

February 11, 2004

MINUTES

THE STATE MEDICAL BOARD OF OHIO

February 11, 2004

Anquetette Sloan, President, called the meeting to order at 1:00 p.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: Patricia J. Davidson, M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Anant R. Bhati, M.D.; David S. Buchan, D.P.M.; Deepak Kumar, M.D.; R. Gregory Browning, Ph.D.; Andrew F. Robbins, Jr., M.D., and Anand G. Garg, M.D. The following joined the meeting at a later time: Carol L. Egner, M.D. The following did not attend the meeting: Anita M. Steinbergh, D.O.

Also present were: Thomas A. Dilling, Executive Director; William J. Schmidt, Assistant Executive Director; Diann K. Thompson, Assistant Executive Director; Mark Wayda, Chief of Executive Staff; Lauren Lubow, Senior Executive Staff Attorney; Shannon F. Baldwin, Executive Staff Attorney; Lori S. Gilbert, Chief Enforcement Attorney; Mark R. Blackmer, Marcie P. Burrow, Sally 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, and Gregory A. Perry, Assistant Attorneys General; Jewell M. Bates, Administrative Assistant; 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.

EXECUTIVE SESSION

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

VOTE:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

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

February 11, 2004

Dr. Egner joined the meeting during the executive session.

The following joined the meeting after the executive session: Sharon W. Murphy, Hearing Examiner.

MINUTES REVIEW

DR. GARG MOVED TO APPROVE THE MINUTES OF JANUARY 14-15, 2004. DR. EGNER SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

REPORTS AND RECOMMENDATIONS

Ms. Sloan 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 record, the proposed findings, conclusions, and order, and any objections filed in the matters of: Miles J. Jones, M.D.; Willie L. Josey, M.D.; Benton Matthew Maslyk, M.T.; Robert S. Reeves, Jr., M.D.; Joel H. Rubin, D.O.; and Vladimir Vasic, M.D.; and the Report of Remand in the Matter of Joseph W. Fischkelta, P.A. 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
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Ms. Sloan	- aye

Ms. Sloan asked whether each member of the Board understands that the disciplinary guidelines do not

February 11, 2004

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

Ms. Sloan 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.

Ms. Sloan 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.

MILES J. JONES, M.D.

Ms. Sloan directed the Board's attention to the matter of Miles J. Jones, M.D. She advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MILES J. JONES, M.D. DR. BHATI SECONDED THE MOTION.

Ms. Sloan stated that she would now entertain discussion in the above matter.

Dr. Bhati stated that Dr. Jones' history is a pretty long one. Dr. Jones dispensed Viagra to some 2,100 patients in 46 states and several foreign countries between June 1998 and March 1999. Dr. Bhati noted that Dr. Jones also prescribed Zyban and Xenical in different strengths. He prescribed these things without a complete history and examination of the patient and without explaining the complications of the drugs. Dr. Bhati stated that for these reasons Dr. Jones' license was revoked in North Dakota, New York, Alabama, Oklahoma and several other states. Dr. Bhati indicated that he doesn't believe Dr. Jones has adequately explained his actions. Dr. Bhati stated that he is in total agreement with the Report and

February 11, 2004

Recommendation in this case.

Dr. Kumar stated that he had looked at this case very carefully. He went through and looked at all of the articles that Dr. Jones submitted, and he would like to point out the individual comments Dr. Jones made on a case-by-case basis.

Dr. Kumar stated that Dr. Jones has indicated that it appears that every Board is going to automatically revoke his license without looking at the facts. Dr. Kumar stated that he would like to assure Dr. Jones that this Board is going to look at his case individually, rather than relying on other Boards' actions. If Dr. Jones was here and stayed through the rest of the meeting, he would see that Dr. Kumar was going to criticize some of the other Board actions in other cases.

Dr. Kumar stated that the comments Dr. Jones makes in his publications pertain to the fact that Internet prescribing is a safe, effective, affordable, and accessible way of practicing medicine. He also talks about the fact that office-based medicine is not safe, effective or affordable. However, if you read the articles that Dr. Jones published, even the editors' notes clearly reflect the fact that that's Dr. Jones' opinion and that they're not publishing the articles because they believe that this is a valid statement. Dr. Kumar stated that he has significant problem with Dr. Jones accepting the fact that a physical examination and office-based medicine is not required before you prescribe some of these medications. Dr. Kumar continued that there is no question about the fact that the AMA and other organizations are looking at ethical guidelines for Internet-based practice, but the way Dr. Jones did those things is not acceptable.

Dr. Kumar noted that Dr. Jones has a full-fledged questionnaire on his Internet site, which he asks the patient to fill out before he would prescribe medicine. Dr. Kumar stated that there was evidence presented that when the questionnaires were not filled out, Dr. Jones still prescribed the medication without doing any physical examination at all. Dr. Jones' articles and speeches are not very well accepted. Dr. Kumar stated that, as far as he is concerned, Dr. Jones did not meet minimal standards for practicing medicine. Dr. Kumar spoke in support of the Report and Recommendation.

Dr. Buchan stated that Dr. Jones' subscription to the notion that traditional practice of office-based medicine is not safe, not effective, not affordable and not accessible makes him believe that Dr. Jones is not a credible individual. Dr. Buchan added that Dr. Jones' method of practice in repeatedly writing prescriptions over the Internet without examining the patients or doing any physical exam is totally contrary to any rule of medicine that he can understand. Dr. Buchan stated that he agrees with the Report and Recommendation, as written.

Mr. Dilling asked to clarify the record with Dr. Kumar. He asked whether Dr. Kumar understands that the Conclusions of Law are based on violations of 4731.22(B)(22), actions by other states that implicate standards of care.

Dr. Kumar stated that he absolutely understands.

Dr. Bhati stated that this is clearly a bootstrap case. Dr. Bhati noted that Dr. Jones did not appear at his hearing or before the Board today, and he did not appear before the other Boards that have taken action

February 11, 2004

against his license. Dr. Bhati added that the price tags on the medicines prescribed by Dr. Jones over the Internet were very significant.

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

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

The motion carried.

WILLIE L. JOSEY, M.D.

Ms. Sloan directed the Board's attention to the matter of Willie L. Josey, M.D. She advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

Ms. Sloan 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.

Dr. Josey was accompanied by his attorney, Kevin P. Byers.

Mr. Byers stated that he hopes that the Board understands that this case is a bit of an outlier or aberration compared to other impairment cases that involve felony charges and subsequent intervention in lieu of conviction because what happened is that Dr. Josey self-disclosed to the Board when he relapsed in August 2001. A hearing was held in December 2001. That matter came before the Board in March 2002, at which time the Board issued an order of permanent revocation, stayed the revocation, imposed a minimum one-year suspension of Dr. Josey's license with the standard kind of documentation the Board requires. The week before Dr. Josey appeared before the Board, he was indicted for the conduct involved in his impairment issues. Mr. Byers stated that that's unusual because the Board often sees cases involving intervention in lieu of conviction, and it's all wound into one case. He hopes that the Board members realize that, just because Dr. Josey is back before it in a relatively short period of time, the Indictment was related to impairment issues. Mr. Byers added that there are some issues about timing and whether or not that was included in the initial Board hearing. Mr. Byers stated that the bottom line is that the case against Dr. Josey was made when he testified honestly, accurately and forthrightly in the Medical Board's hearing. The transcript of that hearing was the body of evidence that was used against him to obtain the Indictment.

Mr. Byers continued that since the March 2002 Order, Dr. Josey has been in compliance with the Board's

February 11, 2004

requirements and is doing everything he needs to do. Dr. Josey is monitored by both the Kentucky and Ohio Physicians Effectiveness Programs.

Dr. Josey thanked the Board for the opportunity to be present today. He stated that he believes that the outcome proposed by Mr. Porter is both fair and appropriate. He stated that he is here to answer any questions the Board may have of him this afternoon.

Ms. Sloan asked whether the Assistant Attorney General wished to respond.

Mr. Perry stated that he inherited this case, and this is his first involvement with it. When he went back to this case, he found there was a lot of history here. There was a 1987 consent agreement, a 1989 impairment case, a 2001 impairment case, and now the 2003 felony case. When he looked at these cases, the numbers really struck him. Dr. Josey has had four cases before this Board dating back to 1987. He's already been subject to two stayed revocations, this would be the third if the Board adopts the Report and Recommendation. Mr. Perry noted that Dr. Josey has had two serious relapses in that time, and has had the benefit of three courses of inpatient treatment. Now he is front of the Board for 13 pleas of guilty to felony drug charges. Mr. Perry stated that that is outrageous, and he questioned how he could go before the Board and not argue for revocation.

Mr. Perry added, however, that, in all fairness, the Hearing Examiner is right in this case. Dr. Josey has been under a Board Order since March 2002. There is no evidence in the record that Dr. Josey has violated any condition of the Order. The only new facts in this case are the three counts in the Indictment that were based on acts in 2000 that Dr. Josey did not tell the Board about. From a legal standpoint, these are additional violations, and they do constitute grounds for discipline. However, substantively and factually there's not a whole lot of difference. Mr. Perry stated that, as much as he's outraged by Dr. Josey's conduct, he doesn't believe this is the time for him to be the voice of moral outrage.

Mr. Perry continued that, if the Board does follow the Report and Recommendation, it should send Dr. Josey a loud and clear message that enough is enough; that he has exhausted his supply of second chances, and that from now on he is on a zero tolerance policy with the Board. Beyond that, he would have to agree that the Report and Recommendation is fair and reasonable and he would go with it.

**DR. BHATI MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF WILLIE L. JOSEY, M.D.
DR. BUCHAN SECONDED THE MOTION.**

Ms. Sloan stated that she would now entertain discussion in the above matter.

Dr. Bhati asked Mr. Dilling what it really means when the Board issues multiple "stayed revocations." How many times will it do that?

Mr. Dilling stated that, legally, it's a warning signal to the doctor that if he or she violates the order, the Board can revoke the stay. Legally, whenever the Board charges a physician under Section 4731.22, the Board can do anything from dismiss the case to reprimand to permanently revoke. That's based on the law

February 11, 2004

itself. The Order is saying, in certain circumstances, that the Board is staying the permanent revocation, but if the physician violates it again, and that is proven at hearing, this is what the Board might do. It is not saying that it is what the Board will do, obviously.

Dr. Bhati asked why the Board is doing that then.

Mr. Dilling stated that that is the question he asks of the Board.

Dr. Bhati asked why the Board is staying the revocation, and the next time comes and the Board is doing the same thing and is willing to do that four times.

Mr. Dilling stated that the Hearing Examiner is giving the Board his or her recommendation. The Board makes the final decision on the sanction, not the Hearing Examiner.

Dr. Bhati stated that looking back from 1987 through today, that's a long time, with 13 felonies on top of it. Yes, Dr. Josey has followed orders, but the State has conclusively proven that Dr. Josey obtained medications by deception on three occasions in 2000. Moreover, the Board was not aware of these episodes prior to issuing its March 2002 Order. Does the Board want to give Dr. Josey a third chance? Dr. Bhati stated that he would like to hear other Board members' thoughts on this.

Dr. Buchan stated that he was bothered by this Proposed Order. He thought it was lenient, and from a legalistic perspective, he felt that revocation is the only thing the Board can do. However, as Mr. Perry accurately reviewed, this is an unusual circumstance in the sense that Dr. Josey has followed the 2002 Order. Dr. Buchan stated that the Order as written, with the longer suspension period, he can accept, if that's the pleasure of the Board. His general feeling is one of zero tolerance, and a stayed revocation means just that. The first time up after that, from his view, it's over, and he believes the record will reflect that. Dr. Buchan stated that he doesn't want to see Dr. Josey back here again if the Board decides to give him one more chance.

Mr. Browning concurred with Dr. Buchan's analysis. He stated that this is it, the end of the line. He stated that he is willing to accept the Hearing Examiner's proposal.

Dr. Robbins stated that he's a little concerned, personally, that the suspension currently in force will, essentially be up next month. Dr. Robbins also expressed confusion about stayed permanent revocations. He was concerned that the suspension wasn't longer than it currently is.

Dr. Kumar agreed with Dr. Robbins. He stated that he is uncomfortable with Dr. Josey's suspension being up next month. If the Board wants to give him another chance, a longer suspension is necessary. Dr. Kumar stated that he believes that the two-year suspension should become effective now, rather than retroactive to March 2002.

Dr. Buchan stated that he agrees that the Proposed Order is lenient, if it stays as written, but Dr. Josey is on a ten-year probationary status with the Board, and he's either going to swim or sink. Dr. Buchan stated that he felt the Board should not be more damaging or more punitive, and that the Board should let the

February 11, 2004

Order ride, as written, and get on with it. Ten years of probation gives him the comfort to know that Dr. Josey is not going to get far. If he slips, even a little bit, that's it. Dr. Buchan stated that he wouldn't be opposed to a longer suspension period, but he thinks that the intent is to protect the public first and if the Board can rehabilitate a physician second, he's in favor. This Order is as reasonable as he can get it.

Dr. Kumar suggested an additional six-months of suspension.

Dr. Buchan stated that he wouldn't vote for that at this point. He spoke in support of the Proposed Order. He added that he would like to see Dr. Josey succeed, and he thinks that the damage has been done and there will be no more shots for him.

