acknowledgment of receipt was received. The Institute did not request a hearing, and more than 30 days have elapsed since the mailing of the notice. The matter is therefore before the Board for final disposition.

DR. GARG MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE OCTOBER 27, 2004 NOTICE AND TO ENTER AN ORDER DENYING THE BRAIN INSTITUTE, CLEVELAND CLINIC FOUNDATION'S SUPPLEMENTAL P.A. UTILIZATION PLAN, EFFECTIVE IMMEDIATELY. DR. STEINBERGH SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion in the above matter. There was no discussion.

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A vote was taken on Dr. Garg's motion:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

UNIVERSITY INTERNAL MEDICINE ASSOCIATES

Dr. Davidson advised that, by letter of October 27, 2004, the Board the Board issued its Notice of Opportunity for Hearing to University Internal Medicine Associates on October 27, 2004, and acknowledgment of receipt was received. The Institute did not request a hearing, and more than 30 days have elapsed since the mailing of the notice. The matter is therefore before the Board for final disposition.

DR. GARG MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE OCTOBER 27, 2004 NOTICE AND TO ENTER AN ORDER DENYING UNIVERSITY INTERNAL MEDICINE ASSOCIATES' SUPPLEMENTAL P.A. UTILIZATION PLAN, EFFECTIVE IMMEDIATELY. DR. STEINBERGH SECONDED THE MOTION.

Dr. Davidson stated that she would now entertain discussion in the above matter.

Dr. Steinbergh stated that the Board's discussion of this request is on the record. It felt that the supplemental plan was the practice of medicine.

A vote was taken on Dr. Garg's motion:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye

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Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

LYNNE ELLEN ZEGIOB CHECK, M.D.

Dr. Davidson advised that, on December 17, 2004, the Board sent a letter via certified mail, return receipt requested, stating that it had reason to believe that Dr. Check was unable to practice according to acceptable and prevailing standards of care pursuant to Section 4731.22(B)(26), Ohio Revised Code, to wit: "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice." Further, copies of the aforementioned letter were also sent to Dr. Check by regular mail and hand delivered to Dr. Check's residence by a Board Investigator on or about December 20, 2004.

Section 4731.22(B)(26), Ohio Revised Code, provides that "failure to submit to a mental or physical examination ordered by the Board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence." Thus, the matter of Dr. Check is now before the Board for final disposition.

MR. BROWNING MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE DECEMBER 17, 2004 NOTICE AND TO ENTER AN ORDER THE PROPOSED ORDER, EFFECTIVE IMMEDIATELY. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

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CITATIONS, PROPOSED DENIALS AND ORDERS OF SUMMARY SUSPENSIONLYNNE E. ZEGIOB CHECK, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time Mr. Dilling noted that before the Board is a proposed Order of Summary Suspension and notice of opportunity for hearing. He remarked that the Secretary and the Supervising Member have determined that, based upon their review of this matter, there is clear and convincing evidence that Dr. Check has violated Section 4731.22 (B)(15), Ohio Revised Code, and that, in accordance with her March 10, 2004 Consent Agreement, such violation constitutes clear and convincing evidence that her continued practice presents a danger of immediate and serious harm to the public. Mr. Dilling noted that the Secretary and Supervising Member recommend that the Board suspend Dr. Check's certificate without a prior hearing. At this time, the Board members were given the opportunity to review the proposed notice.

DR. BUCHAN MOVED TO ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF LYNNE E. ZEGIOB CHECK, M.D., IN ACCORDANCE WITH SECTION 4731.22(G), OHIO REVISED CODE, AND TO ISSUE THE NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

JAMES L.KEGLER, M.D. – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. BUCHAN MOVED TO SEND THE CITATION LETTER TO DR. KEGLER. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
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Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.

GREGORY SCOTT MASIMORE, M.D. – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

**DR. STEINBERGH MOVED TO SEND THE CITATION LETTER TO DR. MASIMORE.
DR. ROBBINS SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

ALAN J. PARKS, M.D. – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

**DR. KUMAR MOVED TO SEND THE CITATION LETTER TO DR. PARKS.
DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye

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Dr. Talmage	- abstain
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.

HUSAM EDDIN HAMED, M.D. – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. GARG MOVED TO SEND THE CITATION LETTER TO DR. HAMED. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

RATIFICATION OF CONSENT AGREEMENTS

MARK ALLAN RENZ, M.D.

DR. GARG MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. RENZ. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye

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Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

MICHAEL WILLIAM SULLIVAN, M.D.

Dr. Steinbergh asked how long Dr. Sullivan's license has been inactive in Ohio.

Ms. Gilbert advised that it has been inactive since September 30, 1996.

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. SULLIVAN. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

FRANK RAYMOND BRUENING, M.D.

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. BRUENING. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye

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Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.

NYKOLAI VASIL PIDHORODECKYJ, M.D.

DR. GARG MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. PIDHORODECKYJ. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

DAVID PAUL SPEARS, D.O.

DR. GARG MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. SPEARS. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

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RALPH G. OSTING, D.P.M.

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. OSTING. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

CHRISTOPHER S. SHAW, M.D.

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. SHAW. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

ROBERT EDWARD MARSICO, JR., M.D.

DR. BUCHAN MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. MARSICO. MS. SLOAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye

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Dr. Talmage	- abstain
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye

The motion carried.

ANDREW SCHNEIDER, M.D.

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. SCHNEIDER. MS. SLOAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

Dr. Davidson at this time commended the Board staff for getting copies of the consent agreements to the Board prior to the meeting so that it could be so efficient today. She stated that she has some concern when Board members are asked to ratify a consent agreement that they hadn't had time to review previous to the meeting. She stated that, in the future, if a consent agreement does not get to the Board prior to the meeting, it will be distributed at the Wednesday session and the topic will be tabled until the Thursday session for ratification at that time.

PERSONAL APPEARANCES

BRIAN D. HEIM, M.D.

Dr. Heim appeared before the Board pursuant to his request for release from the terms of his September 9, 1998 Consent Agreement. If approved, release from probation would become effective immediately.

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In response to Dr. Davidson's questions, Dr. Heim stated that he feels well. He advised that today will not change what he's doing for himself in his recovery process. He will continue to do the things that have got him to this point, as far as attending meetings, doing drug screens and everything else. Basically, release from probation won't change what he's doing at this point.

Dr. Kumar asked whether Dr. Heim had a physical condition that led him to use the narcotics in the first place.

Dr. Heim stated that he did not.

In response to Dr. Steinbergh's questions, Dr. Heim stated that he is a family practitioner in a corporation in Akron. They have eleven different offices. He's in an office by himself at the present time. He works about 45 hours a week in the office.

Dr. Garg asked whether he has cross coverage.

Dr. Heim stated that he does.

DR. STEINBERGH MOVED TO RELEASE DR. HEIM FROM THE TERMS OF HIS SEPTEMBER 9, 1998 CONSENT AGREEMENT. DR. GARG SECONDED THE MOTION.

Dr. Buchan asked whether Dr. Heim has any words of advice for the Board to allow it to do a better job in coaching physicians through the process.

Dr. Heim stated that he doesn't. He stated that he thinks that the toxicology screens were very important for him. That is something that he will not discontinue because he thinks that the random screens are what really help in keeping someone in the recovery process. Dr. Heim stated that he hopes that he doesn't see that changed as far as the Board goes. He thinks it is very critical in the process.

Dr. Heim added that Mr. Albert has been very helpful through the entire process, and he appreciates Mr. Albert's input into his recovery.

Mr. Albert commented that Dr. Heim has done very well.

A vote was taken on Dr. Steinbergh's motion to release:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye

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Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

JOHN F. ZAK, D.M.D., M.D.

Dr. Zak made his initial appearance before the Board, pursuant to the terms of his September 30, 2004 Consent Agreement.

Dr. Kumar asked Dr. Zak what made him allow Dr. Diamantis to practice outside the scope of his practice.

Dr. Zak stated that he was under the assumption that Dr. Diamantis was trained in these procedures, due to the fact that he'd gone to dental school and an oral surgery residency. Dr. Zak was trained to do that for six years. At the time, without doing proper due diligence in terms of looking into the language of the dental and medical practice acts, Dr. Zak stated that he personally went under the assumption that what Dr. Diamantis was doing was okay. He acknowledged that that was a mistake.

In response to Mr. Browning's questions, Dr. Zak stated that Dr. Diamantis completed a four-year dental program before attending medical school. He has his D.D.S., but he didn't get a license. That's the difference.

Dr. Steinbergh suggested that there ought to be a D.D.S. after Dr. Diamantis' name, then. If one graduates with a degree, one can use that degree in their title.

Dr. Diamantis stated that it's a grey area.

Dr. Steinbergh disagreed. If Dr. Diamantis has a D.D.S. degree, it should say that after his name. He was practicing without a license because he didn't have a license.

Ms. Gilbert advised that in Ohio, unless you hold a medical license, you cannot use the M.D. or D.O. designation behind your name as it indicates that the physician is holding him or herself out as being able to practice medicine. She stated that she's not sure about the dental laws, but that would be the situation with an M.D., if one isn't licensed.

Dr. Steinbergh stated that the degree comes from a professional program. She stated that it's her

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understanding that when you earn that degree, it becomes a degree after your name.

Dr. Garg stated that he always questioned that, but that's the law.

Ms. Gilbert stated that you can put the degree behind your name if it's not a situation where you're indicating an ability to practice. But if it's in a situation where someone would believe that you're holding yourself out as able to practice as a physician, the M.D. degree couldn't be used or it's the unlicensed practice.

Dr. Steinbergh asked Dr. Diamantis why he didn't have a license to practice dentistry.

Dr. Diamantis stated that that was just something he chose not to do at that time. If you don't practice dentistry for seven or eight years, it would be very difficult to go back and do fillings. That's what your exam would entail.

Mr. Browning asked Dr. Zak what the moral of the story is from his point of view.

Dr. Zak stated that he learned to not assume anything. An hour of study into it would have at least elicited enough concern to delve further. He had, and will continue to have, confidence in Dr. Diamantis' surgical abilities. The rest is somewhat diplomacy and beyond, but there is a place for that and a reason for that. Dr. Zak stated that he would have paid more attention to that at an earlier stage, given that opportunity.

Dr. Kumar stated that one of the things that bother him is that it was not just a matter of Dr. Diamantis doing dental work. The work done by Dr. Diamantis was billed under Dr. Zak's name.

Dr. Zak stated that that is correct.

Dr. Kumar advised that Dr. Zak was aware of the fact that Dr. Diamantis can't do those things.

Dr. Zak stated that, at the time of the infractions, he wasn't aware that Dr. Diamantis wasn't allowed to do those things.

Dr. Kumar asked why he would bill for Dr. Diamantis' work under his own name if he was not aware of it.

