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**MINUTES**

**THE STATE MEDICAL BOARD OF OHIO**

**March 12, 2003**

R. Gregory Browning, Ph.D., President, called the meeting to order at 1:10 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: Lance A. Talmage, Sr., M.D., Vice-President; Raymond J. Albert, Supervising Member; Carol L. Egner, M.D.; Anant R. Bhati, M.D.; Pitambar Somani, M.D.; Anquetette Sloan; Patricia J. Davidson, M.D.; Ronald C. Agresta, M.D.; and Anita M. Steinbergh, D.O. The following did not attend the meeting: Anand G. Garg, M.D., Secretary; 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; Lauren Lubow, Senior Executive Staff Attorney; Lori S. Gilbert, Chief Enforcement Coordinator; Marcie P. Burrow, David P. Katko, Rebecca J. Marshall, Karen H. Mortland, Kathleen S. Peterson, and Charles A. Woodbeck, Enforcement Coordinators; Rebecca J. Albers, Mark A. Michael, and Kyle C. Wilcox, Assistant Attorneys General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Coordinator for Assessment and Development; Danielle Bickers, Compliance Officer; Mark Wayda, Chief of Executive Staff; 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. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

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

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The following joined the meeting after the executive session: R. Gregory Porter, Chief Hearing Examiner; Sharon W. Murphy and Daniel J. Roberts, Hearing Examiners.

#### MINUTES REVIEW

**DR. TALMAGE MOVED TO APPROVE THE MINUTES OF FEBRUARY 12-13, 2003.**  
**DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

#### REPORTS AND RECOMMENDATIONS

Mr. Browning announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Mr. Browning advised that the Report and Recommendation in the Matter of Charles Vernon Porter, M.D., will not be considered because that case has been resolved through a voluntary surrender. Copies of the voluntary surrender were distributed to Board members for their review.

Mr. Browning asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Paul W. Burke, Jr., M.D.; Mandana Emami, M.D.; and Jonathan Tobias, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Mr. Browning	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Mr. Browning	- aye

Mr. Browning 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.

Mr. Browning 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.

PAUL W. BURKE, JR., M.D.

Mr. Browning directed the Board's attention to the matter of Paul W. Burke, Jr., M.D. He advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

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

Dr. Burke was accompanied by his attorney, John Carney. Mr. Carney advised that Dr. Burke is requesting that the Board shorten the proposed probation period from five years to three years in view of the fact that Dr. Burke has been sober since 1998. Dr. Burke also needs the Board's guidance on the supervision required during the probationary period, relative to his practice plan.

Dr. Burke thanked the Board for allowing him to appear before it. He stated that he appreciates the Board's willingness to reactivate his Ohio license. He understands that it is a privilege and not a right. Dr. Burke stated that he will comply with whatever conditions the Board places on his license, but he asked that, when the Board makes its decision, it consider the entire record. He had a very nice, successful

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practice in Parkersburg, West Virginia, and he was well respected by his medical colleagues and the general public. Dr. Burke stated that he hopes that the Board will look at the fact that he's gone over five years totally abstinent from alcohol and other mood-altering substances. He never intended to hide or deny his problem with alcohol. He struggled to find appropriate treatment.

Dr. Burke commented that West Virginia doesn't have an organization like OPEP, nor does it have a list of approved treatment providers. He stated that he worked a long time to get the adequate treatment he needed, but he did get it and he's been sober ever since. The record over the last five years shows that he doesn't need or want to drink, and he doesn't drink.

Dr. Burke again stated that he appreciates the Board's consideration of his application for restoration.

Mr. Browning asked whether the Assistant Attorney General wished to respond.

Ms. Albers stated that the Hearing Examiner did an excellent job in setting forth the evidence in this case. Dr. Burke has a very long history of impairment and many relapses while practicing in West Virginia. She asked the Board to take into account whether or not it would have let him continue to practice with that many relapses in Ohio.

**DR. SOMANI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF PAUL W. BURKE, JR., M.D. DR. STEINBERGH SECONDED THE MOTION.**

Mr. Browning stated that he would now entertain discussion in the above matter.

Dr. Steinbergh stated that she read Dr. Burke's objections with interest, and she finds some merit to his request to define the monitoring physician. Dr. Steinbergh advised Dr. Burke that the monitoring physician will monitor his charts and provide a quarterly report. He will provide on-site supervision, to assure that there's no obvious relapse, so that whenever Dr. Burke is seeing patients in Ohio, his care will be supervised by another physician licensed in the State of Ohio.

Dr. Steinbergh continued that she would agree to reduce the probation period from five years to three years, which would run concurrent with his West Virginia agreement, which ends on or about May 31, 2006. She added that she would only agree to that because Dr. Burke has documented sobriety from February 1998.

**DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER TO INCLUDE A DESCRIPTION OF THE SUPERVISION OF HIS PRACTICE, AND TO CHANGE THE PROBATIONARY PERIOD TO THREE YEARS, RATHER THAN FIVE. DR. AGRESTA SECONDED THE MOTION.**

Dr. Somani stated that, normally, when the Board has someone who has been impaired and gone through multiple relapses, it does require commitment by that physician, as well as the appropriate time that's necessary for completion of the process. The Board has seen in this case a number of problems when

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Dr. Burke entered treatment and didn't complete it. He added that the February 1998 date that Dr. Burke uses as his date of sobriety is not correct because Dr. Burke again entered treatment after that date.

Dr. Steinbergh stated that Dr. Burke did go into treatment after February 1998, but she felt from the record that Dr. Burke went based on a recommendation. There was no evidence, in fact, that he had relapsed. Perhaps they felt he hadn't had enough treatment.