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

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

The motion carried.

BENTON MATTHEW MASLYK, M.T.

Ms. Sloan directed the Board's attention to the matter of Benton Matthew Maslyk, M.T. She advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

Ms. Sloan continued that a request to address the Board has been timely filed on behalf of Mr. Maslyk. Five minutes would be allowed for that address.

Mr. Maslyk stated that he's here to address the Board and show his sincere desire to be awarded the opportunity to retake the State Medical Board test, and, upon passing that, be awarded the license to practice massage therapy.

Mr. Maslyk stated that, over four years ago, just out of high school, he made some poor judgments. He paid full consequences for his actions, and learned immediately what takes others a long time to understand. While choosing his career path, he focused on areas involving health, fitness and competition. One of his degrees is in fitness. He works in a one-on-one field with clients to put confidence in their skills, and to teach them exercise, weightlifting, proper diets and lifestyles. Mr. Maslyk stated that the art

February 11, 2004

of massage is very compatible with this profession. His personal habits and training go along these same lines.

Mr. Maslyk continued that, in his profession, he has already proven, through his clientele over the last four years, that he is dedicated to health, fitness and the human body. Theirs as well as his is top priority. He studies the needs and results of his clients, as well as working with them to guide and improve their efforts. Mr. Maslyk stated that he has to be reliable, a self-starter, and available at all hours to fit his clients' needs and fulfill his job obligations at the same time.

Mr. Maslyk stated that he also competes in drug-free bodybuilding competitions to keep himself on top of his game. He stated that he is a highly motivated individual, and he tries to motivate others.

Mr. Maslyk stated that he would like to show his clientele how health and stress relief is achieved through therapeutic massage. He knows how great it is; he gets massage on a regular basis. He stated that when you use your body like he does to demonstrate how to exercise and eat correctly to improve what you have, treating it with massage is a great reward and a very healthy addition to your lifestyle. Mr. Maslyk stated that for him to be able to offer this profession in conjunction with exercise would enhance them both and help him to become a successful adult in today's society.

Ms. Sloan asked whether the Assistant Attorney General wished to respond.

Mr. Wilcox stated that Mr. Maslyk came to the Board hearing and did answer all of the questions asked. He was very honest and forthcoming. Mr. Wilcox stated that, obviously, when a lot of these incidents occurred, Mr. Maslyk was a very young man; he was 19 years old. From what was learned at hearing, Mr. Maslyk has made great strides in improving his life and he is certainly making better decisions at this time.

Mr. Wilcox stated that the problem he has with Mr. Maslyk is that he committed two very serious offenses. When he was arrested for the first time for the possession of 218 grams of marijuana, along with his 15-year-old girlfriend, in a car, he was given a pretty good break by the prosecutors. Then he was allowed to plead to two misdemeanors in that case and be placed on probation. That occurred in May 1999. Unfortunately, Mr. Maslyk did not take advantage of that good break and one month later, when he was just placed on probation, he went out and committed a robbery and got a felony conviction. Obviously, at that time, Mr. Maslyk's judgment was seriously in question. Mr. Maslyk served almost one year in prison for that robbery. Since that time he appears to have shaped up and has tried to become a productive citizen.

Mr. Wilcox stated that he believes that the bottom line in this case is that Mr. Maslyk has a felony record. If he had just had the one incident with his girlfriend and the marijuana, the Board could license him, but someone with a robbery conviction on the record is almost someone who cannot be licensed by this Board. Mr. Maslyk has shown extremely poor judgment in the past, and given this felony record, he cannot agree with the recommendation of the hearing examiner. Mr. Wilcox stated that he doesn't think that Mr. Maslyk should be licensed by this Board.

February 11, 2004

MR. BROWNING MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BENTON MATTHEW MASLYK, M.T. DR. KUMAR SECONDED THE MOTION.

Ms. Sloan stated that she would now entertain discussion in the above matter.

Dr. Egner stated that she will speak on Mr. Maslyk's behalf. She stated that Mr. Maslyk is the poster child for poor judgment as a young person. She stated that she always tells her own children that it usually isn't the first bad decision that you make that gets you into the most trouble, it's the second bad decision that you make that gets you into the most trouble. That's Mr. Maslyk. His first bad decision, especially on this robbery, was getting drunk. His second bad decision was ripping the necklace off the girl in front of the police station with his car three feet away. It was incredibly poor judgment that has followed him through his life. That is a lesson to be learned.

Dr. Egner continued that she feels that Mr. Maslyk has tried to make amends for his mistakes. He spent almost a year in jail, which was a significant price to pay for that. Mr. Maslyk has tried to take the examination twice and has not passed. She added that she has some doubts that he will pass the examination; but at this point, he's 25 years old, he hasn't been in any trouble for four years, and she thinks that he's fairly motivated from his presentation to the Board today. Dr. Egner stated that the Board ought to give Mr. Maslyk another chance.

Dr. Robbins stated that he feels pretty much the same way, and added that he also wonders whether Mr. Maslyk will pass the examination. He added that he hopes that, if given the chance, Mr. Maslyk does pass. Dr. Robbins stated that he feels comfortable that, if Mr. Maslyk does pass the examination, his application for a certificate will be subject to probationary monitoring for three years, which is included in the Proposed Order. Dr. Robbins stated that he would agree entirely with what Dr. Egner stated, and he would be in favor of giving Mr. Maslyk the opportunity to take the examination.

Dr. Buchan stated that he had concerns about this case, and listening to Mr. Maslyk, he believes that Mr. Maslyk is remorseful; but he also believes that consequences at times of choices made, even at a young age, are severe and, in fact, fatal to particular career paths. Dr. Buchan stated that he's not comfortable licensing Mr. Maslyk, based upon what he read in the record and the evidence put forth. Dr. Buchan stated that he's not convinced that Mr. Maslyk will make the right decisions all of the time. Dr. Buchan stated that this is not a life sentence. Mr. Maslyk appears to be on the right track, and he would hope that Mr. Maslyk, if denied a license today, wouldn't perceive that as fatal to his life. It is the consequence of a choice he made long ago, and hopefully others will learn from Mr. Maslyk's errors in judgment. Dr. Buchan stated that he otherwise wishes Mr. Maslyk well in his life.

Dr. Bhati stated that in the previous case the licensee was convicted of 13 felony counts and the Board allowed him to have his license. In this case the applicant was convicted of one felony, spent a year in jail, and the Board is saying he may or may not get a license. Dr. Bhati asked whether the Board wants to have licensees with felony records, or does it want to send a message that it is not accepted. A felony is a felony and ought to be taken seriously. Dr. Bhati stated that this is very frustrating.

February 11, 2004

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

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

The motion failed.

Dr. Egner stated that, looking beyond the last case, there are many licensees who have had a felony conviction and who are still allowed to practice, and didn't serve any jail time. Dr. Egner asked Dr. Bhati to reconsider his argument that Mr. Maslyk has a felony conviction and that should be the main basis of the decision. That's why there are degrees of felony, that's why the Board looks at the mitigating circumstances of cases. The Board sometimes considers the age of the licensee when the felony was committed. The Board looks at the mistakes of the elderly and those of youth. In the bigger picture, a felony alone has not been the Board's basis for denying a license.

Dr. Bhati stated that the Board's job is to protect the citizens of the State of Ohio. When you have someone who committed a crime, the Board has to think twice about whether or not it can expose the citizens of Ohio to that person's treatment. He stated that his answer is no. He would have a hard time accepting the situation. Age is not the issue, protecting the public is.

Dr. Egner stated that the public does not have the same risk involved with a massage therapist as they do with a physician.

Dr. Bhati stated that he disagrees on this issue. That's the way he feels about felons.

Dr. Buchan stated that he thinks the relationship between the massage therapist and the patient is significant and should be respected when it comes to issues of decision-making and moral process. He stated that he feels committed to his position, but he will listen to other Board members' explanations on why they feel he is a better decision maker today than he was four years ago.

Mr. Browning stated that he has a track record. Mr. Maslyk didn't just float since 1999. He went to school, he graduated, he went back to get a massage therapy diploma. He's been working at it. He hasn't gotten into trouble since. It's not just been what he hasn't done, but what he has done. He asked that the Board think about why he got that felony. There are a lot of cases rolling through this place. If that becomes the standard for licensing people, then the Board won't license anybody who did anything worse

February 11, 2004

than taking someone's necklace, there will be fundamentally different votes on this Board. A lot of people are going out the door, if that's the new standard. The Board has seen people diverting drugs and doing things up and down the line and now it's going to stand on a felony for taking a necklace. Mr. Browning stated that he doesn't know how the Board can do that.

Dr. Bhati stated that he's sarcastically telling the Board that it has just let a person go who was convicted of 13 felony counts. Why are Board members having a problem letting this individual go? He added that he personally objects to that, but he's one of twelve Board members. Dr. Bhati stated that he feels very strongly that the Board's job is to protect the citizens of the State of Ohio. If someone commits a felony, he's not sure he wants that individual treating patients, whether he's a massage therapist, an M.D., a surgeon or whatever. He added that this doesn't mean that the Board has to vote how he says. The Board voted differently in the last case.

Dr. Davidson stated that he didn't vote to grant Mr. Maslyk's massage therapy license today. She voted, based on agreement with Dr. Egner and others who feel like this was a very young person who made some huge mistakes and has paid and learned, to have the chance to take the examination again and to be under very strict probation. He cannot drink, and he will show up for urine screens for a long time. The Board will have three years of looking at this guy. She votes to give him that chance. She's not sending him out to be a licensed therapist tomorrow.

Dr. Robbins stated that that's the issue. The Board isn't giving Mr. Maslyk a license. He believes that there's a difference between this case and that of Dr. Josey. What Mr. Maslyk showed over the last four years is that he deserves a chance. It isn't giving him a license. It's giving him the opportunity to get the license, and it is monitoring him very closely after. He thinks that that's the difference.

Ms. Sloan stated that when she voted no, she was thinking about positions Mr. Maslyk will find himself in, such as working in others homes. She doesn't know that he will make good decisions. In most cases, he will be alone with his client. She's not sure he can make good decisions. He's made some very poor decisions. She agreed that he hasn't had any problems the Board knows about in the past four years, but she cannot be assured that he will make good decisions when he is alone with patients or his clients.

Dr. Egner stated that she understands that, but that is not what is required of our licensees. The Board does not require every licensee in the State of Ohio to guarantee that they will always make good decisions. What they must do is follow the law. Mr. Maslyk won't only have to follow the law, he will have to follow some more stringent guidelines after he passes the examination. She stated that she would hope that Board members would feel comfortable enough with the guidelines set forth if he passes the test. There will be some monitoring of his decision making process. She again stressed that the Board can not be sure that anyone it licenses will make good decisions. She added that even Board members can make a bad decision.

Dr. Buchan stated that he is disturbed because the court system reviewed this case more thoroughly than he was able, and they put this man in prison. That being said, it's not just about ripping off a necklace and moving on. There's more to the story. He added that he's been around the Board long enough to understand the situation, and he will change his vote and give this gentleman an opportunity to continue to

February 11, 2004

be on the right track. He stated that he has concerns, he's registered them, and he felt that Mr. Maslyk made a fatal mistake when it comes to his profession; however, due to his respect for the members of the Board, and hearing what he's heard through the discussion, he will change his vote to "aye," giving Mr. Maslyk a chance to prove him wrong and the other Board members right.

Ms. Sloan stated that she feels the same way and will change her vote. She's said what she needed to say, but she wants Mr. Maslyk to know that there's a lot riding on this. The Board has monitoring in place, but she hopes that it's not going to be just the monitoring that will keep him doing the right thing.

Another vote was taken on the motion to approve and confirm:

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

The motion carried.

ROBERT S. REEVES, JR., M.D.

Ms. Sloan directed the Board's attention to the matter of Robert S. Reeves, Jr., M.D. She advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

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

Dr. Reeves was accompanied by his attorney, John R. Irwin, M.D., Esq.

Dr. Irwin stated that he would address the Board first and turn over his remaining time to Dr. Reeves.

Dr. Irwin stated that he has appeared before the Board many times in the past, and he also has the honor to be one of the Board's licensees. He stated that he feels that he bears some of the responsibility for why they are here today, and he apologized to the Board for that. Dr. Irwin advised that Dr. Reeves entered into a Consent Agreement with the Board last May, and he failed to comply with some of the provisions of that Consent Agreement. He stated that he sincerely wishes that he had stayed in closer contact with Dr. Reeves and that he had stayed more on top of Dr. Reeves' compliance with the Consent Agreement.

February 11, 2004

Dr. Irwin apologized to the Board for that not having happened, and therefore having to be in front of the Board with Dr. Reeves today.

Dr. Irwin stated that he believes that Dr. Reeves has made a remarkably good recovery from his impairment over the last several years. He has done a sterling job in that regard. Dr. Irwin stated that he hopes the Board will take these facts into consideration.

Dr. Reeves addressed the Board, thanking it for allowing him to address it. He stated that he would like to thank the Board for the opportunity it has given him to rebuild his life from chemical dependency. He really has rebuilt his life from the ground up over the last two years. He's done this with a lot of help from people who are kind and loving, and stern with him sometimes. Dr. Reeves stated that he doesn't think that he could have been in the position to recover as he has without the direction and concern of the Board.