Dr. Zak stated that there were some instances of that that weren't to his full knowledge. They actually did, at the time, seek some guidance on that from someone they thought was an excellent candidate, in terms of an attorney, to judge that sort of thing, and they were given some horrible advice. They were told that that's not necessarily a problem or infraction, and that it was okay.

Dr. Kumar asked whether the infraction was picked up by the insurance companies or the Dental Board.

Dr. Zak stated that the Dental Board picked it up. He added that, to his knowledge, there had never been a complaint by a patient or an insurance company. The Dental Board, in their due diligence investigation,

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had uncovered that. That ended up being the basis for their decision regarding the case. Dr. Zak stated that hindsight is 20/20 and understandable, but there are, and there have been for years, many fail-safe stopgaps in place within the office to ensure that that sort of thing doesn't occur, whether the person's knowledgeable of it or not.

Dr. Buchan stated that the Board has to be clear. Dr. Zak made a choice to bill procedures performed by one physician under his name.

Dr. Zak stated that he did not consciously make that choice of those instances. When that was discovered, he immediately sought some advice and was told that it was fine.

Dr. Buchan asked when it is ever fine to bill procedures under someone else's name.

Dr. Zak stated that the explanation he was given was that, because it's a corporation, that made it okay. Dr. Zak stated that he would rather not repeat the name of the individual who gave them that advice. The Dental Board staff present knows to whom he's referring.

Dr. Zak continued that he certainly understands today, and that's why he's glad to be here today to have the opportunity to rectify the past.

Addressing Dr. Diamantis, Dr. Steinbergh asked whether, in order for him to get licensed in the State of Ohio at the time, he would have had to take an examination in dentistry.

Dr. Diamantis stated that he would have had to take two examinations: an oral exam and a practical exam. The practical exam consists of dentures, fillings, things he hadn't done for years.

Dr. Steinbergh stated that Dr. Diamantis made the choice not to do it, but then continued to practice dentistry.

Dr. Diamantis stated that the dilemma is that it's a state-to-state definition of dentistry. In Florida, where he was practicing, medical licensure is much more expanded. You can surgically take teeth out, and as long as you're not billing yourself as a dentist, it's okay. Obviously, in Ohio, that is not the case at all. He stated that this case actually went to Court in Canton, where the judge found them "not guilty" of this.

Dr. Steinbergh asked whether, in the early stages of the practice, when the bills went out over the wrong physician's name, they found that the insurance company was denying them.

Dr. Zak stated that he wasn't privy to that knowledge. The way the system was set up, there was a billing person that did all that. He never even saw the bills.

Dr. Steinbergh asked whether there was a senior partner in the practice.

Dr. Zak stated that they both entered the practice together.

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Dr. Diamantis stated that it was pure ignorance.

Dr. Steinbergh asked whether the insurance company paid bills for procedures performed by Dr. Diamantis under his own name.

Dr. Diamantis stated that it depended upon the procedure.

Dr. Steinbergh asked whether Dr. Diamantis was aware that there was a difference in dental and medical billing. She stated that there was, at some point, a decision made to bill Dr. Diamantis' services under Dr. Zak's name because Dr. Diamantis wasn't getting paid for them.

Dr. Diamantis disagreed, stating that they never got to that point. Their system wasn't clear enough to even know that at that time. It was so early in their career, they didn't know.

Dr. Egner asked whether they billed every procedure under one name only.

Dr. Diamantis stated that they didn't.

Dr. Egner asked what differentiated what procedure got billed under which name.

Dr. Diamantis stated that they weren't even that sophisticated. They didn't even know at that time what was getting billed.

Dr. Zak indicated that Dr. Diamantis was accepted as a provider by both medical and dental insurance companies, but he was only permitted to perform some procedures under the dental insurance. He added that this was at the stage where he felt that they were, arguably, in a grey area.

Dr. Steinbergh asked what year they went into practice together.

Dr. Zak stated that they went into practice together in 1998.

Dr. Steinbergh asked when they became aware that there was a problem.

Dr. Zak stated that they became aware of the problem in 1998. He stated that he literally walked out of the residency, and this happened soon after. Unfortunately, it's marred both his and Dr. Diamantis' careers.

Dr. Davidson stated that they've reached a consent agreement and everyone understands it. Now they can move forward and salvage their careers.

DR. BUCHAN MOVED TO CONTINUE DR. ZAK UNDER THE TERMS OF HIS SEPTEMBER 30, 2004 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. KUMAR SECONDED THE MOTION. A vote was taken:

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Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

AHMAD SHAHAMAT, M.D.

Dr. Shahamat made his initial appearance before the Board, pursuant to the terms of the Board's Order of April 14, 2004. He was accompanied by his attorney, Timothy P. Haffey.

In response to Dr. Kumar's questions, Dr. Shahamat stated that he's been doing very well. He acknowledged that his situation involved his billing Workers' Compensation for multiple visits at the same time. He stated that he now follows the advice of one of the Board members when he was here the last time. He has had similar problems of a patient coming in with two complaints and wanting to be seen for both complaints. The way to do it is to see the individual for both complaints but bill for one. That's what he's been doing.

Dr. Kumar asked how much of his practice involves Workers' Compensation cases.

Dr. Shahamat stated that he has about 700 patients, and about 70% is Workers' Compensation.

Dr. Kumar asked whether Dr. Shahamat has any questions of the Board concerning what is required of him.

Dr. Shahamat stated that he does understand.

Mr. Haffey added that they would like to be heard prior to the close of the meeting, but, otherwise, they have nothing specific at this time.

DR. KUMAR MOVED TO CONTINUE DR. SHAHAMAT UNDER THE TERMS OF THE BOARD'S ORDER OF APRIL 14, 2004, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. ROBBINS SECONDED THE MOTION.

Mr. Haffey stated that Dr. Shahamat was reinstated by this Board on October 13, 2004. He was suspended

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from practice for 90 days; however, it turned out to be approximately five months, given the technicalities of being reinstated. Since October 13, Dr. Shahamat has been seeing his patients, a good 70% of which are Workers' Compensation patients. Mr. Haffey stated that they have not been recertified with Workers' Compensation. Dr. Shahamat is seeing these patients pro bono. He expects to be recertified because there is a deficit of doctors who will take this work. There's a demand and he can fill that need.

Mr. Haffey advised that Dr. Shahamat cannot get insured by an insurance carrier until these probationary proceedings and this procedure is terminated. Mr. Haffey stated that he doesn't want to sound rash, but they have completed everything that they said that they would with regard to the terms. Dr. Shahamat returned funds to Workers' Compensation and served his suspension period. He's completed all the criminal probationary period; however, they have submitted a letter to the Board indicating that they will terminate early, provided that this Board acts, so there is a "Catch 22." Mr. Haffey stated that Dr. Shahamat cannot practice substantial medicine to his fullest ability until this Board terminates his probationary period. The Board may say that they want to watch this physician for another year and have him come back for a couple more three-month periods. Mr. Haffey stated that Dr. Shahamat will not last that long in the practice without having the ability to bill clients and to obtain insurance and to join a hospital association, or at least be able to practice with a hospital.

Mr. Haffey stated that he knows that it's premature, but they ask that the Board understand the situation and consider terminating Dr. Shahamat's probation at this time, or at the soonest time.

Dr. Egner stated that she remembers this case, and she remembers saying at the time of consideration of it that it was a problem with the system. She understands that. You see a patient for a problem and at that visit, he or she says, "this is bothering me, too;" and you treat both, as opposed to saying, "I'm sorry, today is Tuesday and we can only deal with your knee. If you come back tomorrow, we'll deal with your shoulder." It's a system problem, she understands that. But she questioned this Board's relinquishing probation on somebody that it decided was in violation of the Medical Practices Act. She stated that the Board would have no way of watching Dr. Shahamat.

Mr. Haffey stated that Dr. Shahamat remains under the State of Ohio's purview whether or not he's on probation. He still answers to this Board. Every doctor in the State of Ohio does.

Mr. Dilling stated that the Order states that there is a minimum three-year probation. There is nothing in the Order that says the Board has discretion to change that. The Board made its decision at the time it considered its Order. He suggested that Mr. Haffey might have a better argument with the insurance company to change its policy that it won't reinstate Dr. Shahamat until his Board probation is lifted. Mr. Haffey can tell the insurance company that the Board is watching the doctor, and if the doctor does anything wrong, the Board is going to jump on it. Mr. Dilling stated that that would seem to be a faster or more legal avenue to pursue. He asked whether Mr. Haffey knows of some legal way the Board can break its own order and then go on and not do that for the rest of the Board's orders.

Mr. Haffey stated that he doesn't have a legal trick. He knows that the Board has discretion and an amendment can be made. The Board can amend its own findings and its ruling. Mr. Haffey stated that

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they're dealing with an insurance company that owns them. He asked who can practice without insurance, and who can convene a board of insurance individuals and speak his or her case. Mr. Haffey stated that they didn't equivocate once when they first came before the Board. They admitted their wrong and suggested that they thought they were morally right, but they knew that they were legally wrong. Mr. Haffey quoted Benjamin Franklin's statement: "The rule of law is preferable to that of the individual." Mr. Haffey stated that they have learned that the hard way, and they will continue to follow that rule. Mr. Haffey stated that they are asking the Board to find some way to amend the Board's ruling to release Dr. Shahamat from probation so that he might present himself to the insurance industry and be deemed qualified for insurance. That's his problem.

Dr. Davidson stated that the Board has been through this before and Mr. Haffey's complaint is not the first time the Board has heard this; however, she agreed with Mr. Dilling that his issue is with the insurance company. In the past the Board has written letters explaining its position. If there are conditions in the Order that are intolerable, they should have been appealed at the time. She doesn't believe the Board has any leeway to alter an adopted Order.

Mr. Haffey stated that he has a copy from the provider who must provide the insurance in order to have the other third-party payer. He read the letter, which indicated that Dr. Shahamat does not meet the requirements for coverage, due to his probationary status, and advises Dr. Shahamat to contact them when this license is reinstated for membership in the PPO.

Dr. Steinbergh stated that that is their standard.

Dr. Robbins stated that, even if released, the next letter might say: "Thank you for your reapplication. Your application is denied."

Mr. Haffey stated that he appreciates that.

Dr. Robbins stated that that's what physicians face every day, regardless of Board Orders, etc. It's a no-fault situation.

Mr. Haffey stated that it's Dr. Shahamat's dilemma. He's repentant and has done everything he can. He knows exactly what he did wrong, and he's corrected it. He paid the money back and accepted his penalty. Dr. Shahamat just wants to practice medicine.

Dr. Robbins stated that he understands, but he agrees with what has been said. Dr. Shahamat's problem is really not with the Board. It's with the insurance company.

Dr. Egner asked whether the letter Mr. Haffey read was from the Bureau of Workers' Compensation (BWC).

Mr. Haffey stated it's from regular insurance.

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Dr. Egner asked whether he is back in the BWC system.

Mr. Haffey stated that he is not.