Dr. Somani stated that that may or may not be correct. Dr. Somani stated that, looking at the broader picture, Dr. Burke first made a commitment in 1999. Taking that into account, five years should be the minimum period to be monitored. He would therefore support the motion to go to 2006. That still gives Dr. Burke five years plus of sobriety. The Board cannot say for certain that he has been sober since 1998. There is evidence that he has been sober since 1999.

Dr. Talmage stated that this is an individual who, had he been in Ohio, probably would have had a permanent revocation at this point because of all the relapses. Admirably, Dr. Burke has finally made it, and it looks like he's going to do fairly well. Keeping three years' worth of probation is logical to make sure that he's able to continue and doesn't relapse one more time, which would be fatal. Another relapse would probably be the death knell for Dr. Burke's license. Dr. Talmage stated that he could go along with three years, but no less.

Dr. Davidson noted that Dr. Burke is under a consent agreement with the West Virginia Board until May 2006. That agreement prohibits Dr. Burke from performing surgery. Dr. Davidson stated that she doesn't know Dr. Burke's intentions, but surgical practice is not addressed in the proposed Order. Presumably, it will be considered when the practice plan is fleshed out. Dr. Davidson stated that the Board will have to take into consideration how long it's been since Dr. Burke practiced surgery when considering any practice plan Dr. Burke may submit.

Dr. Bhati stated that he disagreed with the motion to amend the probationary period to three years. He stated that this is a relapse situation. Board members have said that, were Dr. Burke in Ohio, he would probably have lost his license. Dr. Bhati stated that he thinks the Board would be doing Dr. Burke a favor to keep him to a five-year probation so the Board can keep its eye on him. Hopefully, Dr. Burke will get back to a normal situation in five years. He wouldn't be in favor of three years.

Dr. Somani stated that the reason he would support the same date as the West Virginia agreement is because, for two years, Dr. Burke has been monitored. He acknowledged that this Board usually requires a five-year probation, but a three-year probation would make a total of five years that Dr. Burke has stayed sober.

Dr. Davidson agreed with Dr. Bhati that the Board has imposed probations longer than five years. She noted that five years is the standard, but she agrees with Dr. Bhati that this case really represents a non-standard situation, given the relapse history.

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

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Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- nay
	Dr. Somani	- aye
	Ms. Sloan	- nay
	Dr. Davidson	- nay
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

**DR. SOMANI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF PAUL W. BURKE, JR., M.D. DR. STEINBERGH SECONDED THE MOTION.**

Mr. Browning stated that he would entertain further discussion in the above matter.

Dr. Agresta suggested that it is important that the Board note the surgical aspect of this case. Since West Virginia restricted Dr. Burke's surgical practice, it would be appropriate for this Board to do so also.

Dr. Bhati stated that that could be covered when the Board considers Dr. Burke's practice plan if he comes to Ohio to practice.

**DR. AGRESTA MOVED TO AMEND THE PROPOSED ORDER TO INDICATE THAT ANY PRACTICE PLAN SUBMITTED SHOULD NOT INCLUDE SURGERY. DR. SOMANI SECONDED THE MOTION.**

Dr. Steinbergh commented that she doesn't think that Dr. Burke would be able to get privileges to perform surgery because of the Board's Order.

Dr. Somani stated that if Dr. Burke goes to a freestanding surgical center in Ohio, there's nothing to restrict him from practicing surgery under the current Order.

Dr. Talmage indicated that he's not sure that the motion isn't totally redundant. When Dr. Burke submits his practice plan, he looks to staff to refresh the Board's memory enough about this case so that an appropriate practice plan is approved.

Dr. Egner agreed with Dr. Talmage.

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

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

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Dr. Talmage	- nay
Dr. Bhati	- aye
Dr. Buchan	- aye
Dr. Somani	- aye
Ms. Sloan	- nay
Dr. Davidson	- aye
Dr. Steinbergh	- aye

The motion carried.

**DR. SOMANI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF PAUL W. BURKE, JR., M.D. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- aye
	Dr. Bhati	- nay
	Dr. Somani	- aye
	Ms. Sloan	- nay
	Dr. Davidson	- nay
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion failed.

Dr. Egner stated that she doesn't think that this is the place for the Board to say, "no surgery." The Board has the means to do this when and if a practice plan is presented. She continued that, as far as probationary time, she has no strong feelings about whether or not three years or five years is more appropriate.

Dr. Bhati again stated that he would prefer a five-year probation.

Ms. Sloan agreed with Dr. Bhati.

There followed a brief discussion on parliamentary procedure and the proper way to proceed with this case.

**DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER TO LOWER THE PROBATIONARY TERM TO THREE YEARS, AND TO RESCIND THE AMENDMENT CONCERNING THE RESTRICTION OF SURGERY. DR. SOMANI SECONDED THE MOTION.**

Dr. Somani asked whether Dr. Steinbergh would be willing to change the motion to state that the probationary period will end in May 2006, the same as the West Virginia agreement.

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Dr. Steinbergh stated that she would rather use a number of years than a specific date.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- nay
	Dr. Somani	- aye
	Ms. Sloan	- nay
	Dr. Davidson	- nay
	Dr. Agresta	- nay
	Dr. Steinbergh	- aye

The motion failed.

**DR. SOMANI MOVED TO MODIFY THE PROPOSED ORDER TO REQUIRE PROBATION UNTIL MAY 31, 2006. DR. EGNER SECONDED THE MOTION.**

Dr. Egner stated that she seconded the motion for discussion purposes. She added that the Board always rights its orders in terms of years. She personally doesn't care if there is a three-month difference between the Ohio Order and the West Virginia Consent Agreement. Dr. Burke is just lucky to have his license. Dr. Egner commented that when she read this case, she couldn't believe that Dr. Burke is still sober. He is someone that she would never have faith in.