Dr. Reeves continued that he is very sorry for what happened. He stated that in 2003 he had been teaching anatomy and physiology to nursing students at a community college in Fremont. His license was restored by the Board in May 2003. In early to mid-June he got a phone call from a physician recruiter, asking him if he could be at a job at 7:00 a.m. the next morning. He took the call on his cell phone, and in trying to think if there was any reason why he couldn't do the job, he couldn't think of one and he took the job. That was a terrible mistake, and he's sorry that he did that. Dr. Reeves stated that he worked off and on at this clinic in Columbus for possibly ten days in mid to late June. On July 6, he received a letter from the Board reminding him of items he had to have done in order for him to return to work. Right away he saw that there was something that he forgot. He forgot to submit the CV and the name of a monitoring physician for prior approval by the Board before he returned to work. Dr. Reeves stated that he was devastated, and the very next day he called Dr. Irwin and told him what happened. He advised that they let the Board know right away. The next day he had his regular quarterly appearance with Mr. Albert and Ms. Bickers, and he immediately told them what he had done and what had happened.

Dr. Reeves stated that he did this, and he was wrong and it was a terrible mistake. He understands the reasons for the provisions of his Consent Agreement. He also understands that the Board is responsible to the public. He advised that he in no way meant to disregard anything this Board has wanted him to do. All he can do at this point is publicly and humbly apologize to the Board for what he did. He stated that he's sorry he's brought the Board more work and worry. He stated that he also needs to apologize out loud to his wife and two children for the additional worry he's thrown on their shoulders. He also apologized to Bellevue Hospital's administration and the medical staff at Bellevue Hospital, and his patients, who were affected by this. Dr. Reeves promised the Board that he will never make a move regarding any kind of employment or change in circumstances or anything of that nature without double checking with Ms. Bickers, the Board and Dr. Irwin. He again stated that he is terribly sorry that this happened.

Ms. Sloan asked whether the Assistant Attorney General wished to respond.

Mr. Wilcox stated that Dr. Reeves has been monitored by this Board for impairment reasons since 1982. His first consent agreement was in 1982 and he relapsed in 1998. He entered into a Step I consent agreement with the Board in 1999. In 2002, he entered into a Step II Agreement, and soon after he relapsed again. Dr. Reeves entered into another Step I consent agreement in May 2002, and in 2003 he

February 11, 2004

entered into a Step II agreement.

Mr. Wilcox stated that Dr. Reeves obviously has a long history with the Board. He certainly should understand that the Board is very serious about the monitoring terms and the issue of impairment, and the requirements they place upon impaired physicians. Given this history with the Board, Mr. Wilcox stated that it is ridiculous that Dr. Reeves makes excuses for not following the current Step II strictly by the letter. It is not credible that Dr. Reeves was not able to understand the conditions for his reinstatement to practice. If this was just the mistake of a first-time probationer, it might be understandable, but with Dr. Reeves there are no excuses. He knows that he must follow these agreements to every last detail. Dr. Reeves chose not to do so by practicing without a monitor, and he's shown that he cannot follow through with the Board conditions placed upon him. Mr. Wilcox noted that Dr. Reeves also failed to submit the name of a monitoring psychiatrist as well.

Mr. Wilcox stated that, given the fact that Dr. Reeves doesn't seem to be able to follow the agreements that he made with the Board, revocation is an appropriate penalty.

DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ROBERT S. REEVES, JR., M.D. MR. BROWNING SECONDED THE MOTION.

Ms. Sloan stated that she would now entertain discussion in the above matter.

Dr. Egner stated that when Dr. Reeves sits in front of the Board and says that he gets a phone call while driving at 9:00 at night, with a job offer, and he has to go to work the next day, and he thinks to himself that he can't think of any reason why he shouldn't take that job, her first thought was that common sense should have told him that he shouldn't do that. She added that she doesn't know how a physician gets a job offer at 9:00 at night and shows up the next day in an office. Do they have malpractice coverage? Does he know what he's going to make? Does he know with whom he's going to work? It makes no sense. Dr. Egner expressed surprise that, with his history with the Board, his agreement didn't enter into his thought processes. Dr. Reeves has had five consent agreements with the Board and it doesn't make sense.

Concerning whether or not Dr. Reeves has been diligent in his recovery, Dr. Egner stated that she believes that he has, but he is not diligent in following what the Board asks him to do. Dr. Egner added that she doesn't know that she feels that he should be permanently revoked; but she doesn't buy his story. She added that he can take up with his attorney whether or not his attorney should have been more watchful of what he was doing. Dr. Egner stated that Dr. Reeves is responsible for his own behavior with the Board, and he needs to understand that.

Dr. Davidson agreed, stating that there were 22 years of teaching Dr. Reeves how to work with the Board, and what the Board requires. She finds it totally incredible for him to say that he forgot and would practice without a license. She takes that very seriously. Dr. Davidson stated that the Proposed Order is outside the disciplinary guidelines, and she would be very comfortable with a revocation in this case.

February 11, 2004

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

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

The motion failed.

Mr. Dilling reminded the Board that six affirmative votes are necessary to take discipline.

Dr. Bhati stated that he would change his vote, noting that Dr. Reeves has been sober for the last two years.

Dr. Robbins stated that he believes he understands why his colleagues who voted no did so. Dr. Robbins stated that he's not ready to say that Dr. Reeves' license should be permanently revoked. He would be interested in an amended Order, but he wouldn't be in favor of a permanent revocation.

Dr. Bhati stated that this is Dr. Reeves fourth consent agreement in over 22 years. If he doesn't understand it now, what makes the Board think he will understand in the next 22 minutes?

Dr. Robbins stated that he understands Dr. Bhati's argument. He added that he also felt that the story about being called by his recruiter at 9:00 at night with a job and having to be at the job by 7:00 in the morning is preposterous. Dr. Robbins stated again that he's just not ready to go with permanent revocation.

Dr. Davidson stated that another point that she meant to make is that the allegation in the notice of opportunity was for violation of a consent agreement. This is the Board's contract; it's how the Board deals with a licensee who runs afoul of the Board. The Board agrees that these are the rules they'll go by, and if the Board can't count on this agreement, what can it count on? In other situations, the Board clearly goes to Plan B, but here the issue is that he didn't follow the consent agreement. What else does the Board have? She also doesn't find his blaming the lawyer or saying he forgot credible.

Dr. Buchan stated that he doesn't find Dr. Reeves' story credible; in fact, he stated, he believes it's a lie. However, the Board was operating under a consent agreement and will now be operating under a Board Order of stayed permanent revocation. If the Board sees him again, the rules are changed a bit, and, as far as he's concerned, the permanent revocation will stand.

Mr. Browning agreed with Dr. Buchan. This is the end of the line.

February 11, 2004

Dr. Robbins also agreed.

Dr. Bhati asked whether an increased suspension period would help Board members feel more comfortable.

Dr. Buchan stated that he voted for the Proposed Order because it includes a stayed permanent revocation. He doesn't need to add time to the suspension period.

Dr. Davidson asked how many times the Board has permanently revoked Dr. Reeves' license.

Mr. Dilling stated that the Board has never permanently revoked his license. He doesn't believe that the Board has ever imposed a stayed permanent revocation in Dr. Reeves' case.

Dr. Egner stated that Dr. Reeves has never had a Report and Recommendation; everything has been a consent agreement. She asked whether there are consent agreement with stayed permanent revocations.

Mr. Dilling stated that the Board has done it in the past.

Dr. Buchan stated that he doesn't believe that Dr. Reeves has ever been under a stayed permanent revocation before. He believes he was under a standard Step II Agreement.

Dr. Bhati stated that there should only be one stayed permanent revocation. It shouldn't be done a second, third or fourth time in 20 years.

Another 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
	Mr. Browning	- aye
	Dr. Davidson	- nay
	Dr. Robbins	- aye
	Dr. Garg	- abstain

The motion carried.

JOEL H. RUBIN, D.O.

Ms. Sloan directed the Board's attention to the matter of Joel H. Rubin, D.O. She advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

February 11, 2004

DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JOEL H. RUBIN, D.O. MR. BROWNING SECONDED THE MOTION.

Ms. Sloan stated that she would now entertain discussion in the above matter.

Dr. Kumar stated that this is a minimal standards case. He stated that he spent a tremendous amount of time going over the case, and some of the things here involve an out-of-state action. He doesn't know exactly the other state's processes, and he was looking at what would happen if this kind of thing happened in Ohio. Dr. Kumar stated that there were several things that troubled him in this case. He understands that it was a mediated agreed order, meaning that both parties agreed to the Texas Order, but if he takes the case of patient LC, the record clearly shows that the patient had been discharged six weeks prior to the event that occurred on that particular day in the emergency room. Dr. Rubin had all the information, including the information that the patient had an appointment with the infectious disease people three or four days later on. Dr. Kumar stated that somehow that particular information does not appear in this information, and the Texas Board, who mediated things, talks about the fact that the patient was discharged without a course of follow-up, without communicating to anybody. Dr. Kumar stated that he has a problem with that. Was it in the original records? Was it missed or not agreed on? He has a problem with that.

Dr. Bhati stated that the Board won't get that information.

Dr. Kumar stated that if he himself was dealing with a patient with that information he had, i.e., the patient was discharged from the hospital a few weeks ago, the patient comes with urinary tract infection type of symptoms, the patient was already on an antibiotic and has an appointment to see an infectious disease person three or four days later on. The patient refuses to stay in the hospital and has left the hospital many times AMA. These days when we constantly work on doing things on an outpatient basis, we would send the urine out for culture, which is what Dr. Rubin did, and see how the report comes back and then treat the patient appropriately. Dr. Kumar stated that he doesn't think that Dr. Rubin could have done anything right away because he would not start the patient on any other antibiotics, pending the results. Dr. Kumar stated that he has a problem with the way this particular case was addressed, even though it was a mediated thing and he doesn't have all of the information.

Dr. Kumar referred to Patient VC, who was brought into the emergency room with hyperthermia, which means the possibility of a heat stroke, or a septic infection. The record is clear is that Dr. Rubin did treat the patient in the emergency room, he brought the temperature down, he observed the patient, did lab work and so and so forth, and this did not indicate any evidence of sepsis. Dr. Rubin did not discharge the patient, but left the patient for observation. In the evening, the next physician came in and admitted the patient, and later on the record is clear that it was shown that the patient did not have sepsis. Dr. Kumar stated that, as far as he's concerned, had he been there, he would have treated the patient the same way as Dr. Rubin did, except for some minor changes.

Dr. Kumar stated that he wonders what would happen if this case came to this Board. He commented that

February 11, 2004

it would probably be sent to QIP instead of going to a formal Report and Recommendation. Dr. Kumar suggested that Texas' mediated agreed order may be that state's version of QIP. Under those circumstances, he will agree with the Proposed Order, tying the Board to the Texas probationary terms only.

Dr. Bhati asked for what reason the Board should punish Dr. Rubin. Dr. Kumar stated that he was unable to find any problem with the way Dr. Rubin handled those two cases. The question should be whether or not this case should be dismissed.

Dr. Kumar stated that the problem is that he doesn't know exactly what the Texas process is.

Dr. Bhati stated that the Board has to work with what it has.

Dr. Egner agreed with Dr. Kumar. Based upon the information the Board has, and she feels like the Board has enough information, she would not find this as practicing below minimal standards. Dr. Egner stated that she agreed that this would have been a QIP case for this Board, with no disciplinary action.

Dr. Bhati asked what he did wrong. Dr. Rubin didn't do anything wrong, so it wouldn't go to QIP.

Dr. Egner stated that she can't say that Dr. Rubin did nothing wrong because she doesn't have all of the information that Texas had. She stated that she would like to refrain from saying that he did nothing. Based upon the information that the Board has, she doesn't know that he needs disciplinary action from the Ohio Board.

Dr. Buchan stated that these are difficult situations, but the facts are that a jury of his peers in the state of Texas has described that there are issues here, and they have agreed to put certain facts on the record on which they are in agreement. Dr. Buchan stated that he's not comfortable suggesting that this Board dismiss this case, or do anything other than what is written in the Proposed Order, based upon what the Board's peers in Texas have suggested and to which Dr. Rubin has agreed.

Dr. Kumar stated that that is the only problem he had with dismissing this case. Dr. Rubin mediated with Texas, it was a mediated, agreed Order rather than a unilateral action. Dr. Kumar stated that Dr. Rubin agreed to the Texas Order, and he again suggested that this may be Texas' version of QIP.

Dr. Bhati stated that agreement and mediation can be done under duress. What the Board needs to understand is that there is limited information about the two cases. The two cases clearly show that this Board would not have done anything differently than what Dr. Rubin did, so on what basis would the Board propose any disciplinary action. He stated that that needs to be on the record to justify any action taken by the Board.

Mr. Dilling stated that, from a legal perspective, what is before the Board today is a disciplinary action from another state. There is no independent charge of minimal standards or whatever. Certainly those factors impact the Board on what to do with the case, but as far as legal grounds, what the Board has before it is an action by a sister state. Obviously, the laws differ in other states as to what information they can

provide, and it's a difficult thing to get information from other states. The Legislature in Ohio feels that if someone is disciplined in another state, the Medical Board should have the authority to take some action. It's on the public record. What if the different summary of evidence that they put into their order is the one that kicked it over and said they should do it? Obviously, they mediated and agreed upon that Order. If there is no standard of care violation, that goes to mitigation of what penalty the Board imposes. It doesn't necessarily go to saying, legally, you don't have a basis to act because the Board does have a basis to act. It has an action taken in Texas.