Mr. Albert stated that he thinks that the Board has gone as far as it can go in explaining to Mr. Haffey that the Board has nothing it can do to solve his problem.

Mr. Haffey stated that he understands, and added that they will say it to everyone they can until they are successful.

Dr. Talmage left the meeting at some point during the previous discussion.

A vote was taken on Dr. Kumar's motion:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

MARK E. BLAIR, M.D.

Although scheduled to make his initial appearance before the Board this month, Dr. Blair was absent from the meeting.

ROBERT E. MARSICO, JR., M.D.

Dr. Marsico made his initial appearance before the Board, pursuant to the terms of his October 15, 2004 Consent Agreement. Dr. Marsico has also requested approval of a supervising physician.

In response to Dr. Steinbergh's questions, Dr. Marsico stated that he is doing very well. In terms of his recovery, he's completed the program at the Cleveland Clinic for alcohol and drug recovery. He attends three A.A. meetings a week, sees an addictionist, and he's trying to follow all the things outlined in his Consent Agreement. Everything is going very well. He does understand the terms of his Consent Agreement.

Dr. Steinbergh spoke in support of approving David W. Stroom, M.D., to serve as Dr. Marsico's

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supervising physician.

Dr. Marsico indicated that he has submitted a request for approval of Dr. Cinelli to be his supervising physician. He stated that he did send her C.V. to the Board.

Ms. Bickers asked whether he is currently doing screens through the Cleveland Clinic.

Dr. Marsico stated that he is currently, but added that that's about 40 minutes away from his practice and his home. He's asking to switch to Dr. Cinelli.

Ms. Bickers advised that the Board has not received that request. It has the request for approval of Dr. Stroom today. She added that she could present the new request to the Board for consideration in February, but recommended approval of Dr. Stroom at this time.

Dr. Marsico agreed to Ms. Bickers' suggestion. He added that he won't change anything until the Board approves the change.

Mr. Dilling asked whether Dr. Marsico is still practicing with his father.

Dr. Marsico stated that he will return to practice with his father when his license is reinstated.

DR. STEINBERGH MOVED TO CONTINUE DR. MARSICO UNDER THE TERMS OF HIS OCTOBER 15, 2004 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. STEINBERGH FURTHER MOVED TO APPROVE DAVID W. STROOM, M.D., TO SERVE AS DR. MARSICO'S SUPERVISING PHYSICIAN. DR. ROBBINS SECONDED THE MOTION.

A vote was taken on Dr. Steinbergh's motion:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Buchan left the meeting at this time.

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JAMES M. MCGINNIS, D.O.

Dr. McGinnis appeared before the Board, pursuant to the Board's directive following the doctor's October 13, 2004 Board appearance. He is also requesting approval of a treating psychiatrist.

In response to Dr. Davidson's questions, Dr. McGinnis stated that he is before the Board today for alcohol addiction. He stated that he is doing fairly well, one day at a time.

In response to Mr. Browning's questions, Dr. McGinnis stated that he's currently working, doing chores around the house. He takes some painting courses to try to keep busy, and he attends meetings. He feels that things are going well and that he's making progress.

Dr. Kumar asked whether the Board has approved as monitoring physician in another state. He noted that Scott J. Lance, M.D., Dr. McGinnis' nominee for treating psychiatrist, practices in Ashland, Kentucky.

Dr. Buchan returned to the meeting at this time.

Ms. Bickers stated that the Board has approved a physician practicing in another state before. She stated that Dr. McGinnis is actually on the border of Kentucky and Ohio. She stated that she has checked out Dr. Lance's credentials in Kentucky.

Dr. Davidson stated that Ms. Bickers reminded her that the reason Dr. McGinnis is back before the full Board this month is that there was an issue concerning his sobriety date at the time of his initial appearance in October.

Dr. McGinnis stated that he spoke to his aftercare group the day he met with the Board, and he got a consensus that the sobriety date should change to November 1, 2003, and that the initial period of two to three months should not be considered a recovery period because he wasn't in an active recovery program at the time. Concerning the question of whether the incident on October 31, 2003, was a relapse, the group indicated that that was not a relapse because he wasn't in recovery at the time. His recovery date has changed to November 1, 2003, and there has been no relapse since.

Dr. Steinbergh referred to Dr. McGinnis' letter of November 23, 2004, which indicates that he will be on a missionary trip to Nicaragua from January 22 to February 6. She stated that he won't be able to comply with his Consent Agreement during this period of time. She asked whether there will be tolling of his Consent Agreement during that time, noting that he won't be monitored.

Ms. Bickers stated she's discussed the time period with Mr. Albert. She advised that Dr. McGinnis is going to continue with some meetings. He's going to meet with one of the ministers during the time that he's gone to do "sort of" a 12-step meeting. Mr. Albert has agreed to waive Dr. McGinnis' screens during that time period.

Dr. McGinnis added that he will be doing a screen immediately before he leaves and immediately upon his

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return.

Dr. Steinbergh asked whether the period of time that Dr. McGinnis is away will count, or whether that time will be added to the end of the probationary period..

Ms. Bickers stated that it will count.

Dr. Egner asked how long he will be gone.

Dr. Kumar noted it was for two weeks.

Dr. McGinnis stated that, actually, it will be reduced to about a week, from January 22 through January 30.

Dr. Egner asked whether Dr. McGinnis has ever taken such missionary trips before.

Dr. McGinnis stated that he has, although not to Nicaragua.

Mr. Albert stated that he will do a screen the day he leaves and the day he comes back. Instead of his A.A. meetings, he will attend counseling sessions with the minister there.

Dr. McGinnis stated that he does intend on doing more of these trips. He asked whether there is anything with his procedure to which the Board members object.

Dr. Garg recommended that he should discuss this with the Secretary and Supervising Member.

Mr. Albert stated that if the trips start causing him to be out of the country for multiple weeks, other arrangements will need to be made. He directed Dr. McGinnis to contact Ms. Bickers about such trips in the future.

DR. KUMAR MOVED TO CONTINUE DR. MCGINNIS UNDER THE TERMS OF HIS JULY 14, 2004 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. KUMAR FURTHER MOVED TO APPROVE SCOTT J. LANCE, M.D., TO SERVE AS DR. MCGINNIS' TREATING PSYCHIATRIST. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

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Dr. Steinbergh - aye

The motion carried.

KATHERINE A. HUMES, M.D.

Dr. Humes made her initial appearance before the Board, pursuant to the terms of her September 9, 2004 Consent Agreement.

In response to Dr. Davidson's questions, Dr. Humes stated that she's doing okay, her recovery is going well. She feels completely different, and she knows it's going to get better, but she's really happy the way it's going.

Dr. Davidson asked for Dr. Humes' opinion on the 28-day inpatient treatment.

Dr. Humes stated that she had done 28 days at COMPASS in Toledo, and she didn't think that that program was adequate. Problems came up after she left the program. Dr. Humes stated that she understood what an alcoholic was and that she needed to completely abstain, but she was at a loss as to how to do that. She just didn't think that that 28 days was very helpful. Having done 28 days at both Parkside and COMPASS, it seemed a little long, but it doesn't actually matter. They were going to release her from IOP, but she didn't feel like she was ready, so she extended that stay.

In response to Dr. Steinbergh's questions, Dr. Humes stated that she is seeing a psychiatrist for her depression. They meet on a regular basis, and she does some counseling as well, although her psychiatrist has been ill recently. Dr. Humes stated that she has been taking Wellbutrin for quite some time. Dr. Humes stated that, before he became ill, she and her psychiatrist met for an hour every week. He was ill at the end of the previous week and canceled her appointment of the previous day due to illness. Dr. Humes added that she, herself, had surgery at the beginning of December and was not allowed to drive for two weeks. She made a few A.A. meetings, but was unable to go to four a week.

In response to further questions by Dr. Steinbergh, Dr. Humes stated that she was provided with analgesia of some sort and narcotics for her surgery. She added that just before she went to the emergency room she called the person who monitors her urine screens. That individual indicated that she was just about to call Dr. Humes, and subsequently met her in the emergency room where they had a discussion with the emergency room physician. Dr. Humes stated that her husband stayed home and she gave him the medication to dispense to her. Dr. Humes stated that, to be honest, her husband didn't really grasp how he was supposed to do that. She added that she's never taken more medications than prescribed, and she turned what was left over to OPEP in the past. She stated that she still has some from this last occasion, but it's been weeks since she took them.

Dr. Steinbergh suggested that she get rid of those.

Dr. Humes agreed, and stated that these weren't drugs she abused and it never clicked in her brain to try to

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take them to feel good.

In response to Dr. Kumar's questions, Dr. Humes stated that in 1995 she had a consent agreement with the Board due to depression. She stated that she was under a lot of stress. When she went into her own practice, things kind of changed. Her husband was going through some things at the time. She added that since then the practice issue has been resolved. Her husband still doesn't understand this, but they've talked in the last few weeks and it's going really well.

Dr. Kumar noted that Dr. Humes has indicated that her husband doesn't understand. He asked whether her husband is seeing the psychiatrist with her.

Dr. Humes stated that he's not.

Dr. Kumar suggested that her husband obtain some psychological help to help him understand.

Dr. Humes stated that he came to Parkside for a few sessions, and that really didn't go well. He also went to some of the family meetings. She again stated that he doesn't get it; he's not an alcoholic. He knows about Alanon, but she can't force that on him, just like she can't force anyone to go to A.A. But they have come to an understanding and things are going better and she's doing really well. Her husband has been supportive in his own way all along, but right now it's going really well.

In response to Dr. Egner's questions, Dr. Humes indicated that she doesn't have any children, but she does have pets. She is currently in a solo family practice, which is where the stress came in.

Ms. Bickers commented that Dr. Humes' license is currently suspended.

Dr. Buchan asked what Dr. Humes thinks about re-engaging in practice.

Dr. Humes stated that she kind of misses practice, and she kind of doesn't, but she needs to get back to it. Her husband told her that morning that it's what she was meant to do, and that she's really good at it. She added that she feels good about the progress she's making. Her psychiatrist is really pleased with the discussions that they've had, and she's changed a lot.

Dr. Egner asked what Dr. Humes' husband does for a living.

Dr. Humes stated that he's a contractor.

Dr. Egner stated that she's concerned. Dr. Humes husband can't relate to her in a professional way. She asked whether he gets what it means to be a doctor.

Dr. Humes stated that he does understand that. He doesn't understand being an alcoholic though.

Dr. Egner asked whether Dr. Humes' husband drinks.

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Dr. Humes stated that he's gone out on rare occasions with his friends. Over the holidays they went to one party. She added that the only family with whom her husband is in contact is a brother who lives in Florida, and it's been about three years since he's visited.

Mr. Albert asked whether Dr. Humes' husband is an alcoholic.

Dr. Humes stated that he's not. That's why he doesn't get it.

Mr. Albert asked how long Dr. Humes has been associated with this Board.

Dr. Humes stated that her initial contact was in 1995.