**DR. SOMANI ASKED TO CHANGE HIS MOTION TO REQUIRE A THREE-YEAR PROBATION. DR. EGNER, AS SECOND, AGREED TO THE CHANGE.**

Dr. Davidson noted that the motion is unnecessary because the Order has already been amended to call for a three-year probationary period.

Dr. Agresta stated that he, personally, would feel more comfortable eliminating Dr. Burke's surgical privileges at this time, rather than to wait for the practice plan, but if the Board members feel they'd rather do it with the practice plan, that's fine.

**DR. AGRESTA MOVED TO RESCIND HIS AMENDMENT TO REQUIRE A RESTRICTION ON SURGERY. DR. SOMANI SECONDED THE MOTION. A vote was taken:**

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- nay
	Ms. Sloan	- aye

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Dr. Davidson	- aye
Dr. Agresta	- aye
Dr. Steinbergh	- aye

The motion carried.

At this time it was noted that the Proposed Order, amended to require a three-year probation, is now on the table.

**DR. TALMAGE MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF PAUL W. BURKE, JR., M.D. DR. STEINBERGH SECONDED THE MOTION.**

Dr. Bhati, Dr. Davidson and Ms. Sloan spoke against the amended Proposed Order, stating that they would prefer to keep the probationary period at five years.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- nay
	Dr. Somani	- aye
	Ms. Sloan	- nay
	Dr. Davidson	- nay
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Mr. Browning	- aye

The motion carried.

MANDANA EMAMI, M.D.

Mr. Browning directed the Board's attention to the matter of Mandana Emami, M.D. He advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

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

Dr. Emami was accompanied by her attorney, Ronald L. House, Jr. Mr. House advised that Dr. Emami agrees with the Conclusions of the Hearing Examiner's Report and Recommendation that Dr. Emami's application for licensure should be approved. They filed a request to address, solely to make Dr. Emami available to answer any questions Board members may have. They agree with the Hearing Examiner's finding that there was no violation of the Medical Practices Act in this case. Ms. Murphy's Report is well

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thought out and provides a context into what is otherwise a problematic case on paper.

Dr. Emami advised that she appreciates the chance to be here today.

Mr. Browning asked whether the Assistant Attorney General wished to respond.

Mr. Wilcox stated that he believes that there is enough evidence in the record to seriously consider an alternative to licensure that has been recommended by the Hearing Examiner. He personally has trouble believing that Dr. Emami was not being purposefully deceptive when she told ECFMG that she received a diploma in 1989 but did not complete her last rotation until October 1990. Mr. Wilcox asked the Board members who could not say when they graduated from medical school. It doesn't matter what country you're from, you don't get a diploma until you complete all of the requirements of your school. Dr. Emami had not completed all of the requirements, and she knew that. She never completed the rural service requirement, and that is why she didn't get a diploma. The school didn't consider her a graduate at that time.

Mr. Wilcox stated that Dr. Emami blames all of her problems on the bureaucracy at Shiraz University in Iran. To some extent she may be right, but maybe the University didn't feel obligated to help someone who had failed to complete her service requirements.

Mr. Wilcox asked that the Board, given the facts on the record, consider another alternative to licensure at this time.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MANDANA EMAMI, M.D. DR. AGRESTA SECONDED THE MOTION.**

Mr. Browning stated that he would now entertain discussion in the above matter.

Dr. Talmage stated that he has experienced this in his undergraduate degree. He completed all of the requirements, except for one elective course, which the professor chose to make an "incomplete." His diploma reads 1962. He never took a course at the University of Toledo after 1960. For the purposes of the Alumni Association, he's a 1960 graduate. Dr. Talmage stated that these things do happen. In medical schools in the United States, students aren't required to write a thesis. When they complete their course work, they are graduated. Here, Dr. Emami completed her course work but had to turn in a thesis. She has letters indicating that she graduated when she said she did, in 1989. Dr. Talmage stated that he thinks that there is a considerable amount of confusion, and he's not so convinced that she purposely wrote down the wrong date. Dr. Talmage stated that granting Dr. Emami a license seems to be the logical alternative.

Dr. Somani stated that he would have accepted that on face value, except the Board is seeing a number of different dates in Dr. Emami's documents: 1989, 1990, 1997. That's where he feels the difficulty is. If Dr. Emami had been consistent by using the same date in all of the applications filed, it would make sense. He thinks that there is some doubt in his mind because there are a number of applications in which she has used different dates as her date of graduation. He asked what the explanation for that is.

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Dr. Agresta asked what the actual date is that Dr. Emami has certified as her date of graduation.

Dr. Somani stated that the actual diploma states that she graduated in 1997.

Dr. Steinbergh stated that the A.M.A. verified her graduation as 1989.

Dr. Bhati stated that, being an international graduate, he's not surprised. Things happen. You get your diploma, but then you're expected to do certain duties before you get a license. That gets incorporated in your diploma as a graduation date. He stated that the Board only needs to make sure that Dr. Emami graduated, and she did.

Dr. Steinbergh suggested reprimanding Dr. Emami for the errors she's made in her applications. Her residency program was forced to dismiss her and not ask her to come back because of the confusion. One can say that there was a good deal of confusion.