Dr. Kumar stated that he would agree with Dr. Bhati to dismiss this case if, legally, the Board can do that. He doesn't see that the Board should impose any sanctions on this person.

Mr. Dilling stated that the Board can dismiss the case. It can also do anything from reprimand to permanent revocation, based upon the record.

Dr. Robbins stated that he agrees, and wishes the Board had a lot more information, but in the case of VC, he didn't see any problem. He stated that he would love to know what Dr. Rubin mediated, because he turned the patient over and she was admitted.

Dr. Robbins continued that, in the first case, he did have some problems. Here is a patient with advanced AIDS, who presents to the emergency room with nausea, vomiting, and abdominal pain for three weeks. Dr. Rubin did a very appropriate workup; he finds bilateral renal calculi, partial obstruction of the right ureter and just sends the patient out with Phenergan and Vicodin. Dr. Robbins stated that, in the years he worked in the emergency room, he would have clearly called the patient's treating physician and said, "Your patient is here, you know him better than I do, this is what's going on, this is what I propose to do. Would you want to see him in a day or two, whatever." Dr. Robbins acknowledged that the Board doesn't have a log of information, but it bothers him that a physician would do this and just say, "goodbye." In a situation like this, this is a walking time bomb. When the primary care physician did see the patient, he admitted the patient to the hospital. Dr. Robbins stated that, to him, there's a problem there.

Dr. Robbins acknowledged that the Board doesn't know a lot about these cases; but because Dr. Rubin entered into some sort of agreement with the State of Texas, he believes this Board should also put him on probation.

Dr. Kumar stated that he went through all of the letters in the record, and it is clear that Dr. Rubin had the records and that he talked with the family. The patient had left AMA so many times before; he refused to stay in the hospital. There were all of these records to show that the patient had kidney stones, and there was evidence that kidney stones were blocking his ureter.

Dr. Egner stated that he was also a DNR.

Dr. Kumar stated that all of those things were already in the record. He added that his understanding was that Dr. Rubin did try to contact the infectious disease people, but was told that the patient had an appointment three days down the line. Then the report came back on the positive urine culture. He reported that to the infectious disease people, and the patient was admitted.

February 11, 2004

DR. BHATI MOVED TO AMEND THE PROPOSED ORDER TO ENTER AN ORDER OF DISMISSAL OF THIS CASE. DR. KUMAR SECONDED THE MOTION.

Mr. Dilling stated that the Board is considering adopting Findings of Fact and Conclusions of Law to show that this is a 4731.22(B)(22) case. A violation of 4731.22(B)(22) was proven; there was an action taken by another state. He suggested that the Board might want to adopt an order finding that no further action is required. That is a bit different from dismissal. The Board would be taking no action based on its finding that, based on the record, there is no reason to take further action in Ohio. To dismiss it is to say that it never happened.

DR. BHATI ASKED TO MODIFY HIS AMENDMENT TO STATE THAT NO ACTION IS WARRANTED, BASED ON THE RECORD. DR. KUMAR, AS SECOND, AGREED.

Dr. Buchan stated that he's very uncomfortable doing that, based upon the fact that the Board doesn't have all the information it needs. He stated that he feels that he needs to respect the information given to the Texas Board. This Board has dissected a case on limited data. He stated that he doesn't think that the Board can do that. All the Proposed Order suggests is that Dr. Rubin comply with the requirements of the Texas Board and when he does that he has a full, unrestricted Ohio license.

Dr. Bhati stated that he'll have to do that anyway for Texas.

Dr. Buchan stated that this Board has limited information, and he believes that this Board needs to respect out-of-state actions. It has acted appropriately, and has not mandated any more excessive discipline. It simply requires Dr. Rubin to comply with his negotiated order with Texas. Dr. Buchan stated that he would strongly speak against any order of dismissal or no action to be taken.

Dr. Egner stated that, in essence, the Board is not taking further action. It's just saying that he has to comply with what Texas has done. He has to do 50 hours of C.M.E. over a two-year period of time and pay a \$5,000 fine. That's actually ten hours more than the Board requires of every licensee each year to maintain their license. Dr. Egner stated that she's having a hard time making a huge distinction between the two options the Board has, except if the question arises as to whether or not this case was worth the Board looking at it. The answer is, yes. When the Board has a licensee who has been disciplined by another state, this Board should look at these cases. She suggested that someone from staff may be able to enlighten her more as to what distinction she should make between saying, yes, we should look at this and accept the findings of fact and take no further action as opposed to adopting the Report and Recommendation, as written, which does not take further action.

Mr. Dilling stated that what the Board has is a process in which the Secretary and Supervising Member reviews with staff. The recommendation to the Board was to initiate the hearing process. The hearing process went through, and the Attorney Hearing Examiner crafted a decision, a Report and Recommendation, saying exactly what Dr. Buchan said. If the Board is looking for a recommendation from staff, this is what it has here before it. Some Board members have indicated that they don't want even the small penalty imposed by the Proposed Order.

February 11, 2004

Dr. Buchan again stated that he believes the Board needs to respect out-of-state orders, in general, and, if Dr. Rubin doesn't comply with his Texas probation, and this Board doesn't take action, Dr. Rubin will have evidence suggesting that in Ohio they just dismissed this thing. Dr. Buchan stated that Dr. Rubin is under probation in Texas, and this Board needs to respect out-of-state actions. He added that he wouldn't want Texas to suggest that Ohio reviewed a case and imposed a judgment, and the case was not worthy of that judgment. This is not a harsh action, it's a simple bootstrap.

Dr. Bhati stated that there is no question that this is a bootstrap. The issue here is that the Board needs to have something to hang its hat on. The Board doesn't have anything to hang its hat on.

Dr. Buchan stated that it has an out-of-state action.

Dr. Bhati stated that simply saying that the Board wants to respect its sister board, it's a good thing to do, but you have to have something to hang your hat on. The Board doesn't have it on these two cases. He stated that he would have no problem with Dr. Rubin coming to Ohio to practice. He again stated that he sees nothing wrong with the two cases involved.

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

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

The motion failed.

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

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

February 11, 2004

Dr. Garg - abstain

The motion carried.

VLADIMIR VASIC, M.D.

Ms. Sloan directed the Board's attention to the matter of Vladimir Vasic, M.D. She advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

Ms. Sloan continued that Dr. Vasic is present, and has requested an opportunity to address the Board. She stated that a roll call vote would be necessary to grant Dr. Vasic's request.

Mr. Dilling advised that Dr. Vasic did not file a motion to appear before the Board today. Dr. Vasic has approached staff today and asked to address the Board.

DR. BHATI MOVED TO ALLOW DR. VASIC TO ADDRESS THE BOARD FOR FIVE MINUTES. DR. KUMAR 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
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain

The motion carried.

Dr. Vasic thanked the Board for allowing him to explain his side of the issue. Dr. Vasic stated that he is a general surgeon, certified by the American Board of Surgery. He has practiced general surgery for about 26 to 27 years. Dr. Vasic stated that everything he wrote on any application or any form was done on the guidance of the Ontario Medical Association. The plan to leave Ontario was done, based on the same group of people who gave him the advice to take a sabbatical and to take action at the appropriate time. He did not leave on his own.

Dr. Vasic stated that he's really surprised that the State of Ohio would go to this extent to hold that he is not telling the truth or that he's trying to evade some issues. He's very disappointed. He was called five times from the Board's offices in the middle of a case to fax material immediately, right now. If he did it "tomorrow" he would be a criminal. Dr. Vasic stated that he lived in a communist country for about 24 years, and he was treated badly in Ohio. If the Board doesn't have any respect for him as a human being, he asked that the Board at least respect his profession and the work he does, adding that, after all, he's a

medical doctor.

Dr. Vasic stated that the Board has placed him on the Internet and has pre-judged him. He was doing locum in Indiana for seven days. Two days later the chief of staff called him and told him that he had to be off staff immediately because Ohio has an investigation on him. Dr. Vasic stated that the Board can imagine the embarrassment. He was in a small town in Indiana, and he had to leave the town because he was under investigation. Dr. Vasic stated that he was denied at least sixteen to seventeen job applications because the Board placed him on the Internet.

Dr. Vasic stated that there was some material saying how he left the hospital and was taken off staff. Dr. Vasic stated that he was never taken off staff at Niagara Falls Hospital. He added that he has a letter to prove this. He has a normal Ontario license, and he has a normal license for Indiana. During the month of August, Indiana had the same procedure as Ohio has now, and Indiana dismissed his case completely. He has a normal Indiana license.

Dr. Vasic stated that there were some issues in the Hearing Examiner's Report that he felt were a total disservice to him. He stated that she's a charming lady and he respects her as a person, but she really behaved like a communist investigator. She was prejudging him immediately. The questions she was asking – he was wrong immediately. Dr. Vasic stated that she had a recommendation for him and he has a recommendation for her.

At this time Dr. Vasic turned around and addressed Ms. Murphy, stating that she should never again be in any hearing.

Dr. Egner interrupted Dr. Vasic and told him that he has to stop. She stated that Dr. Vasic may explain his position to the Board. He may not attack the Board's staff.

Dr. Vasic stated that he is sorry.

Dr. Bhati stated that it is Dr. Vasic who is at question, not the Board staff and the rest of the world. If Dr. Vasic wants to explain his problems, the Board is ready to listen to him. The Board has gone out of its way to allow him to make a presentation. Dr. Bhati stated that his request to address was supposed to have been filed five days in advance of the meeting. The Board has gone out of its way to allow him to address it, but it will not sit back and listen to him insult its staff in any way.

Dr. Vasic stated that he didn't understand that he was supposed to submit his request. He didn't know.

Ms. Sloan stated that Dr. Vasic needs to focus on what it is he wants to present to the Board on behalf of this case. She added that he has two more minutes to do so.

Dr. Vasic stated that the main point he is trying to make is that the Ontario suspension given to him was based on a case that happened fourteen years ago. He did an open cholecystectomy on a morbid obese patient, and he had to drain the wound. Four days post-op he removed the drain and did not see any wound abscess. Two days later there was some discharge and it was labeled as a wound abscess. He doesn't

February 11, 2004

know whether he missed it or not, and he's not saying one way or another. For the second patient, he placed a central venous line, and he had a good return of blood. He did a chest x-ray and to him the position was adequate. It wasn't his case. He was doing a favor for the Chief of Staff at the time and he agreed that it looked like a good position. Actually, it was not. It was an honest error he made at the time.

Dr. Vasic stated that he was given a suspension in August 1999 by the Ontario licensing body on the condition that he return back to Ontario, so it was specifically effective only if he returned to Ontario, which he never did. The suspension was lifted in May 2003 with no conditions attached, so he has a normal Ontario license. This was extensively investigated by the Indiana licensing board, and he was completely cleared of any limitations. He has no limitations on licensure at all.

Ms. Sloan asked whether the Assistant Attorney General wished to respond.

Mr. Wilcox stated that he would have to agree with the Hearing Examiner's Report and Recommendation in this matter; she did an excellent job summarizing the factual situation in this case. Mr. Wilcox stated that for Dr. Vasic to argue that things for which the State provided documentary evidence did not occur is a bit ridiculous. Dr. Vasic was terminated from Greater Niagara General Hospital. He was suspended and reprimanded in Ontario. He did misrepresent the truth on his applications to the hospitals in Ohio and Indiana. As the Hearing Examiner said, one can only conclude that a person who fails to accept responsibility for his actions is certainly not capable of practicing medicine in a professional manner. Mr. Wilcox stated that the recommendation of permanent revocation is warranted in this matter.

DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF VLADIMIR VASIC, M.D. MR. BROWNING SECONDED THE MOTION.

Ms. Sloan stated that she would now entertain discussion in the above matter.

Dr. Kumar stated that this is again, supposedly, a minimal standards case.

Dr. Egner interrupted, saying that this is not a minimal standards case.

Dr. Kumar stated that, clinically, it is not a minimal standards case. If you go through the entire case, they talk about two cases.

Dr. Egner stated that this is a fraud case.

Dr. Kumar stated that he understands that. He added that the record talks about a fact that there were some cases pertaining to the gall bladder, as well as the other thing. His comment is that that is simply a red herring. Dr. Kumar continued that, in reviewing the hearing record, it becomes very clear that the physician was having problems that were not as much related to clinical things, but more to professional, working, ethical standards in the institution. That became very clear when you read through the letters that were written back and forth. The institution had started an external review of the activities. That happened and they picked up those two cases for whatever reason. From that point on, the sabbaticals or leaving the

February 11, 2004

place and splitting hairs claiming he wasn't suspended because he didn't serve the suspension since he wasn't in Ontario is not credible.

Dr. Kumar stated that Dr. Vasic's behavior today clearly shows that the problem is more one of professional ethics. He will support the Hearing Examiner's recommendation. Dr. Kumar stated that he came to the meeting today with the thought that he might propose a revocation, rather than the permanent revocation proposed by the Hearing Examiner. He added that, after Dr. Vasic's presentation today, he can support the proposed permanent revocation.