Mr. Albert warned Dr. Humes that she will run out of time with the Board. If she has one more issue, she could lose her license forever.

Dr. Humes accepted Mr. Albert's statement. She added that she didn't ask for the problems with depression and she didn't ask for the alcoholism. That's just the way it is. She's doing everything she can to have a healthy lifestyle and that's all she can do.

Ms. Sloan asked Dr. Humes what she does every day.

Dr. Humes stated that every day when she awakens, she already has the day planned out. The real difference is that she finally understands what it means to get out of your head and turn things over and ask for help. That was the big thing.

Mr. Albert asked what she does if she has an urge to drink.

Dr. Humes stated that it's been a while since she has, but she usually thinks about what's coming up. She tries to take it one day at a time. Usually the thought just kind of passes. She's had thoughts recently, but it's not like she wants to.

Mr. Albert expressed concern that Dr. Humes isn't getting much support from her husband.

Dr. Humes stated that she's getting a lot more support from him than she used to get. She added that it was a big problem.

In response to further questions by Mr. Albert, Dr. Humes stated that she does have a sponsor, and she contacts her sponsor about four times a week. It's very back and forth, especially with the holidays. Her sponsor lives in Newark. She added that she goes to a lot of meetings in Newark.

Ms. Sloan again asked Dr. Humes what her day is like.

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Dr. Humes stated that right now she has a temporary job because she needed the income. She's out in the afternoons and evenings, and sometimes on weekends. She goes to meetings. That's the majority of what she does; it's what she's most concerned about getting done. She's started to take some time to relax and reflect on things. She meditates at the end of each day, looking back over the day to see how she could have done a little better and reflecting on what the next day will bring. She feels prepared. She hasn't been blindsided by anything recently, so it seems to be working.

Dr. Davidson asked whether there is any way the Board can help her at this point.

Dr. Humes stated that she spoke with Ms. Bickers earlier that morning, and she was very helpful.

In response to Ms. Sloan's questions, Dr. Humes stated that her part-time job entails her doing demonstrations of an air purification system.

DR. STEINBERGH MOVED TO CONTINUE DR. HUMES UNDER THE TERMS OF HER SEPTEMBER 9, 2004 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Buchan stated that he hopes that Dr. Humes realizes that the Board members are advocates for her. The Board is part of the support group that might be of some service.

DAVID R. MILLER, M.D.

Dr. Miller appeared before the Board at the direction of the Board Secretary, following his December 7, 2004 office conference.

In response to Dr. Steinbergh's questions, Dr. Miller stated that he is a general urologist. He hasn't done any pediatric urology for the last two or three years. He acknowledged that he suffers from a major depressive disorder. He's been seeing his psychiatrist, Dr. DeMuth, since about August 2000. He sees him every two to three weeks, and added that he saw him earlier that day. He's not taking any medications.

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They've tried several medications that resulted in side-effects. Dr. DeMuth has referred him to two or three other physicians for evaluations and recommendations, and they've tried different things.

Dr. Miller continued that he's still trying to get through the aftermath of a divorce. He saw his 16-year-old daughter for a few hours on Thanksgiving and in July or August. He stated that her mother continues to violate what she's supposed to do. Dr. Miller stated that he doesn't see any evidence that the court is going to do anything about it. He added that this is very painful because he was very close to his daughter. Dr. Miller stated that he has a lot of property, including mobile home parks, apartment complexes and his practice. The court allowed his ex-wife to sell all of the property at literally hundreds of thousands of dollars less than it was worth and then gave all the money to her, when, clearly, they had agreed that all liabilities, including taxes, were supposed to be paid before any money was distributed. That was not done. The last two years he's absorbed \$500,000 to \$1,000,000 in capital gains taxes. He still owes the government another \$200,000 in back taxes that must be paid by the end of this year. That causes a great deal of mental strain.

Dr. Miller stated that the bright side is that he has a very good relationship with his 17-year-old daughter, and she has been a real blessing. Dr. Miller stated that he felt that they needed some special bonding, so he took the whole family to China. He had a lot of travel miles because he did all of his expenses through a charge card. Over the holidays he took his older daughter to George Washington University in Georgetown, and she wants to take international studies, including Chinese. Dr. Miller stated that that was a very positive thing and has helped to focus her.

Dr. Talmage returned to the meeting at this time.

Dr. Davidson asked whether Dr. Miller wants to get back into practice.

Dr. Miller stated that he thinks that he does. He's not sure it's a step he can take. He stated that he has asked the Board to consider another option to allow him to do something else. He stated that on an airplane flight from Washington, D.C. to Tokyo with a gentleman who is the head of research and development for China, and he offered Dr. Miller the job of being in charge of medical education for China, which would pay \$3,000,000. Dr. Miller stated that that was as a result of their trip. His family got to meet the other man's family.

Dr. Davidson asked whether he would need his Ohio license to do that.

Dr. Miller stated that he wouldn't.

Dr. Davidson stated that the matter at hand is whether or not Dr. Miller wants to actively engage with the Board in getting his license back. She stated that she appreciates his honesty in not signing declarations of compliance because he didn't feel that he was in compliance with the Consent Agreement, but that's why he's here today.

Dr. Miller stated that he's not sure. He was afraid to sign it and then find that he wasn't in compliance.

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Dr. Davidson stated that that's appropriate.

Dr. Miller stated that he's more concerned with issues such as whether he went to Dr. DeMuth every 14th day. He stated that he did not because if Dr. DeMuth was on vacation, it might be 18 days. By definition, he's out of compliance. Dr. Miller stated that he might have been nitpicking, but he didn't want the Board to think that he was in any way saying something untrue. He stated that he thinks he got hung up on the semantics of that. Another option is that Dr. DeMuth does chart review for Social Security. Dr. DeMuth has suggested that Dr. Miller could do something like that. Dr. Miller stated that he would need a license to do that. He has asked at conference whether there could be a compromise where he would have a license but agree not to practice, prescribe, or use the license in any devious way to get a license in another state.

Dr. Miller added that if he does take the job in China and in five years it turns out to be very successful, as he believes it would be if he did it, the State of Ohio might look kind of silly because it denied him the return of his license.

Dr. Davidson told Dr. Miller to let the Board worry about that.

Dr. Davidson asked Dr. Miller what he feels the Board ought to do today. Is the consent agreement in effect or not? She stated that the Board looks at these agreements as being in a partnership toward a specific goal. She appreciates that Dr. Miller hasn't signed the declarations, but he should discuss concerns with Ms. Bickers. She added that the Board understands that there are the practicalities and realities of life, and she doesn't believe that it is unreasonable in working with him to make his best attempt at dotting every "i" and crossing every "t", but she has a feeling that it's more than that with him.

Dr. Miller stated that he's felt that there's been almost an adversarial thing going on here. He reminded the Board that he came to the Board and told it that he wasn't practicing. The Board didn't come to him and tell him that he should stop practicing. Dr. Miller stated that he feels like he's being punished. When he goes into conferences, he feels like he's a criminal or something. That's just the way that he feels about it.

Dr. Davidson stated that the consent agreement process was designed to be mutually agreeable. These are the conditions that both parties can agree will monitor him and get him back into a full active license. It doesn't sound to her like Dr. Miller is saying today that that's what he's willing to do or prepared to do.

Mr. Browning asked Dr. Miller whether he wants to get off the path he's on. He added that it sounds like Dr. Miller doesn't. Dr. Miller doesn't know what he wants to do. Mr. Browning stated that there's an agreement in place and the Board is working with him. Dr. Miller doesn't like the way he's being treated at some level, but in terms of the agreement into which Dr. Miller willingly entered, he and the Board are still together. Dr. Miller can come back in a couple of months, having complied with the things he's agreed to, and figure out what he intends to do. Mr. Browning stated that what he hears Dr. Miller saying is that he's anxious that someone's going to knock him out of his chair because he didn't get to a psychiatrist on some exact date, and he wants to make sure that he's being honest and meeting all the

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requirements, but he wants to stay on the path. Mr. Browning asked whether that is correct.

Dr. Miller stated that it is.

Mr. Browning urged Dr. Miller to stay on the right path and make his life choices as he sees fit. He added that whether or not Dr. Miller goes to China is not the Board's business.

Dr. Davidson stated that Dr. Miller does have options, and Ms. Bickers can talk with him about those options.

Mr. Browning stated that from the Board's point of view, nothing has changed.

Dr. Miller expressed concern that, because of the timing, he would be required to retest, take the National Boards over, and that's not what the agreement says, but that's how it came across to him. That would definitely be a requirement.

Dr. Egner stated that the agreement requires that if he's out of practice for two years, he'd be required to take the SPEX.

Dr. Davidson stated that that's not the National Boards.

Mr. Browning advised that the Board may not require it.

Dr. Steinbergh stated that the Board generally does require it.

Dr. Davidson agreed, except in cases where the licensee is able to demonstrate some activity toward maintaining their competence, such as C.M.E.

Mr. Albert asked whether Dr. Miller is keeping up his C.M.E.

Dr. Miller stated that he is. He added that you have to have 100 hours every two years. He stated that he doesn't know quite how that figures out. If you're in week 14 of a new cycle, do you have to have 14 hours? He wasn't sure. In week 87 do you have to have 87 hours.

Dr. Egner stated that it doesn't work like that.

Dr. Miller stated that that's why he was reluctant to say that he was compliant. If you averaged it, he doesn't know.

Mr. Browning advised Dr. Miller to talk to Ms. Bickers when he has questions about his compliance.

Dr. Miller stated that he went through a divorce where they tried to make it seem that he was lying about things that he wasn't lying about. He's gotten so gun-shy from that that he doesn't want the Board to think

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that he's doing things that he shouldn't be doing.

Dr. Buchan stated that honesty is good.

In response to Dr. Robbins questions, Dr. Miller stated that he last saw Dr. DeMuth at 10:00 that morning. He will next see him in two weeks. Dr. Miller advised that Dr. DeMuth had told him that if Dr. Miller would go back to work he would get better. One feeds the other. That's why Dr. DeMuth encouraged him to suggest a compromise so that he could go and do some kind of work with an insurance company or something, reviewing charts and so forth. Dr. DeMuth felt that that would be a way for Dr. Miller to get his feet wet and get him back to full-time practice.

Mr. Albert stated that he has suggested to Dr. Miller that he should begin the process of reinstatement and that Dr. Miller has told him that he didn't think he was mentally ready to start to work toward reinstatement.

Dr. Miller stated that what he was saying is that he doesn't think that he's ready to be practicing. Regardless of what the Board members think, he's not going to return to practice if he's not ready to.

Dr. Steinbergh advised Dr. Miller that the reviewing of charts is the practice of medicine. What he does with his license is his business. The Board isn't saying that he has to go back to the practice of urology, but when he says to the Board that he wants to review charts, that is the practice of medicine and requires a license. If Dr. Miller works towards regaining his medical license but makes the decision that, because of his personal psychiatric problems, he's not ready to practice urology again or take on a full-time job as a physician, but he wants to do part-time work, that's his business. As long as he can demonstrate to the Board that he has the capability of maintaining his license, he can do that. Dr. Steinbergh stated that Dr. Miller first has to work toward getting his medical license back again. The Board can't let him practice without a medical license, and reviewing charts is the practice of medicine.