Dr. Talmage stated that, unless he's reading something differently, the A.M.A. information he has indicates that it verified that Dr. Emami graduated from Shiraz University in 1989. The A.M.A., in fact, confirmed her 1989 graduation in their records. Dr. Talmage stated that Dr. Emami was dismissed from the residency based upon the mistake she made here. To reprimand her would serve no particular purpose. Dr. Talmage spoke in support of the Proposed Order.

Dr. Bhati commented that he wouldn't dismiss a resident because of this kind of mistake.

Dr. Somani stated that she didn't have an ECFMG certificate when she was at Flower Hospital. She didn't get it until several years later. The residency program was correct in requiring the ECFMG for her to continue.

Dr. Somani stated that he agrees that a reprimand would not solve the problem. This was a comedy of errors, with different dates and a lot of confusion in papers. Not all of the errors were her fault. She did graduate, she has ECFMG, USMLE, and she has completed her training.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

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The motion carried.

JONATHAN TOBIAS, M.D.

Mr. Browning directed the Board's attention to the matter of Jonathan Tobias, M.D. He advised that objections were filed to Hearing Examiner Roberts' Report and Recommendation and were previously distributed to Board members.

Mr. Browning advised that materials included with the objections are being construed as a request to submit additional evidence. The Assistant Attorney General has filed a memorandum in opposition to Respondent's "Motion" for admission of documents. Mr. Browning asked whether the Board wished to admit the additional evidence.

No motion was made to admit the additional evidence into the record.

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

Dr. Tobias did not appear at the meeting, but was represented by his attorney, Marc D. Mezibov.

Dr. Steinbergh asked whether Dr. Tobias didn't think his license was important enough for him to be present.

Dr. Egner stated that Dr. Tobias doesn't have to appear before the Board.

Mr. Mezibov stated that Dr. Tobias thinks his license is important enough that his attorney be present. He added that he's filed objections to the Hearing Examiner's Report and Recommendation. Mr. Mezibov stated that, with one exception, they do not find any error in the Hearing Examiner's report, either in its thoroughness or in the thrust of its report. It is noteworthy that in this very unusual circumstance, the Hearing Examiner has proposed an order providing for sanctions that are outside the prescribed range of penalties. The Recommendation would provide for penalties that are in favor of Dr. Tobias and militate in terms of leniency rather than harsher penalties. Mr. Mezibov stated that this circumstance warrants further attention.

Mr. Mezibov continued that the Hearing Examiner's recommendation is significant. The charges, by their nature, are very unusual, if not unprecedented. The conviction is highly suspect, and they anticipate a ruling from the Court of Appeals shortly. Dr. Tobias is an individual of impeccable credentials and qualifications, as the record amply demonstrates. Mr. Mezibov asked that the Board defer its ruling until the Court of Appeals rules on the validity of the conviction. He added that he doesn't think that any party to this matter disputes the fact that the entire disciplinary situation with Dr. Tobias rests on the validity of the conviction. That is now before the Court of Appeals. The matter was argued orally on December 5. He understands that in Hamilton County it takes approximately 60 days for a ruling, and it's been longer than that and he anticipates a ruling presently.

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Mr. Mezibov asked, if the Board is determined to go forward with the Report and Recommendation at this time, that it consider that what has happened here, at least insofar as the nature of the conviction and the charges against Dr. Tobias are concerned, involve matters that did not arise in the course of practice. This did not involve in any way, shape or form, Dr. Tobias' involvement with patients, with care of people or with the performance of professional responsibilities. There was nothing unique or unusual about these circumstances that these charges could not have emanated from any number of positions of responsibility, none of which may be medical in nature, such as a custodian at the morgue or anybody who has any responsibility for the ingress and egress of persons from that particular building.

Mr. Browning advised Mr. Mezibov that he has a minute to conclude his statement.

Mr. Mezibov stated that Dr. Tobias has voluntarily desisted from the practice of medicine for two years or so, while the course of events has unfolded and while the criminal prosecution was completed. He has already been in a suspended status for approximately two years. Mr. Mezibov asked that the Board consider that.

Mr. Browning asked whether the Assistant Attorney General wished to respond.

Mr. Michael at this time stated that he takes issue with Mr. Mezibov's statements. As things stand today, Dr. Tobias is legally convicted of two felony counts of gross abuse of a corpse. This related Dr. Tobias, a licensed physician working in the morgue as a pathologist, allowing a photographer into the county morgue, where the photographer posed the corpses with various objects and took pictures of them. This is very egregious conduct. It is a felony, and the State would argue that this is a felony in the course of practice. Dr. Tobias, a licensed medical doctor working at the morgue and in the scope of his employment, allowed the photographer in to take pictures. He was tried in Hamilton County and he was convicted. If the Court of Appeals does overturn the conviction, there are legal avenues for Dr. Tobias to ask this Board to revisit this issue. However, today he is convicted.

Mr. Michael stated that the State is not in favor of the Report and Recommendation, which is a departure downward from the Board's minimal standards. A permanent revocation would be fitting for the nature of the crime, which is a felony committed in the course of practice.

**DR. SOMANI MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JONATHAN TOBIAS, M.D.  
DR. AGRESTA SECONDED THE MOTION.**

Mr. Browning stated that he would now entertain discussion in the above matter.

Dr. Bhati at this time recused himself from participation in this case, stating that he has been contacted by individuals outside the hearing process concerning this issue.

Dr. Egner commented that, although she is from Cincinnati and this has been a very publicized case there, she does believe that she can remain objective on this case. She does not know Dr. Tobias, and she hasn't spoken with anyone about this case.