Dr. Egner stated that she thinks it is clear that Dr. Vasic published a fraudulent statement, that he meant to do it, and that there was no way that he wouldn't have known that his privileges had been suspended and that an action had been taken by the College of Physicians and Surgeons of Ontario. She stated that she doesn't think that there is any question there. This all took place in 1997, 1999, and 2000. Although not submitted into evidence, he would have had reapplications in Ohio during that time, too, in which he would have had to answer those exact same questions. She wondered why that wasn't in the State's evidence, but she doesn't think that there's any question as to why he shouldn't receive a permanent revocation today.

Dr. Buchan suggested that Dr. Vasic has a responsibility to understand the status of his license, and if he clearly does not understand that, the Order should go as written. The pattern of lies and untruths support the Report and Recommendation.

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

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

The motion carried.

REPORT OF REMAND IN THE MATTER OF JOSEPH W. FISCHKELTA, P.A.

Ms. Sloan directed the Board's attention to the matter of Joseph W. Fischkelta, P.A. She advised that no objections were filed to Hearing Examiner Murphy's Report of Remand.

Mr. Dilling noted that this is a remand. The Board requested in January that this remand be handled expediently. Ms. Murphy worked with all parties to get this ready for this month.

February 11, 2004

DR. BHATI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER ON REMAND IN THE MATTER OF JOSEPH W. FISCHKELTA, P.A. DR. BUCHAN SECONDED THE MOTION.

Ms. Sloan stated that she would now entertain discussion in the above matter.

Dr. Bhati stated that he believes that Ms. Murphy did her job properly, and this ought to be approved.

Dr. Buchan agreed, adding that he appreciates the quick response. Ms. Murphy's report addresses the Board's questions from last month.

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

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

The motion carried.

Dr. Buchan left the meeting at this time.

FINDINGS, ORDERS AND JOURNAL ENTRIES

NANCY F. GRUBB, M.D.

Ms. Sloan advised that, by letter of December 15, 2003, the Board notified Dr. Grubb that it proposed to approve her application for restoration of her certificate to practice medicine and surgery, subject to her passing the SPEX or the American Board of Family Practice recertification examination. The notice was mailed to Dr. Grubb's address of record and proper service was documented. No hearing request was received from Dr. Grubb, and more than 30 days have elapsed since the mailing of the notice. The matter was before the Board for final disposition.

DR. EGNER MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS AS SET FORTH IN THE DECEMBER 15, 2003 NOTICE OF OPPORTUNITY FOR HEARING IN THE MATTER OF DR. GRUBB, AND TO ENTER AN ORDER APPROVING DR. GRUBB'S REQUEST FOR RESTORATION OF HER CERTIFICATE TO PRACTICE MEDICINE AND SURGERY,

February 11, 2004

SUBJECT TO HER PASSING THE SPEX OR THE AMERICAN BOARD OF FAMILY PRACTICE RECERTIFICATION EXAMINATION. DR. BHATI SECONDED THE MOTION. A vote was taken:

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

The motion carried.

CITATIONS, PROPOSED DENIALS & ORDERS OF SUMMARY SUSPENSION

JEREMY AMPS, 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. BHATI MOVED TO SEND THE CITATION LETTER TO DR. AMPS. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

The motion carried.

JEREMY JOHN BURDGE, 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. BHATI MOVED TO SEND THE CITATION LETTER TO DR. BURDGE. DR. ROBBINS

February 11, 2004

SECONDED THE MOTION. A vote was taken:

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

The motion carried.

PETER EVANS DINTIMAN, 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. BHATI MOVED TO SEND THE CITATION LETTER TO DR. DINTIMAN. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

The motion carried.

DAVID EDWIN ERICKSEN, 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. BHATI MOVED TO SEND THE CITATION LETTER TO DR. ERICKSEN. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

February 11, 2004

Dr. Talmage	- abstain
Dr. Bhati	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain

The motion carried.

SANDRA KAY HAREWOOD, 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. BHATI MOVED TO SEND THE CITATION LETTER TO DR. HAREWOOD.
DR. ROBBINS SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

JAMES CHARLES HELPHENSTINE, D.O. - 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. BHATI MOVED TO SEND THE CITATION LETTER TO DR. HELPHENSTINE.
DR. ROBBINS SECONDED THE MOTION.** A vote was taken:

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

February 11, 2004

Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain

The motion carried.

SAM HILL, D.O. - 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. BHATI MOVED TO SEND THE CITATION LETTER TO DR. HILL. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

The motion carried.

JEFFREY THOMAS JONES, P.A. - NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Notice of Immediate Suspension and Opportunity for Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. BHATI MOVED TO SEND THE NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING TO MR. JONES. DR. ROBBINS SECONDED THE MOTION.

A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye

February 11, 2004

Dr. Garg	- abstain
Ms. Sloan	- aye

The motion carried.

PHILIP F. MYERS, 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. BHATI MOVED TO SEND THE CITATION LETTER TO DR. MYERS. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

The motion carried.

DALE PRATT-HARRINGTON, D.O. - ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Order of Summary Suspension and Notice of Opportunity for Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. BHATI MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. PRATT-HARRINGTON. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye

February 11, 2004

Dr. Garg	- abstain
Ms. Sloan	- aye

The motion carried.

CRAIG LOUIS RICH, M.D. - ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Order of Summary Suspension and Notice of Opportunity for Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. BHATI MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. RICH. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

The motion carried.

CHRISTOPHER JOHN SHERMAN, M.D. - ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Order of Summary Suspension and Notice of Opportunity for Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. BHATI MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. SHERMAN. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

February 11, 2004

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

The motion carried.

BRIAN D. SOUTHERN, M.D. - ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Order of Summary Suspension and Notice of Opportunity for Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. BHATI MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. SOUTHERN. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

The motion carried.

TOM REUTTI STARR, 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. BHATI MOVED TO SEND THE CITATION LETTER TO DR. STARR. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

February 11, 2004

Dr. Bhati	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- abstain

The motion carried.

TAMARA D. WILLINGHAM, M.T. - 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. BHATI MOVED TO SEND THE CITATION LETTER TO MS. WILLINGHAM.
DR. ROBBINS SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

Mr. Dilling stated that the topic of Citations, Proposed Denials and Orders of Summary Suspension should be tabled until tomorrow. There may be two additional cites for the Board's consideration at that time.

RATIFICATION OF CONSENT AGREEMENTS

MARCIANO DAVID BAUTISTA, D.O.

**DR. BHATI MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH
DR. BAUTISTA. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

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

February 11, 2004

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

The motion carried.

ANTHONY EMMANUEL DANIACHEW, M.D.

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

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

The motion carried.

DOUGLAS B. KAREL, M.D.

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

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

The motion carried.

February 11, 2004

ANN VERLENE GOVIER, M.D.

DR. BHATI MOVED TO RATIFY THE PROPOSED STEP II ADDENDUM WITH DR. GOVIER. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

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

The motion carried.

PERSONAL APPEARANCES

ELLIOT L. NEUFELD, D.O.

Dr. Neufeld appeared before the Board pursuant to his request for release from the terms of the Board's Order of November 8, 2000.

In response to Dr. Davidson's questions, Dr. Neufeld stated that his experience with the Board has been educational. He stated that he has learned to be very careful in dealing with corporations and lawyers, and in trusting people. Basically, in his case, he was hired as a medical director for a \$7 billion company, Baxter. The Federal Government went after a subsidiary, Caremark, under the Stark Laws, and he got caught in that. Dr. Neufeld stated that they never solved the issue. They ended up doing a plea bargain where he made up a \$147.00 overbill for Medicaid. The events of the case were in 1991, and he's still dealing with it. It's been a long struggle, but somehow you survive. He's working, and using his medical license, and he's now a Medical Director for three companies right now that "do" plasma products. He's working part-time. He'll be eligible to get his Medicaid provider number back in two years, and he'll decide then whether he wants to reopen his practice.

In response to Dr. Kumar's questions, Dr. Neufeld stated that he also has to wait two years to get his Medicare provider number.

Dr. Kumar asked Dr. Neufeld to explain exactly what happened.

Dr. Neufeld stated that he was medical director for an AIDS infusion center. He worked for them and also sent patients to them. He had sent some Medicaid patients to them and the Federal Government thought that was implied kickbacks under the Stark Laws. In 1994 he was indicted. They went to court and

February 11, 2004

couldn't get a fair trial. There was a mistrial. Then they sued for double jeopardy, appealed that all the way to the Supreme Court of the United States, but it was not heard by the Supreme Court. He got re-indicted three years later for the same charges again. Rather than go to court again, and he didn't know whether he could get a fair trial, he ended up doing the plea bargain. It was the lowest charge the Feds could bring. They said he overbilled Medicaid \$147.00. Dr. Neufeld stated that they made these charges up. He sat down with his lawyer and his lawyer asked whether they should do an ethics charge or an overbill charge. They offered the Feds an overbill charge and that was accepted. That's the negotiations that went in the Court System. Dr. Neufeld stated that the courts were so arrogant, they even told him what the Medical Board would do. It was amazing.

Dr. Bhati wished Dr. Neufeld the best of luck.

DR. BHATI MOVED TO RELEASE DR. NEUFELD FROM PROBATION. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

MARK E. TURNER, D.O.

The Board was advised that Dr. Turner, who was scheduled to make an appearance, passed away earlier in the week.

DAVID T. BROCK, D.O.

Dr. Brock made his initial appearance before the Board, pursuant to the terms of his May 9, 2001 Consent Agreement.

In response to Dr. Bhati's questions, Dr. Brock stated that he is feeling well. He's been sober for three and a half years now. Life has been excellent for him since his last Board appearance. His support system is better now than it has been. He got married since his last appearance, and he bought a new house here in central Ohio. Life is much more stable now than it was. He's finishing up his residency and is waiting to start his own practice in London, Ohio.

In response to Dr. Kumar's questions, Dr. Brock stated that his practice will be with Madison County

February 11, 2004

Hospital in London. They have a physician recruitment assistance program where they help physicians start a practice on their own, and they give management consultant and financial assistance. They bring you in, you start your practice, and then after the guarantee is over, between a year and a half and two years. Then it's your practice. He'll be in family practice.

DR. BHATI MOVED TO CONTINUE DR. BROCK UNDER THE TERMS OF HIS MAY 9, 2001 CONSENT AGREEMENT AND THE BOARD'S POLICY OF DECEMBER 9, 1998, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE EVERY THREE MONTHS. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

DAVID J. LEVY, M.D.

Dr. Levy made his initial appearance before the Board, pursuant to the terms of his November 12, 2003 Consent Agreement.

In response to Dr. Bhati's questions, Dr. Levy stated that he is doing well. It's been a long haul, he's been in recovery for two years and nine months. He added that he's very grateful to be where he is now, compared to where he was.

Dr. Levy at this time stated that he'd like to apologize to the Board for what he did. It was terribly wrong. He tried to stop multiple times on his own, but was incapable of doing that. When he went to rehab, he was told that part of the characteristics of the disease of addiction is thinking that you can do things on your own and that you don't really have a problem. Dr. Levy stated that it was unfortunate that the legal system had to get him into recovery, but he's certainly a lot better off than he was back then, and he's very grateful to be where he is now.

Dr. Levy continued that he wants the Board to understand that he is very sincere about his recovery, and he does what he's supposed to do every day. Dr. Levy stated that he knows that this disease is characterized by relapses, and he doesn't want to go there at all. He commented that he has always had the philosophy that it's a privilege to take care of people, and he believes that over the course of his career he's been able to help a lot of people. He would love to have the opportunity to do that in the State of Ohio.

February 11, 2004

Dr. Bhati noted that this is Dr. Levy's initial appearance. He asked whether Dr. Levy has any questions about his consent agreement.

Dr. Levy stated that he doesn't. He added that he does have a chance to review it from time to time.

DR. BHATI MOVED TO CONTINUE DR. LEVY UNDER THE TERMS OF HIS NOVEMBER 12, 2003 CONSENT AGREEMENT AND THE BOARD'S POLICY OF DECEMBER 9, 1998, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

MARC H. SCHWACHTER, M.D.

Dr. Schwachter made his initial appearance before the Board, pursuant to the terms of his November 12, 2003 Consent Agreement.

In response to Dr. Bhati's questions, Dr. Schwachter stated that he is doing much better, although he's not 100% yet. He's still in treatment, but he's feeling much better. He added that he's no longer in Chicago, but in Dayton. He trained in Chicago and he filled out his application for Ohio licensure while he was still in Chicago.

In response to further questions by Dr. Bhati, Dr. Schwachter stated that he has had the opportunity to review his consent agreement, and he is comfortable with it and its requirements. He has a 14-month old son. His wife is present with him today and has been very supportive, and his A.A. sponsor, who lives in the Columbus area, has been sober for quite some time, and has been fantastic. Dr. Schwachter stated that the rest of his family doesn't live in the area, but they do provide support.

DR. KUMAR MOVED TO CONTINUE DR. SCHWACHTER UNDER THE TERMS OF HIS NOVEMBER 12, 2003 CONSENT AGREEMENT AND THE BOARD'S POLICY OF DECEMBER 9, 1998, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. ROBBINS SECONDED THE MOTION.