Ms. Bickers stated that if the psychiatrist recommends that Dr. Miller stay out of the active practice of medicine, that is something that is taken into consideration and presented to the Board in an amended consent agreement. It could restrict him from certain things. Ms. Bickers stated that the Board can work with Dr. Miller in getting an active license. It might wish to implement a practice plan requirement so that the Board knows what he's doing. Ms. Bickers explained, however, that the only time the Board hears from Dr. Miller is when he comes in every three months. Sometimes he indicates that he wants to go to China, sometimes he wants to review charts, sometimes he advises that he's not ready to return to practice. Ms. Bickers stated that Dr. Miller needs to make a decision on what he wants to do and put it in writing so that he and the Board can move forward.

Mr. Albert stated that Dr. Miller has indicated that he doesn't know whether he wants to return to the practice of medicine. After his appearance in December, Mr. Albert decided to bring him before the Board out of frustration, to see if the Board can get a sense of what he's dealing with.

Dr. Garg asked when Dr. Miller last did any medical work.

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Dr. Miller stated that he hasn't done any medical work since December 2001.

Dr. Garg stated that he's already out almost three years. Before he gets any license, he will be required to show to the Board that he's able to work. That's where the exam comes in. Either he will need to recertify with his urology boards, even if he's not going to practice, or he will have to take the SPEX. Dr. Garg explained that the SPEX is not a full exam like the National Boards. Dr. Garg stated that in this case, he thinks that the Board will definitely want Dr. Miller to pass an exam of some kind to show that he still understands and can practice. Dr. Garg stated that that's Mr. Albert's frustration. He asked whether Dr. Miller is prepared for that, adding that, otherwise, he's just wasting time.

Dr. Steinbergh stated that Dr. Miller might choose to surrender his license if he doesn't want to deal with the Board anymore and he's uncertain that he wants to practice medicine. He could surrender his medical license so he won't have to deal with the Board anymore.

Dr. Robbins asked whether Dr. Miller thinks he's getting better.

Dr. Miller stated that he thinks he's leveled off since last year. He doesn't think that he's quite as bad as he was in early 2002, and so forth.

Dr. Garg stated that if Dr. Miller wants to take the job in China, he should do so. Otherwise, he will have to meet certain requirements to assure this Board that he is capable of returning to the practice of medicine.

Dr. Miller stated that he would have very likely taken it right after the December meeting. He blew out his L 4-5 disc. For six weeks he couldn't have driven to Columbus. Dr. Miller stated that he's had patients with disc problems, but his hip was five degrees hotter than the rest of his body. Now it's better, but he's gained 25 lbs. He didn't want to take the job until he felt that he could do so, physically.

Dr. Garg suggested that Dr. Miller decide what he wants to do and set a course for it.

Dr. Davidson suggested Dr. Miller give what the Board has told him some thought.

Dr. Garg stated that if Dr. Miller decides that he doesn't want to be under a consent agreement with the Board, he can surrender his license. He added that if Dr. Miller is ever in a position where he wants to return to practice, he will have to prove to the Board that he is capable of doing so. Dr. Garg stated that he doesn't know what else the Board can tell Dr. Miller.

Mr. Albert asked when Dr. Miller's next scheduled conference is.

Ms. Bickers stated that it's in three months.

Dr. Garg stated that he would think that Dr. Miller would be able to make that decision in a month.

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Dr. Robbins asked for the date of the last letter from Dr. DeMuth.

Ms. Bickers stated that one was received three days ago.

DR. KUMAR MOVED TO CONTINUE DR. MILLER UNDER THE TERMS OF HIS NOVEMBER 20, 2002 CONSENT AGREEMENT, WITH THE NEXT APPEARANCE IN TWO MONTHS BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. BROWNING SECONDED THE MOTION.

Dr. Kumar stated that the probation should continue, unless Dr. Miller decides to request to surrender his license.

Dr. Miller stated that he's not going to request to surrender his license.

Dr. Buchan stated that if he doesn't become compliant, there's another issue here. He is at a crossroads.

Dr. Garg suggested that Dr. Miller is at the point where, if he doesn't comply, or he doesn't surrender, the Board will take his license.

Dr. Steinbergh agreed, stating that Dr. Miller can't go on forever like this.

Dr. Davidson stated that this is a warning for Dr. Miller, and agreed that he is at a crossroads.

Mr. Browning asked for the current status. He noted that the information before the Board is that Dr. Miller's compliant in his paperwork. Is he not in compliance otherwise?

Ms. Bickers stated that there are issues that the Board staff is reviewing. Dr. Miller is currently in compliance with the terms of the consent agreement.

Mr. Browning asked what the issue is, if Dr. Miller is complying.

Ms. Bickers stated that when Dr. Miller appeared for his conference in December, paperwork was still missing. He was not in compliance at that time. Based on that and the discussions that were being held with Dr. Miller, the decision was made to bring him before the Board. He is currently in compliance with his paperwork.

Dr. Miller stated that if the Board isn't going to nitpick over 14 or 15 days, he in compliance.

Dr. Steinbergh asked whether Dr. Miller has ever discussed the issue of paranoia with his psychiatrist.

Dr. Miller stated that if the Board members had been through what he's been through the past three years, they would have a sense of paranoia, too. His sense of the adversary, rather than the Board wanting to help the physician is that he felt like the Board was waiting for him to want to get his license so that they could

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pounce on him and penalize him. That's the way he felt about it.

Ms. Sloan asked how he feels today.

Dr. Miller stated that he still has concerns about it.

Dr. Kumar stated that he's not sure what the Board can do. The Board has done everything it can to tell Dr. Miller that the Board is trying to help him. Ms. Bickers has addressed his concerns about "nitpicking." He stated that he's not sure what else the Board can do.

Dr. Miller stated that he's not practicing or writing prescriptions or doing anything like that, or anything that he would consider a real violation. He's not practicing medicine. They were concerned because he didn't understand the declaration of compliance. He's supposed to send it in ahead of time, but it doesn't seem like a big deal to him to sign it when he comes into the office for his appearance, but they want to have it mailed by the first of the month.

Mr. Albert stated that it is a big deal. The Board has several hundred people on probation, and it must have strict rules. Those rules are part of his recovery program. If the Board had the same problems with everyone, he'd have to have four staff people doing Ms. Bickers' work.

Dr. Steinbergh stated that there would be chaos.

Ms. Sloan stated that Dr. Miller is an adult, but she feels like she's talking to her six-year-old child. You have to do this because there are rules and regulations. Dr. Miller has a paper that he signed that explains exactly what it is that the Board is expecting to happen. In order to help him, these things have to happen. In order for him to get his license back, this is what he has to get done. She commented that the Board is at an impasse now because it's not sure that he wants to get his license back. She suggested that, if he does want his license back, he should get the paperwork in here before he walks into the door because the Board needs it. He's coming in for a session to discuss what is on the paper that he's submitted, not to bring the paper in and then sit down and talk about it. So if he does want his license back, then he has to show some sign that this is what he wants to do.

Mr. Albert stated that he believes that the discussion is as far as it can go.

A vote was taken on Dr. Kumar's motion:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye

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Dr. Robbins - aye
Dr. Garg - aye
Dr. Steinbergh - aye

The motion carried.

RATIFICATION OF CONSENT AGREEMENTS

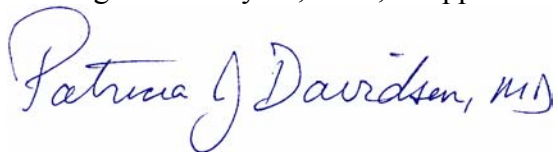
Dr. Davidson stated that the Board needs to table this topic for possible consent agreements on Thursday.

DR. BUCHAN MOVED TO TABLE THE TOPIC OF RATIFICATION OF CONSENT AGREEMENTS. DR. GARG SECONDED THE MOTION. All members voted aye. The motion carried.

DR. STEINBERGH MOVED TO ADJOURN. DR. EGNER SECONDED THE MOTION. All members voted aye. The motion carried.

Thereupon at 5:07 p.m. the January 12, 2005 session of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on January 12, 2005, as approved on February 9, 2005.



Patricia J. Davidson, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)



January 12, 2005

MINUTES

THE STATE MEDICAL BOARD OF OHIO

January 13, 2005

Patricia J. Davidson, M.D., President, called the meeting to order at 8:05 a.m., at the Vern Riffe Center for Government and the Arts, 77 S. High St., Columbus, Ohio 43215, Room #1932, with the following members present: Andrew F. Robbins, Jr., M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Carol L. Egner, M.D.; David S. Buchan, D.P.M.; Deepak Kumar, M.D.; R. Gregory Browning, Ph.D.; Anquenette Sloan; Anand G. Garg, M.D., and Anita M. Steinbergh, D.O. The following did not attend the meeting: Anant R. Bhati, M.D.

Also present were: Thomas A. Dilling, Executive Director; Diann K. Thompson, Assistant Executive Director; Shannon F. Baldwin, Executive Staff Attorney; Marcie P. Burrow, Enforcement Attorney; Tara L. Berrien, Assistant Attorney General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Coordinator for Assessment and Development; Danielle Bickers, Compliance Officer; Barbara Jacobs, Public Services Administrator.

PROBATIONARY REPORTS

Dr. Davidson referred the Board to the Compliance Staff's reports of conferences with probationers on August 9-10, 2004. She noted that all probationers are in compliance.

DR. STEINBERGH MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES WITH DAVID E. ALLEN, M.D.; ROBERT M. BENSON, M.D.; STEVEN W. CRAWFORD, M.D.; ANTHONY E. DANACHEW, M.D.; RICHARD DE LA FLOR, M.D.; JOSEPH W. FISCHKELTA, P.A.; VICKIE M. FLOWERS, M.T.; TIMOTHY A. GOODEN, M.D.; GEORGE V. HASSINK, M.D.; KANDHASAMY KANNAPIRAN, M.D.; DAVID J. LEVY, M.D.; ERIC W. LOTHES, M.D.; GARY RAY LUTZ, D.O.; ADAM S. MARTIN, M.D.; DALE PRATT-HARRINGTON, D.O.; JAMES M. ROSSELIT, D.O.; MARC H. SCHWACHTER, M.D.; MARK E. SENIOR, D.O.; GEORGE A. SOUTHIERE, JR., M.D.; JOSEPH A. TORE, M.D.; MICHAEL CRAIG WARREN, D.O.; AND TAMARA D. WILLINGHAM, L.M.T. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye

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Dr. Garg - aye
 Dr. Steinbergh - aye

The motion carried.