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Dr. Egner continued that she found this to be an extremely difficult case. She has gone over and over the hearing record and the Report and Recommendation, and she can't find Findings of Fact that it was Dr. Tobias who was involved with this Mr. Condon taking the pictures. That's what she was looking for to warrant a permanent revocation. They go into great detail that at the time those pictures were taken Dr. Tobias was doing other autopsies. There is no evidence to say that he was involved with that. He let the photographer into the morgue, but this photographer had access in and out of the morgue for a fairly long period of time because he was supposed to be doing this video education project. There were many people who saw the photographer in and out of the morgue. They felt that he was there doing what he should have been doing. Dr. Tobias became friends with the photographer. Dr. Tobias has poor judgment in his friends, no doubt. Does that mean that he should be permanently revoked?

Dr. Egner stated that Dr. Tobias does have a felony conviction. She stated that she thinks that the Board should go ahead and rule on this. It can reconsider if the Court of Appeals overturns the conviction.

Dr. Egner stated that something must be done with the felony conviction, but permanent revocation, even though it is stayed, is really too harsh. Even the judge said, "I so rule, but I do feel it was a close case as to guilt." Dr. Egner stated that she believes there are a lot of mitigating circumstances here. Dr. Tobias does have a very good history, in terms of his letters of recommendation and his performance in residency. He doesn't come with any past history of inappropriate or ill behavior. Dr. Egner stated that she believes that the Board should stay with the 90-day suspension, but she would like to drop the "permanent revocation" language from the Order. When the Board writes an order of permanent revocation, even though it's stayed, the Board is saying that what the physician did deserves permanent revocation, which will come into play if the physician does anything else wrong. Does the Board feel this way about Dr. Tobias? She stated that at this time she does not.

Dr. Somani stated that, when he read through this case, he also had quite a few questions. What actually has Dr. Tobias done in relation to the Proposed Order, as well as his conviction in the court? He allowed a photographer to come into the morgue while he was doing autopsies. This thing happened during the time Dr. Tobias was in the practice of medicine, according to his responsibilities. The Board cannot find that this happened outside the scope of his practice. During that time, someone came into the morgue. The next important issue is Dr. Tobias' relationship to the actual events that happened. Did Dr. Tobias contribute to that event? Dr. Somani stated that there is no evidence to link Dr. Tobias to what the photographer did, except that the photographer happened to be there during Dr. Tobias' practice. If that's the case, the only thing before the Board is that Dr. Tobias stands convicted.

Dr. Somani continued that, when the court and jury system convicts someone, it becomes the Board's responsibility to decide if this person's conviction should lead to discipline. Is this person morally fit to practice? That's the only thing the Board has before it. The Board has testimony from his medical school, his residency program, and those who have worked with him, that indicates that Dr. Tobias is a good person and a smart doctor. Should the Board permanently revoke for the conviction? Dr. Somani stated that he agrees with Dr. Egner, and does not feel compelled to permanently revoke Dr. Tobias' license. Dr. Somani stated that he would support a motion to modify the Proposed Order.

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Dr. Steinbergh stated that this was a very disturbing case to her. She read the record as showing that Mr. Condon knew that he shouldn't have been in the morgue. At some point, Mr. Condon befriended Dr. Tobias, and Dr. Tobias basically allowed Mr. Condon free rein while he was there. Dr. Steinbergh stated that it is a bit unreasonable for her to think that, in his responsibility as a pathologist fellow, Dr. Tobias would allow this person to go in and out of that cooler without any type of supervision. The staff itself was confused about it. They spoke to the issue. There was no response by Dr. Tobias when he was asked about the pictures. There was obviously very poor communication within the Hamilton County Coroner's Office because she thinks at some point, when Mr. Condon was coming in and out, the chief pathologist should have said that this man is not to be coming in and out of the morgue, it is inappropriate. At the same time, as a physician, and, subsequently, as a pathologist on that day, she has to believe that, although there is no evidence that Dr. Tobias posed these pictures, he was aware for a very long time that Mr. Condon was in and out of the cooler. That would immediately raise suspicion in her mind, if she were in charge of the office. Dr. Steinbergh stated that she believes that Dr. Tobias had enough reason to believe that this man should probably not have been in that cooler for the length of time that he was. Dr. Steinbergh continued that Dr. Tobias was convicted of two felony counts of gross abuse of a corpse for those offenses.

Dr. Steinbergh stated that Dr. Tobias has never defended himself to the Medical Board. Although he has a right not to appear before the Board or at his hearing, the Board has yet to really see him or hear from him, in her opinion. Dr. Steinbergh spoke in support of the Report and Recommendation.

Dr. Talmage stated that he had the same concerns about whether this was a passive permission for this individual. He added that the Board must keep in mind that Dr. Tobias was a fellow. It was neither his authority to allow or to disallow Mr. Condon to be in the morgue. He finds considerable confusion about the fact that Mr. Condon was allowed into the morgue to take pictures in order to prepare for an educational process. Dr. Talmage stated that, if he were a fellow, his approach would have been to take what the boss said as being what to do. At most, he would have gone to the boss to find out if he or she approves of the individual being in and out of the morgue several times.

Dr. Talmage continued that, at the same time, the Board owes the public the consideration that if, in fact, Dr. Tobias does something else, the permanent revocation can be unstayed. While keeping the permanent revocation is a stain, it is no more of a stain than his being convicted. There will be an immediate reconsideration if Dr. Tobias' appeal is successful. Dr. Talmage took issue with the statement that the corpse was not a patient. An individual's death does not take him or her out of the patient category. A physician still owes the duty to care for that individual, even though it's a corpse. Dr. Talmage's reading of this case was that Dr. Tobias' actions were passive. He simply allowed the photographer to enter into where he thought the photographer was allowed to go, and he didn't know what the photographer was doing while he was in that room. Dr. Talmage stated that he thinks that the Proposed Order is appropriate, as long as the Board has the assurance that it can revisit its decision if the appeal is, in fact, successful.