In response to Dr. Egner's questions, Dr. Schwachter stated that he was in private practice in Dayton for

February 11, 2004

two years, but he's been fired from that practice. He worked with a company called Life Stages.

A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

VIRGINIA K. WINTER, M.D.

Dr. Winter made her initial appearance before the Board, pursuant to the terms of the Board's Order of October 8, 2003.

In response to Dr. Bhati's questions, Dr. Winter stated that she is feeling fine, although she's a little jetlagged. Life is treating her very well. She was discharged from treatment on February 2, and she's now living in a sober house in Oregon. She stated that residential treatment was fantastic, covering everything from spiritual, emotion, psychological and psychiatric. It was one of the best experiences in her life and she would certainly recommend it. She was in treatment for 60 days. Dr. Winter stated that she believes that 60 days of treatment is better than 30 days. It has been over 16 months since she last used anything.

Ms. Sloan asked Dr. Winters to describe her support system.

Dr. Winter stated that she has a very supportive family. She also receives a lot of support from Hazelden, her treatment center. She can go back to Hazelden for anything. She's also living in a sober house, so that's a good network of other women.

In response to Mr. Schmidt's questions, Dr. Winter stated that she is tied in with the local A.A. community, and she just got a sponsor. She attends a minimum of four meetings per week. She's through step 5.

In response to Dr. Talmage's questions, Dr. Winter stated that she's not sure how long she will be in the sober house. That will depend on her progress. She added that she'll be there for as long as it takes.

Dr. Davidson noted that Dr. Winter's minimum suspension period is up, and she asked whether Dr. Winter is working. Dr. Winter stated that she is not. She has started the reinstatement process, and she hopes to get her license back soon. She does think about the stress of returning to OB/GYN.

February 11, 2004

Dr. Bhati asked whether Dr. Winter will be going back to OB/GYN.

Dr. Winter stated that she would only return to it in a modified way. She may do something in the level of doing something in an office, or in a physician assistant kind of role. She doesn't want to go back to full-time work.

DR. BHATI MOVED TO CONTINUE DR. WINTER UNDER THE TERMS OF THE BOARD'S ORDER OF OCTOBER 8, 2003 AND THE BOARD'S POLICY OF DECEMBER 9, 1998, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. KUMAR SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

PROBATIONARY REPORTS

Mr. Browning referred the Board to the Compliance Staff's reports of conferences with probationers on November 10 and 13, 2003. The reports indicate that all probationers are in compliance.

DR. KUMAR MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES WITH: FRANK R. BRUENING, M.D.; PAUL W. BURKE, JR., M.D.; WILLIAM L. CRAWFORD, M.D.; BRIAN HEIM, M.D.; RAYMOND E. HENSHAW, II, M.D.; W. ANDREW HIGHBERGER, M.D.; NORMAN I. HIRSCH, D.O.; RICHARD M. HOFSTRA, M.D.; MITCHELL W. LEVENTHAL, M.D.; ROBERT F. LINN, D.O.; MARK S. MCALLISTER, M.D.; ASHOK V. PADHIAR, M.D.; JOHN P. ROBINSON, D.O.; STEPHEN J. ROLFE, M.D.; DON R. SHEGOG, M.D.; ALLAN H. SHIPPEL, M.D.; JORDAN B. STERNS, M.D.; DAVID E. SUBLER, M.D.; MICHAEL J. VJECHA, M.D.; AND REGINALD O. WINDOM, M.D. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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

February 11, 2004

Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- aye

The motion carried.

PROBATIONARY REPORTS AND REQUESTS

MARK D. BALDWIN, D.O.

Dr. Baldwin's requests for: approval of the staff's report of his office conference, reduction in his drug screen requirement, reduction in his psychiatric session requirement and elimination of his chart review requirement were presented to the Board for consideration at this time.

DR. BHATI MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCE WITH DR. BALDWIN ON JANUARY 13, 2004. DR. BHATI FURTHER MOVED TO APPROVE DR. BALDWIN'S REQUESTS FOR: A REDUCTION IN HIS DRUG SCREEN REQUIREMENT TO TWICE PER MONTH; A REDUCTION IN HIS PSYCHIATRIC SESSION REQUIREMENT TO EVERY THREE MONTHS; AND TO ELIMINATE HIS CHART REVIEW REQUIREMENT. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

WILLIAM D. FIEGENSCHUH, JR., M.D.

Dr. Fiegenschuh's requests for approval of the staff's report of his office conference and a reduction in his appearance schedule were presented to the Board for consideration at this time.

DR. BHATI MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCES WITH DR. FIEGENSCHUH ON DECEMBER 09, 2003. DR. BHATI FURTHER MOVED TO GRANT DR. FIEGENSCHUH'S REQUEST FOR A REDUCTION IN HIS APPEARANCE SCHEDULE TO EVERY SIX MONTHS. MR. BROWNING SECONDED THE MOTION. A vote was taken:

February 11, 2004

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

RYAN P. HANSON, M.D.

Dr. Hanson's requests for approval of the staff's report of his office conference and approval of an ethics course were presented to the Board for consideration at this time.

DR. BHATI MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCES WITH DR. HANSON ON JANUARY 12, 2004. DR. BHATI FURTHER MOVED TO APPROVE CASE WESTERN RESERVE UNIVERSITY'S COURSE, *INTENSIVE COURSE IN MEDICAL ETHICS AND PROFESSIONALISM*, AS FULFILLMENT OF PARAGRAPH B.4 OF THE BOARD'S ORDER OF JUNE 11, 2003. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

CYNTHIA J. JOHNSON, P.A.

Ms. Johnson's requests for approval of the staff's report of her office conference and revisions in her probationary conditions were presented to the Board for consideration at this time.

DR. GARG MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCES WITH MS. JOHNSON ON JANUARY 13, 2004. DR. GARG FURTHER MOVED TO GRANT MS. JOHNSON'S REQUESTS FOR: A REDUCTION IN HER APPEARANCE SCHEDULE TO

February 11, 2004

EVERY SIX MONTHS; A REDUCTION IN HER ALCOHOL AND DRUG REHABILITATION MEETING REQUIREMENT TO TWICE PER WEEK WITH A MINIMUM OF TEN PER MONTH; AND A REDUCTION IN HER DRUG SCREEN REQUIREMENT TO TWICE PER MONTH. DR. GARG FURTHER MOVED TO DENY MS. JOHNSON'S REQUESTS FOR REDUCTIONS IN THE FREQUENCY OF HER PSYCHIATRIC AND COUNSELING SESSIONS. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

ANTHONY W. KITCHEN, M.D.

Dr. Kitchen's requests for approval of the staff's report of his office conference and an ethics course were presented to the Board for consideration at this time.

DR. GARG MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCE WITH DR. KITCHEN ON JANUARY 13, 2004. DR. GARG FURTHER MOVED TO APPROVE THE ETHICS COURSE TAILORED FOR DR. KITCHEN BY STEPHEN B. LEVINE, M.D., AS FULFILLMENT OF PARAGRAPH B.7. OF THE BOARD'S ORDER OF DECEMBER 11, 2002. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

JAMES E. STURMI, M.D.

February 11, 2004

Dr. Sturmi's requests for approval of the staff's report of his office conference and modifications of his probationary conditions were presented to the Board for consideration at this time.

DR. GARG MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCES WITH DR. STURMI ON JANUARY 13, 2004. DR. GARG FURTHER MOVED TO GRANT DR. STURMI'S REQUESTS FOR: A REDUCTION IN HIS PSYCHIATRIC SESSION REQUIREMENT TO ONCE EVERY THREE MONTHS; AND A REDUCTION IN HIS DRUG SCREEN REQUIREMENT TO TWICE PER MONTH. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

PROBATIONARY REQUESTS

KAREN CLEMENCY, M.D.

Dr. Clemency's request for a reduction in her appearance schedule was presented to the Board for consideration at this time.

MR. BROWNING MOVED TO GRANT DR. CLEMENCY'S REQUEST FOR A REDUCTION IN HER APPEARANCE REQUIREMENT TO ANNUALLY. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

February 11, 2004

VENU G. MENON, M.D.

Dr. Menon's requests for approval of a practice plan and approval of a monitoring physician were presented to the Board for consideration at this time.

DR. GARG MOVED TO APPROVE DR. MENON'S PROPOSED PRACTICE PLAN AND TO APPROVE ANTONY T. JACOB, M.D., TO SERVE AS DR. MENON'S MONITORING PHYSICIAN, WITH TEN CHARTS REVIEWED PER WEEK. DR. BHATI SECONDED THE MOTION.

Dr. Davidson asked whether the Board rejected approval of Dr. Jacob before because of the difference in their specialties.

Ms. Bickers stated that the issue was also that there was not a practice plan to give the Board members an idea of what Dr. Menon was doing. Now the Board does have a practice plan.

Dr. Davidson stated that she believes Dr. Jacob can monitor Dr. Menon's practice as far as the pain side goes, but she doesn't see how he can monitor his anesthesia practice. She's not sure the proportion of pain and anesthesia time will change when Dr. Menon is only at the Dayton office.

Ms. Bickers stated that Dr. Menon is only at the Dayton office now. Dr. Jacob already reviews all of the charts in that office.

Dr. Davidson asked whether he will only be doing pain procedures then.

Ms. Bickers stated that Dr. Jacob will review everything that Dr. Menon is doing.

Dr. Garg asked to amend his motion.

DR. GARG MOVED TO APPROVE DR. MENON'S PROPOSED PRACTICE PLAN FOR THE DAYTON OFFICE ONLY, AND TO APPROVE ANTONY T. JACOB, M.D., TO SERVE AS DR. MENON'S MONITORING PHYSICIAN, WITH TEN CHARTS REVIEWED PER WEEK. DR. BHATI SECONDED THE MOTION.

Dr. Davidson stated that she's still not sure in the least way how a physical medicine physician is going to review an anesthesiologist's chart. Dr. Menon's specific violation related to charting and eligibility.

Dr. Garg stated that if Dr. Menon is only doing an office practice with no anesthesia being given, that would be appropriate.

Dr. Davidson stated that anesthesia will be given there.

Dr. Kumar stated that there is anesthesia being given there, and Dr. Menon talks about that in his practice

February 11, 2004

plan. Tuesday he'll be working, doing anesthesia for GYN and general surgery.

Dr. Bhati stated that the Board needs to advise that Dr. Menon will need someone to review his anesthesia charts.

Ms. Bickers noted that Dr. Menon's attorney is present, if the Board wants to ask him any questions.

Dr. Bhati asked Ms. Collis who would be monitoring Dr. Menon's anesthesia practice.

Ms. Collis stated that Dr. Menon has nominated Dr. Jacob to monitor both portions of the practice.

Dr. Bhati stated that Dr. Jacob is not an anesthesiologist.

Ms. Collis stated that they were looking mainly for someone who could do the job. She stated that what the Board cited Dr. Menon on was the legibility of his records. It was not her understanding that they would need a physician to go in and monitor the treatment. She understood that someone was to go in and monitor the record to see if the record could be read and passed on to another treating physician and have that physician understand it.

Dr. Bhati stated that, if that was the issue, he doesn't have any problems with Dr. Jacob.

Ms. Collis stated that legibility was the only concern of the citation letter, not standards.

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

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

February 11, 2004

REINSTATEMENT REQUESTS

IRENEO T. CADSAWAN, M.D.

Dr. Cadsawan's request for reinstatement of his license to practice medicine and surgery, which was suspended by Board Order of April 2, 2003, was presented to the Board for consideration at this time.

DR. GARG MOVED TO APPROVE DR. CADSAWAN'S APPLICATION FOR REINSTATEMENT OF HIS LICENSE TO PRACTICE MEDICINE AND SURGERY, SUBJECT TO THE TERMS OF THE BOARD'S ORDER OF APRIL 2, 2003. DR. BHATI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

STEVEN W. CRAWFORD, M.D.

Dr. Crawford's request for reinstatement of his license to practice medicine and surgery, which was suspended by Board Order of June 11, 2003, was presented to the Board for consideration at this time. Dr. Crawford also submitted a practice plan for the Board's approval, as well as the name of a proposed monitoring physician.

DR. BHATI MOVED TO APPROVE DR. CRAWFORD'S APPLICATION FOR REINSTATEMENT OF HIS LICENSE TO PRACTICE MEDICINE AND SURGERY, SUBJECT TO THE PROBATIONARY TERMS OF THE BOARD'S ORDER OF JUNE 11, 2003, AND EFFECTIVE FEBRUARY 14, 2004. DR. BHATI FURTHER MOVED TO APPROVE DR. CRAWFORD'S PROPOSED PRACTICE PLAN, AND TO APPROVE RONALD L. LOPEZ, M.D., TO SERVE AS DR. CRAWFORD'S MONITOR, WITH TEN CHARTS REVIEWED PER WEEK. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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

February 11, 2004

Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- aye

The motion carried.

BASSAM DAHMAN, M.D.

Dr. Dahman's request for removal of the restrictions placed on his license was presented to the Board for consideration at this time.

DR. BHATI MOVED TO REMOVE THE RESTRICTIONS PLACED ON DR. DAHMAN'S LICENSE BY THE BOARD'S ORDER OF FEBRUARY 12, 2003. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

LICENSURE

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 (A) 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. Bhati	- aye
	Dr. Kumar	- aye

February 11, 2004

Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- aye

The motion carried.