PROBATIONARY REPORTS AND PROBATIONARY REQUESTS

DAVID T. BROCK, D.O.

The staff's report of office conference and Dr. Brock's request for a change in his appearance schedule were presented to the Board for consideration at this time.

DR. STEINBERGH MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCE ON DECEMBER 6, 2004 WITH DR. BROCK. DR. STEINBERGH FURTHER MOVED TO GRANT DR. BROCK'S REQUEST FOR A CHANGE IN HIS APPEARANCE SCHEDULE FROM EVERY THREE MONTHS TO EVERY SIX MONTHS. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

WILLIAM L. CRAWFORD, M.D.

The staff's report of office conference and Dr. Crawford's request for a reduction in his drug screen requirement were presented to the Board for consideration at this time.

DR. STEINBERGH MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCE ON DECEMBER 7, 2004 WITH DR. CRAWFORD. DR. STEINBERGH FURTHER MOVED TO REDUCE DR. CRAWFORD'S DRUG SCREEN REQUIREMENT FROM ONCE A WEEK TO TWICE PER MONTH. MS. SLOAN SECONDED THE MOTION. A vote was taken:

Vote:

Mr. Albert	- aye
Dr. Egner	- aye

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Dr. Talmage	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

JOHN H. GRAY, D.O.

The staff's report of office conference and Dr. Gray's requests for elimination of his chart monitoring and controlled substance log requirements were presented to the Board for consideration at this time.

DR. STEINBERGH MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCE ON NOVEMBER 9, 2004 WITH DR. GRAY. DR. STEINBERGH FURTHER MOVED TO GRANT DR. GRAY'S REQUEST TO ELIMINATE HIS CHART MONITORING REQUIREMENT, AND TO DENY DR. GRAY'S REQUEST FOR ELIMINATION OF MAINTENANCE OF A CONTROLLED SUBSTANCE LOG.

Dr. Steinbergh stated that drug logs are an integral part of Dr. Gray's consent agreement, considering that his disciplinary action was due to his inappropriately documenting the prescribing of controlled substances.

Dr. Garg agreed with Dr. Steinbergh.

DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

JORDAN E. HOPKINS, M.D.

The staff's report of office conference and Dr. Hopkins' request for approval of a monitoring physician

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were presented to the Board for consideration at this time.

DR. STEINBERGH MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCE ON NOVEMBER 9, 2004 WITH DR. HOPKINS. DR. STEINBERGH FURTHER MOVED TO APPROVE NATHAN J. O'DORISIO, M.D., TO SERVE AS DR. HOPKINS' MONITORING PHYSICIAN, WITH TEN CHARTS REVIEWED PER MONTH. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

ASHOK V. PADHIAR, M.D.

The staff's report of office conference and Dr. Padhiar's request for a reduction in his drug screen requirement were presented to the Board for consideration at this time.

DR. STEINBERGH MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCE ON DECEMBER 7, 2004 WITH DR. PADHIAR. DR. STEINBERGH FURTHER MOVED TO APPROVE DR. PADHIAR'S REQUEST FOR A REDUCTION IN HIS DRUG SCREEN REQUIREMENT TO TWICE PER MONTH. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

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STEVEN J. SHOR, M.D.

The staff's report of office conference and Dr. Shor's request for a reduction in his psychiatric sessions were presented to the Board for consideration at this time.

Dr. Steinbergh stated that she has a question about this case. Dr. Shor's consent agreement states that he should not have less than one psychiatric meeting per month. Dr. Shor has major depressive disorder. The other question she had is whether or not there has been appropriate compliance. Has he been compliant in regards to the frequency with which he sees his mental health professional?

Ms. Bickers stated that Dr. Shor was not in compliance. He was under the impression that it was already approved, so he was not in compliance with the psychiatric sessions, but he was already seeing a psychologist in the interim. At the last conference, he was told that he had to get back into compliance before the Board can address the psychiatric issues. Ms. Bickers stated that Dr. Shor wanted to reduce his psychiatric sessions to every three months, but he was told that he would need to see someone once a month. Essentially, he is asking to replace one of the required psychiatric sessions with a session with the psychologist. Ms. Bickers commented that he's very similar to the physician the Board had at the end of the previous day.

Dr. Steinbergh noted that Dr. Shor is due for release from probation in April, so she has concern if he's not in compliance. If he's not ready for release, the Board has the responsibility to not release him.

DR. GARG MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCE ON NOVEMBER 9, 2004 WITH DR. SHOR. DR. GARG FURTHER MOVED TO REDUCE DR. SHOR'S PSYCHIATRIC SESSIONS TO ONCE A MONTH, WITH THE UNDERSTANDING THAT DR. SHOR WILL CONTINUE PSYCHOLOGIC COUNSELING. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

ALAN B. STORROW, M.D.

The staff's report of office conference and Dr. Storrow's request for reductions in appearance schedule and

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his drug-screen requirement were presented to the Board for consideration at this time.

DR. KUMAR MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCE ON DECEMBER 7, 2004 WITH DR. STORROW. DR. KUMAR FURTHER MOVED TO REDUCE DR. STORROW'S APPEARANCE SCHEDULE TO EVERY SIX MONTHS, AND TO REDUCE HIS DRUG SCREEN REQUIREMENT TO TWICE PER MONTH, WITH EACH SPECIMEN SCREENED SPECIFICALLY FOR DEMEROL, LORAZEPAM/ATIVAN, OXYCODONE, FENTANYL AND VERSED IN ADDITION TO THE REGULAR 12-PANEL TEST. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

KELLI D. WAHL, M.T.

The staff's report of office conference and Ms. Wahl's request for a reduction in her counseling session requirement were presented to the Board for consideration at this time.

DR. STEINBERGH MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCE ON DECEMBER 7, 2004 WITH MS. WAHL. DR. STEINBERGH FURTHER MOVED TO REDUCE MS. WAHL'S COUNSELING SESSIONS FROM ONCE EVERY TWO WEEKS TO ONCE A MONTH. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

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PROBATIONARY REQUESTS

ANTHONY W. KITCHEN, M.D.

Dr. Kitchen's request for approval of a practice plan was presented to the Board for consideration at this time.

DR. GARG MOVED TO APPROVE DR. KITCHEN'S REVISED PRACTICE PLAN. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

JULIA RUFFIN, D.P.M.

Dr. Ruffin's request for approval of an assessing and treating psychiatrist was presented to the Board for consideration at this time.

DR. STEINBERGH MOVED TO APPROVE DENTON H. WYSE, M.D., TO SERVE AS DR. RUFFINS' ASSESSING AND TREATING PSYCHIATRIST. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

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MARY MEI-LING YUN, M.D.

Dr. Yun's request for approval of a psychotherapist was presented to the Board for consideration at this time.

Dr. Steinbergh stated that she has a question about Dr. Yun's request. She stated that the request is to approve Ms. Faison as Dr. Yun's treating psychotherapist. She asked whether Dr. Yun still has a treating psychiatrist.

Ms. Bickers stated that she does.

DR. STEINBERGH MOVED TO APPROVE CARLA M. FAISON, LPCC, TO SERVE AS DR. YUN'S PSYCHOTHERAPIST. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

REINSTATEMENT REQUESTS

GEORGE V. HASSINK, M.D.

Dr. Hassink's request for approval of an assessing psychiatrist was presented to the Board for consideration at this time.

Dr. Steinbergh stated that she has a little concern over this request. The C.V. of Dr. Hassink's nominee, Brad Bundy, D.O., shows that he took his psychiatric residency at Harding Hospital from July 1987 through June 1990. Under qualifications he says that he is board eligible in psychiatry. Dr. Steinbergh expressed concern over Dr. Bundy's having been board eligible for that length of time and not to have sat for the Boards. Dr. Steinbergh stated that she contacted Ms. Jacobs and asked her to clarify that because the American Osteopathic Association does not allow a person to call himself board eligible for that length of time. There is a time frame where you are board eligible, and if you have not completed the boards, you

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may not call yourself Board eligible anymore. Dr. Steinbergh advised that Ms. Jacobs called Dr. Bundy, who's response was unsatisfactory.

Dr. Talmage stated that the American Board of OB/GYN considers you board eligible for six years maximum. Internal medicine considers board eligibility to be until you take the boards, so you can finish a residency and call yourself board eligible until you die.

Dr. Steinbergh stated that she understands that. She added that Dr. Bundy calls himself "board eligible," but she doesn't know what board he's ever intended to take. Dr. Steinbergh stated that, since Dr. Bundy is an osteopathic physician, she will assume that he would sit for the AOA Boards. Dr. Steinbergh stated that that's a concern of hers, and his response was also a concern of hers.

Dr. Kumar suggested that the Board require Dr. Hassink to nominate a different assessing psychiatrist.

Dr. Egner asked whether Dr. Hassink has used Dr. Bundy for anything else.

Ms. Jacobs stated that Dr. Hassink is currently treating with Dr. Bundy, although not under the Board's consent agreement.

Dr. Steinbergh stated that now he wants Dr. Bundy approved as an assessor. She'd like to know that the assessor is appropriate, and, because of Dr. Bundy's C.V., she's not convinced that he's an appropriate assessor. She added that she doesn't have concerns about Dr. Bundy's treating Dr. Hassink, but she believes that at some point the Board does need to be concerned about who it's allowing as assessors.

Dr. Robbins asked whether Dr. Steinbergh would have been concerned if "board eligible" hadn't appeared on the C.V.

Dr. Steinbergh stated that her concern is that the individual is not board certified.

Dr. Talmage stated that he shares Dr. Steinbergh's concerns about board certification, adding that he feels it's a measure of competence. He asked whether the Board has required board certification in other issues of assessment. Dr. Talmage stated that when the Board looks for an expert, it looks for somebody who has like qualifications. He stated that he doesn't recall where the Board has required any expert it uses to be board certified.

Dr. Garg stated that he thinks that the Board always looks at board certification in choosing an expert.

Dr. Talmage stated that the Board needs to be consistent. He stated that he would be very concerned about denying this request if the Board has used anyone who was not board certified in other cases.

Mr. Dilling stated that he has to believe that the Board has.

Dr. Kumar asked whether the Board has ever used a non-board-certified physician as a monitor.

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Dr. Steinbergh stated that the Board has, but in this case the issue is an assessing psychiatrist.

Mr. Dilling stated that it's not an expressed term in their consent agreements or Board orders.

Dr. Steinbergh stated that the Board has discretion in this case, and that's why the Board looks at these requests.

Dr. Davidson asked whether anyone has any specific concerns about Dr. Hassink. She stated that there are two things to consider: The board certification issue, and the fact that Dr. Bundy has been Dr. Hassink's treating physician, which, in her book may be a little less than optimal.

Dr. Talmage stated that Dr. Hassink relapsed very quickly. He believes that was the major concern.

Mr. Albert stated that if he's going to relapse, whether the assessing psychiatrist is board certified or board eligible won't make a difference.