Dr. Talmage asked for verification that the statutes provide for review and rescinding of an order, should the Board choose to do so upon successful appeal.

Mr. Browning stated that they do.

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Dr. Talmage stated that he would recommend passing the Order as it exists.

Dr. Egner stated that her original suggestion was to drop the “permanent revocation” language.

Dr. Talmage stated that he understands.

Dr. Egner stated that what happened in this case was awful. The first day medical students walk into a Gross Anatomy lab, they are told and understand the sanctity of that place. The Coroner’s office should be just as much into that thinking, if not more so. In reading this case, a number of individuals who had a role of authority at the Coroner’s office saw Mr. Condon going in and out of the office. They did not make comment. Dr. Utz is quoted as saying that Mr. Condon had been granted authorization by the Coroner to enter the morgue and to take photographs of autopsies and corpses. Dr. Egner stated that she’s not sure what Dr. Tobias did differently from anyone else at the morgue. Maybe he did, but she doesn’t think that the Board knows that. There’s a part of her that thinks he did because Mr. Tobias was the one convicted. She’s looking at a young man at the very beginning of his career with a conviction, and she was looking for more facts. If the Board puts a permanent revocation on his record and stays that permanent revocation, anytime in his life that he has a misdemeanor could bring back the permanent revocation. It is very, very serious to put a permanent revocation on Dr. Tobias. If he deserves it, that’s what he gets, but Dr. Tobias didn’t take the pictures, he didn’t pose the bodies. She thinks that the record would say that, if that were the case. That’s her concern. Dr. Tobias does have a conviction, and that’s a difficult thing to deal with, so the Board has to do something.

Dr. Somani indicated agreement with Dr. Egner. The only thing that the Board has before it is that Dr. Tobias did get convicted. Is it serious enough to permanently revoke his license? Dr. Somani stated that, in his opinion, he doesn’t think so. He suggested a stayed revocation, rather than a stayed permanent revocation. Then Dr. Tobias is on guard that he should not do anything else.

**DR. SOMANI MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF JONATHAN TOBIAS, M.D., BY REMOVING THE WORD, “PERMANENT” FROM PARAGRAPH A OF THE HEARING EXAMINER’S PROPOSED ORDER.** The motion died for lack of a second.

Dr. Egner stated that she doesn’t know that the Board would get anyplace with a non-permanent revocation. That would mean that the Board is looking for further fact in the future, and she doesn’t think that the Board is going to get anything. It would have had everything by now.

Dr. Somani stated that the Board should either revoke Dr. Tobias’ license, or suspend him, and deal with that when the Board knows what the court’s final decision is. Permanent revocation is too harsh for not knowing exactly what Dr. Tobias’ role was, except that he happened to be in that situation and happened to be doing autopsies at that time, while others were also in charge of who comes in and out of the morgue.

Dr. Agresta stated that this is one of the most bizarre cases he’s read in a long time. He’s not sure exactly what happened here. He knows that there was a person in the morgue, in a closed room, with corpses,

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taking photographs. As far as he knows, Dr. Tobias was not in the room with this person. He was, however, in the general area and knew that the man was there. Since he was a fellow, this should have thrown a red flag up to him. On the other hand, Dr. Tobias did know that this man was allowed to be in there. Dr. Agresta stated that he can't understand why they didn't go after the other people. They should have gone after Dr. Tobias' supervisor or boss, who set the whole tone for this whole process. They didn't. Dr. Agresta stated that he's sure those issues will be brought up on appeal, but the Board is stuck with having to deal with someone who has been convicted of a felony. The Board has to deal with that. Dr. Agresta stated that he doesn't feel comfortable with what he read. He agreed with Dr. Egner. He believes that Dr. Tobias just ignored this individual. The Board does know that Dr. Tobias didn't help position any of these objects on the corpses, and the Board knows that he didn't take photographs himself. What was brought out at trial, the Board doesn't know. Because of that, he would feel very uncomfortable permanently revoking Dr. Tobias' license. Dr. Agresta stated that he doesn't have enough information to do that in good conscience.

Ms. Sloan stated that in reading this case, she agrees with Dr. Agresta and Dr. Egner. Dr. Tobias was actually conducting his duties as a fellow in the coroner's office, and Mr. Condon was taking pictures. She doesn't see the connection being made that Dr. Tobias knew exactly what Mr. Condon was doing. She would have a hard time permanently revoking in this case; but there was a felony conviction and she doesn't know what to do because of that felony conviction.

Dr. Steinbergh stated that there is an inconsistency with regard to Dr. Utz that concerns her. The initial report said that they are supervising, and the final report doesn't mention his presence. She doesn't know to this day whether or not there was any other kind of supervision in that office on that particular day. Dr. Egner's point about the sanctity of the pathology room keeps coming back to her, and that's where she is with this. She found it was very inappropriate for Dr. Tobias to allow access to these people.

Dr. Egner agreed, and stated that this is a terrible case. But is not keeping the sanctity of a gross anatomy lab or the morgue worth permanent revocation?

Dr. Steinbergh stated that she feels that the permanent revocation order is consistent with his felony conviction. If that conviction is overturned, the Board can revisit this. This particular Board Order, allows, at least, a stay of the permanent revocation and puts him into a term of suspension. She finds it to be appropriate with a felony conviction.