P.A. UTILIZATION PLANS

At this time the Board considered a number of standard P.A. Utilization Plans submitted for approval.

DR. DAVIDSON MOVED TO APPROVE THE P.A. UTILIZATION PLANS SUBMITTED BY: CLEVELAND CLINIC HEALTH SYSTEM, EUCLID HOSPITAL; CLEVELAND CLINIC VASCULAR MEDICINE; SHAKIL KHAN, M.D.; MONARCH HEALTH; UNIVERSITY HOSPITAL OF CLEVELAND, OB/GYN; UNIVERSITY HOSPITAL OF CLEVELAND, PSYCHIATRY RESEARCH PROGRAM; AND VALLEY MEDICAL PRIMARY CARE. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- 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.

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

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

February 11, 2004

Dr. Kumar	- aye
Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- aye

The motion carried.

ANTHONY EMMANUEL DANIACHEW, M.D.

Dr. Daniachew's request for endorsement of Steps 1, 2 and 3 of the U.S.M.L.E. was presented to the Board for consideration at this time.

Mr. Dilling noted that the Board ratified a consent agreement with Dr. Daniachew earlier in the meeting.

MR. BROWNING MOVED TO APPROVE DR. DANIACHEW'S REQUEST FOR ENDORSEMENT LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS, AND SUBJECT TO THE TERMS OF HIS CONSENT AGREEMENT OF FEBRUARY 11, 2004. DR. BHATI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

PHYSICIAN ASSISTANT APPLICANTS

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

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

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

February 11, 2004

Dr. Talmage	- aye
Dr. Bhati	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- aye

The motion carried.

P.A. UTILIZATION PLANS

At this time the Board considered a number of standard P.A. Utilization Plans submitted for approval.

MR. BROWNING MOVED TO APPROVE THE P.A. UTILIZATION PLANS SUBMITTED BY: FAIRFIELD MEDICAL CENTER, JOSE NORBERTO, M.D.; LUKE MEDICAL PRACTITIONERS; CINCINNATI SPORTSMEDICINE & ORTHOPAEDIC CENTER, INC.; AND AMITA PATEL, M.D., INC. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

ADMINISTRATIVE REPORT

Mr. Dilling at this time reviewed his administrative report, a copy of which shall be maintained in the exhibits section of this journal.

PROBATIONARY APPEARANCES

Mr. Albert stated that a few months ago the Board gave the Secretary and Supervising Member the authority to reduce probationary appearances from three to six months when all the paper work is in and the individuals have been good probationers. He asked whether the Board also intended that to include impaired individuals.

Dr. Garg stated that the Secretary and Supervising Member see these people more than anyone, and he

February 11, 2004

doesn't see why they shouldn't.

Mr. Albert stated that the Secretary and Supervising Member don't recommend any changes in probationary status unless the individual has all the necessary documentation in.

Dr. Talmage stated that in the Board members' agenda binder pockets is a document entitled, "Ohio Surgical/Procedural Verification Protocol." He stated that he presented this document to the Minimal Standards Committee that morning, and the Committee recommended that the Board approve it. Dr. Talmage asked that Board members take time to study this document this evening for discussion on Thursday.

Dr. Kumar stated that he has read the document, and it is appropriate, but he would like to make one change.

Dr. Talmage asked Dr. Kumar to give him that information following the meeting.

Dr. Bhati stated that this is an important topic, and the Committee feels that it shouldn't wait for a whole month. All the Committee wants is for the Board to endorse the policy.

Thereupon at 4:50 p.m. the February 11, 2004 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 February 11, 2004, as approved on March 10, 2004.

Anquetette P. Sloan, President

Lance A. Talmage, M.D., Secretary

(SEAL)



February 12, 2004

MINUTES

THE STATE MEDICAL BOARD OF OHIO

February 12, 2004

Anquetette Sloan, President, called the meeting to order at 8:00 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:, Patricia J. Davidson, 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.; R. Gregory Browning, Ph.D.; Andrew F. Robbins, Jr., M.D., and Anand G. Garg, M.D. The following did not attend the meeting: Deepak Kumar, M.D.; Anita M. Steinbergh, D.O.; and David S. Buchan, D.P.M.

Also present were: Thomas A. Dilling, Executive Director; William J. Schmidt, Assistant Executive Director; Diann K. Thompson, Assistant Executive Director; Terrill D. McLaughlin, Assistant Director, Investigations; Mark Wayda, Chief of Executive Staff; Lauren Lubow, Senior Executive Staff Attorney; Shannon F. Baldwin, Executive Staff Attorney; David P. Katko and Karen H. Mortland, Enforcement Attorneys; Rebecca J. Albers, Assistant Attorney General; Eileen M. Schmidt, Executive Assistant to the Director; and Joan K. Wehrle, Coordinator for Assessment and Development.

REPORTS OF ASSIGNED COMMITTEES

LIMITED BRANCH & ALTERNATIVE MEDICINE COMMITTEE

Dr. Bhati stated that the Committee reviewed Rule 4731-1-05, the Massage Therapy Scope of Practice Rule. He at this time deferred to Mr. Wayda.

Mr. Wayda at this time reviewed his memorandum, a copy of which shall be maintained in the exhibits section of this journal, concerning the Massage Therapy Scope of Practice rule. He noted concerns of the Chiropractic Board and the Chiropractic Association concerning rule 4731-1-05(A) and the use of the term, "manipulation." The two organizations also expressed concern over Rule 4731-1-05(F)(1), with its use of the phrase, "high velocity-low amplitude force," and with 4731-1-05(G)(2), and its definition of the term, "mechanical devices."

Mr. Wayda stated that the Committee considered the arguments made in public testimony and the recommendations of MTAC, and decided on appropriate language. The Committee requests that the Board refile amended rule 4731-1-05 with JCARR.

DR. GARG MOVED TO REFILE AMENDED RULE 4731-1-05 WITH JCARR. MR. ALBERT SECONDED THE MOTION. A vote was taken:

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

February 12, 2004

Dr. Talmage	- aye
Dr. Bhati	- aye
Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- aye

The motion carried.

Dr. Bhati advised that the Committee also discussed Rules 4731-1-13 and 4731-1-19, concerning licensure examination.

Mr. Wayda stated that these rules have been in existence for some time. Two issues have arisen.

If a school's graduates are not performing well on the examination, Rule 4731-1-19 allows the Board to put the school's certificate of good standing on probation. If the School doesn't improve its performance, the Board can revoke the certificate of good standing.

Rule 4731-1-13 gives the Board the authority to deny admission to the exam to students who do not pass the exam after three consecutive attempts unless or until they obtain a certificate of competency issued by a school holding a certificate of good standing.

Mr. Wayda stated that, having consulted with the Board's Licensure and Exam staff, as well as with the exam committee, they feel that the exam has come to a point where it is defensible. The staff has asked that the Board designate the December 2003 exam as the first exam for both of these rule processes.

Mr. Wayda noted that, as of March 2004, one of the approved massage therapy schools will be offering a remedial education program.

Dr. Egner asked whether the school offering the remedial program is one with a good track record.

Mr. Wayda stated that it is, and added that this school has had a 100% pass record for, at least, the last two exams, and possibly the last three.

DR. GARG MOVED TO DESIGNATE THE DECEMBER 2003 EXAM AS THE FIRST EXAM TO BE CONSIDERED FOR ACTIONS TAKEN PURSUANT TO RULES 4731-1-13 AND 4731-1-19, OHIO ADMINISTRATIVE CODE. DR. DAVIDSON SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye

February 12, 2004

Dr. Robbins - aye
Dr. Garg - aye

The motion carried.

Dr. Bhati stated that the Committee also reviewed the exam results for the December 2003 exam. He stated that the results were much better than results from previous exams. He advised that the Committee has requested staff to obtain the number of graduates from the schools so that the Committee members may see how many are not taking the exam immediately upon graduation.

Dr. Bhati stated that the Committee also reviewed two résumés of physicians who have been nominated for appointment to the Cosmetic Therapy Advisory Committee. Following the review, the Committee recommends appointing Freda James Forkapa, C.T., to fill the vacancy in the Committee.

MR. BROWNING MOVED TO APPOINT FREDA JAMES FORKAPA, C.T., TO THE COSMETIC THERAPY ADVISORY COMMITTEE. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Bhati	- aye
Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- aye

The motion carried.

Dr. Bhati stated that the Committee also reviewed Mr. Wayda's and Ms. Baldwin's report of MTAC activities and acknowledged the hard work of the Committee, as well as the exemplary attendance of its members. Dr. Bhati stated that the Committee commends the MTAC members on their dedication and the great strides they have made during the past two years. The Committee recommends that Board staff be instructed to prepare a letter of appreciation to the MTAC members.

DR. GARG MOVED TO DIRECT STAFF TO PREPARE A LETTER FROM THE BOARD, EXPRESSING ITS APPRECIATION FOR THE EFFORTS OF THE MTAC MEMBERS. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

Vote:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Bhati	- aye
Mr. Browning	- aye

February 12, 2004

Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- aye

The motion carried.

Mr. Dilling stated that he would like to take this opportunity to commend the Board's staff, led by Mr. Wayda. He stated that this Committee has accomplished an incredible amount.

RULES ADOPTION

Mr. Dilling referred the Board to the list of rules contained in the agenda. He stated that there has been a hearing on these rule proposals, and a copy of the rules transcript and Hearing Examiner's report will be maintained in the exhibits section of this Journal. These rules are now before the Board for adoption.

DR. GARG MOVED THAT THE "FINDINGS AND ORDER" IN THE MATTER OF THE ADOPTION OF AMENDED RULES 473 1-1-13, 4731-1-15, 473 1-1-16, 4731-9-01, 473 1-12-01, 4731-12-02, 4731-12-03, 4731-12-04, 473 1-12-05, 473 1-12-06, 473 1-13-01, 473 1-13-02, 473 1-13-03, 473 1-13-04, 473 1-13-06, 473 1-13-07, 473 1-13-08, 473 1-13-09, 473 1-13-10, 473 1-13-11, 473 1-13-12, 473 1-13-13, 4731-13-14, 473 -13-15, 4731-13-16, 4731-13-17, 4731-13-18, 4731-13-20, 4731-13-21, 4731-13-22, 473 -13-23, 4731-13-25, 4731-13-26, 4731-13-27, 4731-13-28, 4731-13-30, 4731-14-01, 473 -15-02, 4731-15-03, 4731-15-04, 4731-15-05, 4731-17-01, 4731-17-02, 4731-17-03, 473 -17-04, 4731-17-05, 4731-17-06, 4731-17-07, 4731-19-01, 4731-19-02, 4731-19-03, 473 -19-04, 4731-19-05, 4731-19-06, 4731-19-07, 4731-20-01, 4731-20-02; RESCINDED RULES 4731-1-23, 4731-13-19, 4731-13-29, 4731-15-01; NEW RULES 4731-1-09, 473 1-1-10, 473 1-13-31, 473 1-13-32, 473 1-13-33, 473 1-13-34, 473 1-13-35, 473 1-13-36, 4731-15-01; AND NO CHANGE RULES 4731-13-05 AND 4731-13-24 OF THE OHIO ADMINISTRATIVE CODE BE ADOPTED AS THE FINDINGS AND ORDER OF THE BOARD IN RELATION TO THE PROPOSED RULES CITED THEREIN, AND THAT THE STAFF PROCEED TO FILE THE FINAL RULES IN ACCORDANCE WITH THE PROVISIONS OF SAID FINDINGS AND ORDER. DR. TALMAGE SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

February 12, 2004

2004 FEDERATION OF STATE MEDICAL BOARDS MEETING – RESOLUTIONS

Ms. Sloan advised that copies of draft resolutions from Ohio, Pennsylvania and Iowa were distributed to Board members the previous day for discussion today. Copies of these resolutions will be maintained in the Exhibits Section of this Journal.

Mr. Dilling stated that the first resolution from Ohio concerns the USMLE Step 2 Clinical Skills Examination. Ohio is asking the Federation to work with some independent professional entities, such as the ACGME, to establish a suitable mechanism, such as a review committee, to set parameters and verifiable measures that will further validate the clinical skills component and report those findings on an annual basis to the Federation.

Mr. Browning stated that he believes that it's important that the Board encourage an independent evaluation. He added that the clinical skills component is a significant new initiative, is expensive, and it should be evaluated on the merits and, objectively, by an independent organization. Mr. Browning stated that his only concern is mentioning any specific independent entity in the resolution. Mr. Browning further stated that he thinks that this is an important recommendation, and he supports it.

Dr. Robbins asked whether the Board will see the results of graduates of the Ohio schools.

Ms. Thompson stated that the Board would have to make a request for that information, and the National Board of Medical Examiners will determine whether or not it will honor the request.

Mr. Browning stated that the Board could ask the individual schools, adding that this information should be on the public record.

Dr. Garg asked what would be accomplished by having that information, adding that there's nothing the Board could do with it.

Dr. Talmage stated that the Board could express its concern if a school's graduates do poorly on the test.

Ms. Thompson stated that part of the accreditation process for the schools will be looking at the exam results. The schools may not be discredited, but they will be pushed to improve the results.

At this time Dr. Bhati stated that he had to leave, and he asked to make his report of the Minimal Standards Committee meeting.