Mr. Dilling asked whether Dr. Davidson is concerned because Dr. Bundy is Dr. Hassink's treating psychiatrist.

Dr. Davidson stated that she is. She wondered how often the Board has allowed the assessing physician to be the treating physician.

Dr. Talmage stated that he would be more concerned with someone who is the treating physician, where the doctor/patient relationship is a long-term development. Can that individual be an objective assessor? Dr. Talmage stated that he would be concerned about approving that individual.

Ms. Bickers stated that, meeting with Dr. Hassink every three months, she believes that it would be entirely appropriate to ask him to nominate someone other than his treating psychiatrist to do the assessment to return to work.

DR. KUMAR MOVED TO DENY APPROVAL OF BRAD BUNDY, D.O., AS AN ASSESSOR FOR PURPOSES OF PERFORMING THE PSYCHIATRIC ASSESSMENT REQUIRED BY PARAGRAPH 9.B.IV OF DR. HASSINK'S JULY 9, 2003 CONSENT AGREEMENT, AND TO REQUIRE DR. HASSINK TO NOMINATE SOMEONE OTHER THAN HIS TREATING PSYCHIATRIST TO DO THE ASSESSMENT. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye

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Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

SCOTT T. STEWART, P.A.

Dr. Stewart's request for reinstatement of his certificate to practice medicine and surgery, which was suspended by Board Order of July 12, 2000, was presented to the Board for consideration at this time.

DR. KUMAR MOVED TO APPROVE MR. STEWART'S APPLICATION FOR REINSTATEMENT OF HIS LICENSE, SUBJECT TO THE PROBATIONARY TERMS AND CONDITIONS OF THE BOARD'S ORDER OF JULY 12, 2000. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

LICENSURE

PHYSICIAN ASSISTANT APPLICANTS

At this time the Board considered applications for registration as physician assistants.

DR. GARG MOVED TO APPROVE THE APPLICANTS LISTED IN LICENSURE EXHIBIT (A) FOR REGISTRATION AS PHYSICIAN ASSISTANTS, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
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Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

P.A. UTILIZATION PLANS

A number of standard P.A. Utilization Plans were presented to the Board for consideration at this time.

DR. TALMAGE MOVED TO APPROVE THE STANDARD P.A. UTILIZATION PLANS SUBMITTED BY THE FOLLOWING, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS: IMTIAZ AHMED, M.D.; CENTRAL OHIO CARDIOVASCULAR CONSULTANTS; DAYTON ONCOLOGY & HEMATOLOGY; DIGESTIVE CARE, INC.; FIRST MEDICAL URGENT FAMILY CARE CENTER; BASHAR KAHALEH, M.D.; OSU SURGERY, LLC; GARY PALMER, M.D.; RADIOLOGY ASSOCIATES OF CANTON; AND SOUTH CENTRAL OHIO INTERNAL MEDICINE, INC. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

ACUPUNCTURIST APPLICANT

At this time the Board considered applications for registration as acupuncturists.

DR. STEINBERGH MOVED TO APPROVE THE APPLICANTS LISTED IN LICENSURE

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EXHIBIT (B) FOR REGISTRATION AS ACUPUNCTURISTS, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

PHYSICIAN LICENSURE APPLICANTS

At this time the Board considered applications for licensure as doctors of medicine and surgery, doctors of osteopathic medicine and surgery and doctors of podiatric medicine and surgery.

DR. KUMAR MOVED TO APPROVE THE APPLICANTS LISTED IN LICENSURE EXHIBIT (C) FOR ENDORSEMENT LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

DECEMBER 2004 PMLEXIS RESULTS

At this time the Board reviewed the results of the December 2004 PMLexis.

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DR. GARG MOVED TO APPROVE THE RESULTS OF THE DECEMBER 2004 PMLEXIS, AND TO CERTIFY AS PASSING AND FIND ELIGIBLE FOR LICENSURE THOSE RECEIVING A SCORE OF 75 OR GREATER ON THE EXAMINATION, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS, AND TO CERTIFY AS FAILING AND DENY LICENSURE TO THOSE WHO RECEIVED A SCORE OF LESS THAN 75 ON THE EXAMINATION. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

PHYSICIAN ASSISTANT APPLICANTS

At this time the Board considered applications for registration as physician assistants.

MR. BROWNING MOVED TO APPROVE THE APPLICANTS LISTED IN LICENSURE EXHIBIT (D) FOR REGISTRATION AS PHYSICIAN ASSISTANTS, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

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P.A. UTILIZATION PLANS

A number of additional standard P.A. Utilization Plans were presented to the Board for consideration at this time.

DR. GARG MOVED TO APPROVE THE STANDARD P.A. UTILIZATION PLANS SUBMITTED BY: MICHAEL DEROSA, D.O., AND HOPE MITCHELL, M.D., CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

DECEMBER 2004 COSMETIC THERAPY EXAMINATION RESULTS

At this time the Board reviewed the results of the December 2004 cosmetic therapy examination.

DR. GARG MOVED TO APPROVE THE RESULTS OF THE DECEMBER 2004 COSMETIC THERAPY EXAMINATION, AND TO CERTIFY AS PASSING AND LICENSE THOSE RECEIVING A SCORE OF 75 OR GREATER ON THE EXAMINATION, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS, AND TO CERTIFY AS FAILING AND DENY LICENSURE TO THOSE WHO RECEIVED A SCORE OF LESS THAN 75 ON THE EXAMINATION. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye

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Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

DECEMBER 2004 MASSAGE THERAPY EXAMINATION RESULTS

At this time the Board reviewed the results of the December 2004 massage therapy examination.

DR. GARG MOVED TO APPROVE THE RESULTS OF THE DECEMBER 2004 MASSAGE THERAPY EXAMINATION, AND TO CERTIFY AS PASSING AND LICENSE THOSE RECEIVING A SCORE OF 75 OR GREATER ON THE EXAMINATION, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS, AND TO CERTIFY AS FAILING AND DENY LICENSURE TO THOSE WHO RECEIVED A SCORE OF LESS THAN 75 ON THE EXAMINATION. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

ACUPUNCTURIST APPLICANT

At this time the Board considered additional applications for registration as acupuncturists.

DR. GARG MOVED TO APPROVE THE APPLICANTS LISTED IN LICENSURE EXHIBIT (E) FOR REGISTRATION AS ACUPUNCTURISTS, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye

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Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

ANESTHESIA ASSISTANT APPLICANT

At this time the Board considered an application for registration as an anesthesiologist assistant.

DR. GARG MOVED TO APPROVE JAYATI KESAVAN FOR REGISTRATION AS AN ANESTHESIOLOGY ASSISTANT, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

RATIFICATION OF CONSENT AGREEMENTS

JEANNE M. KIRKLAND, M.D.

DR. BUCHAN MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. KIRKLAND. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye

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Dr. Kumar	- abstain
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- aye
Dr. Davidson	- aye

The motion carried.

REPORTS BY ASSIGNED COMMITTEES

IMPAIRMENT COMMITTEE

Dr. Davidson advised that the Committee reviewed applications from two treatment providers and recommends approval of both.

DR. ROBBINS MOVED TO APPROVE CORNERSTONE OF RECOVERY, INC. AND THE WOODS AT PARKSIDE AS TREATMENT PROVIDERS. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

LICENSURE COMMITTEE

Dr. Robbins stated that the Committee reviewed six applications.

Joy Anglea, M.D.

Dr. Anglea's application for endorsement of her NBME diplomate status came before the Committee because she had not been engaged in the active practice of medicine since May 1997. Dr. Robbins stated that the Committee noted that Dr. Anglea was recertified by the American Board of Family Practice in

2002 and recommends approval of her application without requiring the SPEX.

DR. ROBBINS MOVED TO APPROVE DR. ANGLEA’S REQUEST FOR ENDORSEMENT LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

Peter Kunze, M.D.

Dr. Kunze’s application for endorsement of his USMLE came before the Committee because he had not been engaged in the active practice of medicine since October 2002. Dr. Robbins noted that Dr. Kunze passed USMLE Step III with a score of 94. The Committee recommends approval without requiring the SPEX.

DR. ROBBINS MOVED TO APPROVE DR. KUNZE’S APPLICATION FOR ENDORSEMENT LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

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The motion carried.

Antonio Panza, M.D.

Dr. Panza's request that the Board deem his 31 months of fellowship training in the United States to be equivalent to the 24 months of graduate medical education through the second year level, required for Ohio licensure. Dr. Robbins stated that the Committee felt that this was a reasonable request and recommends approval.

DR. ROBBINS MOVED TO FIND THAT DR. PANZA'S 31 MONTHS OF FELLOWSHIP TRAINING IN THE UNITED IS EQUIVALENT TO 24 MONTHS OF APPROVED GRADUATE MEDICAL EDUCATION THROUGH THE SECOND YEAR LEVEL, AND TO APPROVE DR. PANZA'S REQUEST FOR ENDORSEMENT LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

Farzad Sabet, M.D.

Dr. Sabet's request for special accommodations under the Americans with Disabilities Act of 1990 (ADA) was considered by the Committee. Dr. Sabet indicates that he has been diagnosed with ADD/ADHD. He has requested extra time and a separate testing room.

Dr. Robbins stated that the Committee found that Dr. Sabet's request meets the criteria for approval.

DR. ROBBINS MOVED TO GRANT DR. SABET'S REQUEST FOR EXTRA TIME OF TIME AND A HALF AND A SEPARATE TESTING ROOM FOR USMLE STEP III. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye

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Dr. Talmage	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

Mohammed E. Majd, M.D.

Dr. Majd's application for licensure was considered by the Committee. Dr. Majd is a graduate of a non-LCME accredited medical school, and he has not completed 24 months of approved graduate medical education through the second year level. He has requested that the Board consider his 55 months of fellowship training as being equivalent. Dr. Robbins stated that the Committee recommends granting Dr. Majd's request for a finding of equivalency.

DR. ROBBINS MOVED TO FIND THAT DR. MAJD'S 55 MONTHS OF FELLOWSHIP TRAINING IN THE UNITED STATES IS EQUIVALENT TO THE 24 MONTHS OF APPROVED GRADUATE MEDICAL EDUCATION THROUGH THE SECOND YEAR LEVEL AND TO GRANT DR. MAJD A LICENSE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

Berna K. Remzi, M.D.

Dr. Remzi's application for licensure was considered by the Committee. Dr. Remzi is a graduate of a non-LCME accredited medical school, and she has not completed 24 months of approved graduate medical

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education through the second year level. She has requested that the Board consider her five years and eleven months of fellowship training in the United States as being equivalent. Dr. Robbins stated that the Committee noted that the fellowship training listed was all in research. The Committee recommends tabling this matter until additional information can be obtained regarding Dr. Remzi's clinical training.