Dr. Talmage stated that, if the appeal is unsuccessful, Dr. Tobias is still convicted, and was convicted on the basis of a full court trial. The Board doesn't have access to the full transcript of that trial. There may be other issues. If, in fact, the appeal is unsuccessful and Dr. Tobias is still convicted, this Board Order is totally appropriate. If the appeal is successful, the Board can revisit it and take it away to the extent it wishes to take it away. At this point, without the appeal having been completed, the Board Order is, in fact, appropriate.

Mr. Browning asked Dr. Somani whether he wishes to restate his motion.

Dr. Egner stated that Dr. Somani's motion was not seconded.

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Mr. Dilling asked whether the Board had the criminal transcript as part of the Board's record in this case. He stated that he thought it was part of the record.

Dr. Somani stated that it's part of the record, but he doesn't think it shows a clear link to Mr. Condon's doing what he was doing. His impression was that Dr. Tobias was doing his work as the Coroner's pathologist while Mr. Condon was doing what he was doing. There is no evidence in the record to link Dr. Tobias to helping Mr. Condon or corroborating with him to take the pictures. The Board is left with the issue that Dr. Tobias was convicted, and since he is convicted, it's the Board's responsibility to deal with that felony conviction. Dr. Somani stated that, looking at the felony convictions with which the Board has dealt in the past, a stayed revocation would be appropriate. The record indicates that Dr. Tobias is a conscientious, competent pathologist, and it was very unfortunate that this thing happened.

**DR. EGNER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF JONATHAN TOBIAS, M.D., BY REMOVING THE "PERMANENT REVOCATION" LANGUAGE FROM PARAGRAPH A OF THE HEARING EXAMINER'S PROPOSED ORDER, AND KEEPING ALL LANGUAGE RELATIVE TO SUSPENSION AND PROBATIONARY REQUIREMENTS. DR. SOMANI SECONDED THE MOTION.**

Dr. Agresta stated that the change seems to be appropriate.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- nay
	Dr. Bhati	- abstain
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- nay
	Dr. Agresta	- aye
	Dr. Steinbergh	- nay

The motion carried.

**DR. TALMAGE MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF JONATHAN TOBIAS, M.D. DR. SOMANI SECONDED THE MOTION. A vote was taken:**

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

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Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Agresta	- aye
Dr. Steinbergh	- nay

The motion carried.

#### FINDINGS, ORDERS AND JOURNAL ENTRIES

##### JAMES MICHAEL KENNEN, D.O.

By letter of January 9, 2003, the Board notified Dr. Kennen that it proposed to take action against his license to practice osteopathic medicine and surgery, based on his alleged failure to comply with specified conditions of limitation imposed on his license by an August 14, 2002, Board Order. A signed certified mail receipt was returned to the Board documenting proper service of the notice. However, no hearing request has been received from Dr. Kennen and more than 30 days have elapsed since the mailing of that notice. The matter was presented to the Board for final disposition at this time.

Dr. Steinbergh noted that this is a case involving numerous relapses.

**DR. STEINBERGH MOVED TO ENTER AN ORDER OF REVOCATION, EFFECTIVE IMMEDIATELY. DR. TALMAGE SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

##### DAVID C. MINOR, M.D.

By letter of August 15, 2002, the Board notified Dr. Minor that it proposed to take action against his license to practice medicine and surgery, based on his alleged failure to comply with specified conditions of limitation imposed on his license by a September 13, 2000 Consent Agreement. Simultaneous mailings were sent via certified mail, return receipt requested, to Indian Hospital, Lawrie Tatum Road, Lawton, OK 73501 and C/O Ann Minor, P. O. Box 204, Grannis, AR 71944. Verification of service was not obtained from these mailings. Pursuant to Section 119.07, ORC, notice was published once a week for three consecutive weeks (on November 27, December 4 and December 11, 2002) in The Lawton Constitution.

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However, no hearing request has been received from Dr. Minor and more than 30 days have elapsed since the mailing of that notice. The matter was presented to the Board for final disposition at this time.

Dr. Steinbergh stated that this is the case of a physician who has been diagnosed as bipolar and who, in the past, did not take his medication. He failed to turn in quarterly compliance reports and missed two probationary meetings. As the Board knows by his medical history, when Dr. Minor stops taking his medication, he is having some psychiatric difficulties. He's had no communication with this Board.

**DR. STEINBERGH MOVED TO ENTER AN ORDER OF PERMANENT REVOCATION IN THE MATTER OF DAVID C. MINOR, M.D., EFFECTIVE IMMEDIATELY. DR. AGRESTA SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

FREDERICK JOHAN RAAL, M.D.

By letter of December 30, 2002, the Board notified Dr. Raal that it proposed to deny his application for a certificate to practice medicine and surgery in Ohio based upon the fact that Dr. Raal does not hold certification from the Education Commission for Foreign Medical Graduates, as required pursuant to Section 4731.091(B)(2), ORC and Rule 4731-6-15, OAC. Said notice was mailed via registered mail, return receipt requested, to Dr. Raal's address of record. A letter was subsequently received from Dr. Raal, verifying that he had received the Board's notice of opportunity. He did not request a hearing. The matter was presented to the Board for final disposition at this time.

**DR. SOMANI MOVED TO ENTER AN ORDER DENYING DR. RAAL'S LICENSURE APPLICATION. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye

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Dr. Agresta - aye  
 Dr. Steinbergh - aye

The motion carried.

CITATIONS, PROPOSED DENIALS & ORDERS OF SUMMARY SUSPENSION

TERRENCE FRANCIS MCCOY, M.D. - CITATION LETTER

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

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

FREDERICK COHN, 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. TALMAGE MOVED TO SEND THE CITATION LETTER TO DR. COHN. DR. SOMANI SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

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The motion carried.