REPORTS BY ASSIGNED COMMITTEES

MINIMAL STANDARDS COMMITTEE

Dr. Bhati stated that there were two issues that the Committee discussed. The first was a Nursing Board inquiry concerning the administration of prescription drug medications by unlicensed personnel. Dr. Bhati stated that there was a previous inquiry about this, and the Committee recommends a response similar to

February 12, 2004

that sent for the earlier inquiry. Copies of the proposed response were distributed to Board members in their agenda binders the previous day, and a copy shall be maintained in the exhibits section of this journal.

**DR. GARG MOVED TO SEND THE PROPOSED LETTER TO THE NURSING BOARD.
DR. ROBBINS SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

Dr. Bhati stated that the Committee also discussed wrong-site surgery protocol. Copies of the proposed protocol were distributed to the Board the previous day, and a copy shall be maintained in the exhibits section of this journal. . Dr. Bhati stated that the Committee is looking endorsement of the proposal prepared by Dr. Talmage.

Dr. Talmage stated that the proposal was made by a panel, which was convened by the Ohio Hospital Association on behalf of the Ohio Patient Safety Institute. This proposal is a result of good representation from all interested parties throughout Ohio. He added that this will be the first such protocol established in the country.

**DR. GARG MOVED TO APPROVE THE PROPOSED WRONG SITE SURGERY PROTOCOL.
DR. ROBBINS SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

Dr. Bhati left the meeting at this time.

February 12, 2004

2004 FEDERATION OF STATE MEDICAL BOARDS MEETING – RESOLUTIONS

Mr. Dilling stated that the second Ohio resolution concerns FCVS recognition by JCAHO and NCQA. He stated that the FCVS needs to be recognized by these organizations in order to fulfill its multi-use purpose. If it is used by hospitals and insurers, more states will want to sign on to it.

Dr. Garg asked whether hospitals are using it at all.

Mr. Dilling stated that there are probably a few that do.

Mr. Dilling continued that the next draft resolution for consideration was one presented by Dr. Kimball, of the Pennsylvania Board, and is entitled, "Fraudulent Testimony by Expert Witness to be defined as Unprofessional Conduct." Pennsylvania wants to clearly indicate in the Federation's, *A Guide to the Essentials of a Modern Medical Practice Act*, that fraudulent testimony given by a medical professional, while serving as an expert witness, should constitute unprofessional conduct, as defined in the act. There was some discussion on the Committee level, and it was felt that Boards couldn't really get to the "false and deceptive" statement concept in a jury trial because that's what the jurors and judge weigh. If someone perjures herself or himself, the judge steps in. Every case involves a battle of experts. There's even a battle of experts when the Board considers quality standards cases. Mr. Dilling stated that he doesn't believe that the resolution links up with the "whereas" paragraphs.

Dr. Garg stated that a battle of experts should be on the positive ground. There might be two opinions, but he believes this resolution is talking about a physician giving an opinion that is not supported by either the practice, research or any other documentation. He stated that some doctors do that, and he thinks that the resolution is timely. It's time someone had authority to do something about it.

Mr. Dilling explained that the courts have ruled that Boards can't take action against a physician who is testifying as to his own practice beliefs; however, the Board can take action against a physician whose testimony creates a circumstance that didn't really occur. He stated that the "resolution" paragraph addresses the latter issue, but the "whereas" paragraphs talk about "false" and "misleading." That could mean that Dr. Garg, as a neurosurgeon, could disagree with the testimony of another neurosurgeon on the standard. Mr. Dilling stated that, in that case, the Board could not pursue disciplinary action against the expert, who was testifying to his own opinions.

Dr. Garg felt that "false" and "misleading" is fraudulent.

Mr. Dilling stated that it is if you can prove it.

Dr. Garg stated that he is aware of the testimony of a particular neurosurgeon who testified in a recent court case, and nothing he said jives at all with any kind of neurosurgical practice. He understands that this particular surgeon is testifying in several cases to this information. He added that he's sure there are other physicians who are doing the same. Dr. Garg stated that he doesn't understand why it isn't fraudulent for a specialist or expert to give misleading testimony when the Court and the jury is depending on that expert for testimony is scientific, valid and acceptable.

February 12, 2004

Mr. Dilling stated that he agrees that he would like to have the best testimony possible and not be misleading at all, but in this system there is a line you can cross to get into “fraudulent.” He added that he isn’t at this time able to give the Board all the pieces that need to be put together to establish fraud, but it is beyond just disagreeing.

Mr. Schmidt stated that fraud is a material misstatement, knowingly made, for the purpose of inducing reliance thereon.

Dr. Garg stated that he would support the resolution, and if it needs to be cleaned up, it should be. He added that he thinks it is about time that the Boards begin to do something in this direction. It has already happened in other states.

Mr. Dilling stated that the last resolution was submitted by the Iowa Board to create a study committee to evaluate accreditation standards of international medical schools. Mr. Dilling stated that there are a lot of different groups that are involved in saying that these schools are okay, but what are the standards?

Dr. Garg stated that he thinks this should be done. He stated that in the old days there was a World Health Organization (WHO) list of international medical schools, and the ECFMG used to be involved in accrediting the schools. Now Boards don’t know whether or not an international medical school is good. He stated that he would be in favor of that.

DR. GARG MOVED TO SUPPORT THE PRINCIPLES OF ALL FOUR RESOLUTIONS. DR. GARG FURTHER MOVED TO BE A SIGNATORY OF THE IOWA AND THE PENNSYLVANIA RESOLUTION, PROVIDED PENNSYLVANIA ADDRESSES AREAS OF CONCERN. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

A brief discussion involving the history of accreditation of schools and the licensing of graduates of international medical schools took place following Dr. Robbins’ request for information.

February 12, 2004

REPORTS OF ASSIGNED COMMITTEES

EXECUTIVE COMMITTEE

Ms. Sloan stated that the Committee reviewed the Proposed Goals for 2004, a copy of which shall be maintained in the exhibits section of this journal. She at this time deferred to Mr. Wayda.

Mr. Wayda explained the process used in arriving at these goals for the coming year, including Board discussions, staff meetings, reviewing the 2003 goals and the staff's and Board's performance on those goals. Also, Mr. Dilling requested input from the staff on their top ten goals. The list of goals for 2004 are things that staff thought, and the Executive Committee agreed, are of such magnitude that it really should have the stamp of a Board goal for the year to give the Board the impetus to push the goals.

Mr. Wayda reviewed proposed goals, noting that they are more specific than the previous year's goals as to measurable sorts of operationalizations attached to each of the goals, in part, to give the Board some tool to track itself and the staff on how well they are doing in achieving these goals as they go through the year.

Dr. Garg asked whether the proposed Professional Conduct rules would be applied to all of the Board's licensees.

Mr. Wayda stated that the idea is to make sure that the rules cover everyone. He added that in the Limited Branch rules the Board does hold LMTs accountable to the AMTA code of ethics. There might have to be separate rules because standards might be slightly different between professions. The idea was to fill in some gaps that exist for the other licensees.

Dr. Garg noted the goal to revise the investigator's manual. He stated that it seems to him that there are some problems with some investigators' performances. He suggested that the Board really build something that will give the Board teeth in taking action against such investigators.

Mr. Wayda stated that that Dr. Talmage addressed that at the Executive Committee and Mr. Schmidt assured that addressing those issues will be considered in the revision.

DR. TALMAGE MOVED TO ENDORSE THE PROPOSED GOALS FOR 2004 AS PRIORITY GOALS FOR 2004. DR. GARG SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

February 12, 2004

QUALITY ASSURANCE COMMITTEE

The Committee did not meet this month.

IMPAIRMENT COMMITTEE

Mr. Albert stated that the Committee has been struggling with the issue of how to effectively deal with anesthesiologists who are chemically impaired. Yesterday morning the Committee heard a presentation by Craig T. Pratt, M.D., of Twin Valley Behavioral Health Care, on this issue. The Committee's goal is to formulate a position paper and possibly rules for the Board's review. Currently there are 16 anesthesiologist probationers: two no longer practice anesthesiology; nine continue to practice without any relapses; and five have relapsed. Mr. Albert stated that the Committee hopes to have something for the Board in the next month or so.

Dr. Garg stated that the Committee also discussed having Dr. Pratt and Theodore Parran, M.D., of Case Western Reserve, address the Board on this issue. Dr. Garg added that he felt Dr. Pratt's presentation was very good.

Dr. Davidson suggested that the Board also invite Richard Whitney, M.D., of Shepherd Hill.

LEGISLATIVE LIAISON & RULES COMMITTEE

Mr. Browning stated that the primary focus of the Committee was S.B. 147, Senator Wachtmann's bill on expanding the scope of practice of physician assistants to include prescribing. Mr. Browning stated that the bill is moving and will most likely pass either this year or next year. He suggested that the best the Board may be able to do is use this as an opportunity to rationalize and improve its licensing process.

Mr. Browning stated that the Committee will engage more on this front in terms of a policy position and communications. They haven't been in front of the Legislature talking about the bill yet, but that will change. Both the P.A. Committee and the Legislative Liaison & Rules Committee will work on this and go forward.

Dr. Davidson stated that she discussed the specific aspect of the formulary, following her experience with the Nursing Board's Committee on Prescriptive Governance, to try to inject some improvements. She suggested working with O.S.M.A. and O.O.A. to try to do it better this time; specifically, including special consideration for new drugs and black box warning drugs.

LICENSURE COMMITTEE

Dr. Garg stated that since this Committee was established, it has reviewed training equivalency issues, licensure application problems, and ADA accommodations. Dr. Garg stated that at this time the Committee feels that there are certain items that it doesn't need to see, but can come straight to the Board. Dr. Garg referred to Mr. Dilling's memorandum of February 2, 2004, which outlines the Committee's

February 12, 2004

request as follows:

(I)n the future, the ADA accommodation requests from applicants for Step 3 be presented directly to the full Board if the accommodation request is for the same accommodation that the applicant has been previously granted for Steps 1 and 2. If the applicant does not pass the Step 3, and therefore asks again for the same Step 3 accommodation approved by the Board, the licensure staff would approve the subsequent request without need for either committee or Board approval.

If the accommodation request for Step 3 is not for the same accommodation as previously granted for Steps 1 and 2, then the initial request would go to the Licensure Committee.

In all cases, if the Board approves an accommodation and the applicant fails the exam (whether it is for Step 3 or for a limited branch examination), the Licensure staff would approve subsequent requests for the same accommodation without going back to the Board or committee. If the applicant requests a different accommodation for a subsequent examination, that request would be treated as an initial request.

An initial accommodation request from an applicant for the limited branch exam also goes to the Licensure Committee (not the Limited Branch Committee) to ensure consistency in the determinations.

In addition to exam accommodation requests, the Licensure Committee reviews training equivalency issues and licensure applications (either restoration or initial) on which the applicant indicated no clinical practice within the last two years.

Dr. Garg asked for a motion to approve this process.

MR. BROWNING MOVED TO APPROVE THE PROCESS AS OUTLINED IN MR. DILLING'S MEMORANDUM OF FEBRUARY 2, 2004. DR. DAVIDSON SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

The motion carried.

Mr. Albert left the meeting at this time.

February 12, 2004

PRESCRIBING COMMITTEE

Dr. Davidson stated that the Committee discussed the Optometry Board's formulary rule about antivirals. The Optometry Board will be refileing its rule with JCARR with language requiring optometrists who prescribe antiviral agents to consult with a physician licensed pursuant to Chapter 4731. and shall advise the patient, as appropriate, based upon that consultation. An entry specifying the consultation and advice required was given must be made in the patient record.

Dr. Davidson stated that the Compassionate Care Task Force intends to issue its report in March. A draft of the report has been distributed.

Mr. Dilling stated that he, Dr. Davidson and Mr. Schmidt will discuss the draft report and a brief will be prepared for the Board.

At this time the Board meeting adjourned to the Medical Board's Conference Room for discussion of additional proposed cites. Mr. Albert had rejoined the meeting when it reconvened.

CITATIONS, PROPOSED DENIALS AND ORDERS OF SUMMARY SUSPENSION

DR. DAVIDSON MOVED TO REMOVE THE TOPIC FROM THE TABLE. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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

The motion carried.

AZZAM NIMER AHMED, M.D. – AUTOMATIC SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Automatic Suspension and Notice of Opportunity For Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. EGNER MOVED TO APPROVE THE ORDER OF AUTOMATIC SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. AHMED. MR. BROWNING SECONDED THE MOTION. A vote was taken:

February 12, 2004

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

The motion carried.

KANDHASAMY KANNAPIRAN, M.D. ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time the Board contacted Dr. Bhati by speaker phone. Mr. Dilling read the proposed Order of Summary Suspension and Notice of Opportunity For Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. BHATI MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. KANNAPIRAN. DR. DAVIDSON SECONDED THE MOTION. A vote was taken:

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

The motion carried.

DR. GARG MOVED TO ADJOURN. DR. ROBBINS SECONDED THE MOTION. All members voted aye. The motion carried.

Thereupon at 9:45 a.m. on February 12, 2004, the February 11-12, 2003 meeting of the State Medical Board of Ohio was duly adjourned.

13884

February 12, 2004

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on February 11-12, 2004, as approved on March 10, 2004.



Anquetette P. Sloan, President



Lance A. Talmage, M.D., Secretary

(SEAL)