DR. ROBBINS MOVED TO TABLE DR. REMZI'S APPLICATION FOR ENDORSEMENT LICENSURE, PENDING RECEIPT OF ADDITIONAL INFORMATION CONCERNING HER CLINICAL TRAINING. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

PRESCRIBING COMMITTEE

Dr. Davidson reported on the Committee's discussions of the following issues: the DEA's request for comments on using controlled substances for pain; and Respiratory Care Issues, as detailed in the Committee's minutes.

Referring to the proposed letter the Committee approved to be sent to the D.E.A. regarding the permissibility of physicians preparing multiple prescriptions on the same day with instructions to fill on different dates, a copy of which shall be maintained in the exhibits section of this journal, Mr. Browning voiced opposition to allowing open-ended permission. He expressed concern about a physician writing a group of prescriptions at the front end of a diagnosis, and the patient's having access to a prescription that may no longer be necessary and suggested that that may be why D.E.A. changed its stance on this issue.

Mr. Dilling stated that the letter addresses standards of care. He added that he is unaware of any abuse of this system in the past.

Mr. Browning stated that the letter needs to be very clear about this point and not just touch on it as the proposed document does.

Dr. Robbins asked whether, if a physician is prescribing Ritalin for a patient, the patient should be seen every six months or could the patient be given a prescription for Ritalin for a year. Where is the threshold?

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Mr. Dilling stated that those types of rules aren't written down in medicine.

Dr. Buchan stated that he understands Mr. Browning's concern, but he doesn't think that the Board should try to define that standard of care.

Mr. Browning stated that he's not saying that the Board should write rules. He's only suggesting that the letter be clarified.

Dr. Buchan suggested adding the following language: "The frequency by which the patient is seen is defined by the patient's condition and the standard of care for the particular medicine prescribed."

Mr. Browning agreed that that would be appropriate.

The consensus of the Board was to make the change in the letter.

LICENSURE COMMITTEE

Dr. Kumar stated that one thing that was brought up in Committee that was not addressed by the Board earlier was his suggestion that the Board begin to look into doing criminal background checks on its licensure applicants. He commented that he understands that other states are considering requiring this. Dr. Kumar stated that he thinks it is a good idea, but he has been told that for this Board to do so, it would require legislative authority.

Dr. Davidson asked Dr. Kumar to try to get the Board more information on the current status of this in other states and what it would take for this Board to be able to do it and then report back through the Committee.

Dr. Kumar indicated that he would be happy to do so.

P.A. COMMITTEE

Dr. Talmage advised that the Committee reviewed Indiana/Ohio Heart's request for its P.A.s to perform vein and artery harvesting, in a hospital setting, utilizing 100% onsite supervision with the P.A. observing the physician perform 25 procedures and the physician observing the P.A. perform 40 procedures to determine competency. Dr. Talmage stated that there is a long-term precedent for this and the Committee recommends approval.

DR. TALMAGE MOVED TO APPROVE INDIANA/OHIO HEART'S REQUEST FOR ITS P.A.S TO PERFORM VEIN AND ARTERY HARVESTING. DR. KUMAR SECONDED THE MOTION. A vote was taken:

Vote:

Mr. Albert

- aye

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Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

Dr. Talmage noted that the Board's Executive Committee has met with the various associations, and he recommended that it also meet with representatives of the Ohio Association of Physicians Assistant. He stated that he would like such a meeting to include a discussion about P.A. training.

MINIMAL STANDARDS OF CARE COMMITTEE

Dr. Kumar stated that the Committee will do the five-year review of the Standards for Surgery Rules. The Committee reviewed a draft proposal, which will require some changes. The Committee will seek input from the professional associations.

Dr. Davidson asked that members of all committees think about their committee goals and be prepared to report to the Board in February what their committee's goals are and how they hope to accomplish the goals.

Dr. Talmage stated that the Group 2 committees did approve the goals proposed for them this month.

Referring to the earlier discussed letter to the DEA, Mr. Dilling stated that the Pharmacy Board intends to send its letter on this subject to the DEA and a list of other interested parties. Mr. Dilling asked whether the Board would like to send its letter to the same list of interested parties. The consensus of the Board was that its letter should only be sent to the DEA.

Mr. Dilling referred to the Draft Practice Statement of the Respiratory Care Board on protocols for administering medication in the practice of respiratory care. He noted that the document indicates that it was written in cooperation with the Medical, Pharmacy and Nursing Boards. Mr. Dilling asked whether the Board had any objection to the inclusion of its name in this paper. Board members indicated that they do not.

EXECUTIVE COMMITTEE

Dr. Davidson stated that the Committee looked at the topic of agency goals. They reviewed the 2004 goals that remain unfinished, and one of them is review of the investigator's manual. She stated that this is a

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huge project, and the Committee has asked Mr. Schmidt to work on a draft revision with review by the Secretary and Supervising Member before presenting the revised manual to the Board.

Dr. Davidson stated that one of the agency goals is to write professional conduct rules to cover boundary issues. She stated that this will be a huge project for the Minimal Standards Committee.

Dr. Davidson continued that a huge project for 2005 will be the transition of Executive Director. The Executive Committee recognized the need for a revitalized Management Committee. When she looked at the Committee charges, it seemed to her that the Quality Assurance Committee was the logical place to put these issues, rather than trying to create a new committee. Dr. Davidson stated that the Executive Committee will develop the charges for the Quality Assurance Committee.

Dr. Davidson stated that she will attempt to streamline the Board meetings as best she can. She stated that she was pleased with the way the previous day went, noting that the Board got through a great deal of work in one session. She's talked with staff about changing the agenda a little bit to have a consent calendar where everything that is non-contested would go in a pile. That might include licensure and probationary reports. Board members would be free to pull out problems prior to the motion to approve.

Dr. Davidson stated that there are only five Reports and Recommendations in February, so there shouldn't be a time problem. However, she suggested that in the future, when there are a large number of Reports and Recommendations and Personal Appearances, the Board could divide into groups and have each group do a portion of the initial personal appearances and then report to the Board on the appearance. She added that she wouldn't include final appearances in this group because she feels that it's important for the full Board to say goodbye to these people.

Dr. Steinbergh stated that she's not sure she agrees with the suggestion to divide into groups for initial appearances because she always gets an impression of the licensee when she sees him or her at the end of the table, even on easy cases. She stated that she's always felt that it was important for each Board member to get a sense of the probationers.

Dr. Davidson stated that the Board has seen all those who came through on a Report and Recommendation.

Dr. Garg stated that, in the past, the Board had a lot of problems with probationers coming in and saying that they didn't understand the agreement, they didn't know what they were supposed to do. That's why a few years ago the Board decided that the first appearance should be before the full Board so that everybody has a chance to meet.

Dr. Davidson continued that she would also like the Executive Committee to meet separately. She stated that the Committee has lost its way a little bit. If the Committee takes on the task of developing the charge for management oversight, it will be a lot of work that will have to be consistent. For that reason she would like the Executive Committee doing that without other Board members coming in and out. She stated that she understands that it's an open meeting, but it's difficult with people coming in and out of the meeting and asking for updates on the discussion, etc.

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Dr. Davidson continued that Thursday's session includes some big items for discussion, such as QIP, preparing for the Federation meeting, etc.

Dr. Garg stated that there's no reason that it can't be done the way Dr. Davidson is suggesting.

Dr. Kumar stated that he thinks doing things with the consent agenda will save a lot of time.

Mr. Albert commented that there are always leftover topics from Board retreats that can be contained on a Thursday agenda.

Dr. Davidson asked that Board members think about ways to streamline the meeting. She stated that she really feels strongly that the Board needs to do due diligence for the things it has to do, and still provide time to deliberate.

At this time Dr. Davidson acknowledged Ms. Sloan and her presidential year, by presenting a plaque to her, expressing the Board's appreciation.

Ms. Sloan thanked the Board, stating that it was a wonderful opportunity for her, and definitely a year of learning. She could see how everything happens, how it comes together, why the Board does certain things the way they do it. She stated that it was a wonderful year that she really enjoyed.

Dr. Davidson reported on the Committee's meeting with the Ohio Hospital Association, as detailed in minutes of the Executive Committee.

ADMINISTRATIVE REPORT

Mr. Dilling referred the Board to his written report, a copy of which shall be maintained in the exhibits section of this journal.

Mr. Dilling noted that the Board ended the year with 201 disciplinary actions, an increase of about 46 actions from 2003.

Mr. Dilling at this time presented Lynda Hosken, Chief, Human Resources, with a service pin, honoring her 10 years of service with the State.

Mr. Dilling advised that other employees who will receive 10-year service pins are: Barb Sibla, Paralegal; Jean Gillman, Secretary; Carolyn Mack, Licensure Assistant; and Sue Bigham, Public Inquiries Officer.

EXECUTIVE DIRECTOR POSITION; POSITIONS EXEMPT FROM CLASSIFIED CIVIL SERVICE

DR. STEINBERGH MOVED THAT THE BOARD CONTINUE THOMAS A. DILLING IN THE UNCLASSIFIED POSITION OF EXECUTIVE DIRECTOR, UNTIL SUCH TIME AS HIS

SUCCESSOR SHALL BE APPOINTED.

DR. STEINBERGH FURTHER MOVED TO AUTHORIZE THE EXECUTIVE DIRECTOR TO SIGN, ON BEHALF OF THE BOARD, ANY PERSONNEL ACTIONS, FISCAL DOCUMENTS AND ANY DISCIPLINARY DOCUMENTS THAT WOULD OTHERWISE HAVE TO BE SIGNED BY THE BOARD AS THE APPOINTING AUTHORITY, FOLLOWING RESOLUTION OF THE BOARD TO TAKE SUCH ACTION.

DR. STEINBERGH FURTHER MOVED THAT PURSUANT TO SECTION 124.11(A)(8), REVISED CODE, THE BOARD DESIGNATE THE FOLLOWING POSITIONS AS UNCLASSIFIED: ADMINISTRATIVE ASSISTANT 3, POSITION CONTROL NUMBER 83016.1, AND SECRETARY, POSITION CONTROL NUMBER 83022.4.

DR. BUCHAN SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.

EXECUTIVE SESSION

MR. ALBERT MOVED THAT THE BOARD DECLARE EXECUTIVE SESSION TO CONSIDER THE EMPLOYMENT OF A PUBLIC EMPLOYEE. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

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Dr. Steinbergh - aye

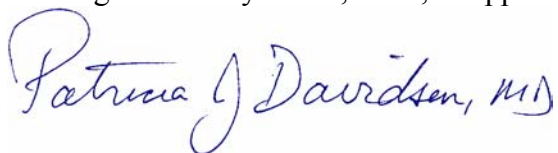
The motion carried.

Pursuant to Sections 121.22(G)(1), Revised Code, the Board went into executive session.

DR. STEINBERGH MOVED TO ADJOURN. MR. BROWNING SECONDED THE MOTION. All members voted aye. The motion carried.

Thereupon at 10:54 a.m. on January 13, 2005, the January 12-13, 2005 meeting of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on January 12-13, 2005, as approved on February 9, 2005.



Patricia J. Davidson, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)