GHASSAN HAJ-HAMED, M.D. - CITATION LETTER

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

**DR. STEINBERGH MOVED TO SEND THE CITATION LETTER TO DR. HAJ-HAMED. DR. AGRESTA SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

JUAN C. MEJIA, 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. TALMAGE MOVED TO SEND THE CITATION LETTER TO DR. MEJIA. DR. AGRESTA SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

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RATIFICATION OF CONSENT AGREEMENTS

BRUCE S. WORRELL, D.O.

**DR. TALMAGE MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. WORRELL. DR. AGRESTA SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

PERSONAL APPEARANCES

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

Dr. Fiegenschuh made his initial appearance before the Board, pursuant to the terms of the Board's Order of August 9, 2000, following reinstatement on November 13, 2002.

In response to Dr. Somani's questions, Dr. Fiegenschuh stated that he is doing very well. He's feeling physically well, and his recovery continues to go well. On December 1, 2002, he started to work in his fellowship in addiction medicine in Cleveland with Dr. Parran and Dr. Adelman, and it's been excellent. He has long hours. He gets up at 4:00 a.m., and doesn't get home until about 7:30 p.m. It's a long day, but he's really enjoying it. He commutes between Alliance and Cleveland, which is about an hour to an hour and a half drive. He tries to be there by 7:00 a.m. for the nurse's report so that he knows what's going on with all of the patients.

Dr. Somani asked Dr. Fiegenschuh whether he has a good support system, noting that Dr. Fiegenschuh is putting in quite a few hours.

Dr. Fiegenschuh stated that his support system is excellent. He and his wife knew that it was going to be this way when he started the fellowship. He'll be doing it for about a year and a half. His support system is excellent, and, in fact, has gotten stronger as he's gone on. He's gotten a lot of support from the people with whom he works in Cleveland, in addition to what he has already. The staff there has been tremendous; it's a wonderful group of people. Dr. Fiegenschuh stated that he doesn't mind getting up in the morning; it's a joy to go to work.

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In response to Dr. Bhati's questions, Dr. Fiegenschuh stated that he has been substance-free for over three and a half years.

Dr. Bhati noted that Dr. Fiegenschuh has a history of relapses in the past. He stated that this Board's tolerance is very miniscule. The next time he might not have a license.

Mr. Albert stated that Dr. Fiegenschuh has been very compliant with the Board's Order. He noted that Dr. Fiegenschuh's wife has accompanied him to this meeting, as she has accompanied him to other probationary meetings.

Dr. Steinbergh expressed concern about the number of hours Dr. Fiegenschuh spends out of his home. One of the things that push doctors into relapse is the stress of long hours and so forth. She asked whether he's getting enough personal time, relaxing enough so as not to stress himself.

Dr. Fiegenschuh stated that he is. He came from a profession in surgery when he was putting in long hours, and there was a lot of turmoil at work also. He's not finding that with this job. It's a tremendous atmosphere in which to work, and he spends a lot of his day with addicted patients and alcoholics, not just as their doctor, but as their friend as well. He's getting a lot of work sitting and talking, too. That's a joy. Dr. Fiegenschuh stated that he gets home at night and he's tired, but it's a happy tired. He doesn't mind getting up in the morning. He knows this is temporary, and they knew it was coming for a long time. His wife's a nurse and she's familiar with it. He knows that he can't neglect his own A.A. meetings because he needs to do that for himself. This job has also been a help for him. He feels that he's working the twelve steps with people all day long. The rotation he's on right now is probably the toughest during the whole fellowship, and he's been with it for four months now. He'll be changing to a rotation that will have a little more free time where he'll be able to be home earlier.

Dr. Talmage stated that he's a little more reassured that Dr. Fiegenschuh is working with Dr. Parran and is aware of Dr. Fiegenschuh's commuting.

Mr. Albert stated that Dr. Fiegenschuh is addicted to alcohol and has had several relapses. He was taken out of practice for two years. He is also facing another seven years on probation.

**DR. SOMANI MOVED TO CONTINUE DR. FIEGENSCHUH UNDER THE TERMS OF THE BOARD'S ORDER OF AUGUST 9, 2000 AND THE BOARD'S POLICY OF DECEMBER 9, 1998, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE.**

**DR. AGRESTA SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye

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Dr. Agresta           - aye  
Dr. Steinbergh       - aye

The motion carried.

JAMES L. REINGLASS, M.D.

Dr. Reinglass made his initial appearance before the Board, pursuant to the terms of his December 11, 2002 Consent Agreement.

In response to Dr. Somani's questions, Dr. Reinglass stated that he has reviewed his consent agreement, and he is committed to follow through with it. His major problem was depressive disorder. He has a good support system, and works closely with his psychiatrist, whom he sees monthly or more often, if necessary. He's free to pick up the phone and call the psychiatrist whenever he wishes.

Dr. Talmage stated that in the past Dr. Reinglass has changed psychiatrists and tapered off his own medication. He asked whether Dr. Reinglass is staying with his medications at this time.

Dr. Reinglass stated that he is, but added that the medicines have been readjusted since he initiated the taper by the physician and at a lower dose. He's relying on his psychiatrist.

Dr. Talmage asked Dr. Reinglass what he is doing to occupy his days.

Dr. Reinglass stated that he becomes involved with whatever he can at the time that's interesting to him. He does have hopes to move forward in the future with some kind of plan, either to go back to school or to seek some medical position that does not involve direct patient care, such as an administrative type of responsibility or a laboratory responsibility.

**DR. SOMANI MOVED TO CONTINUE DR. REINGLASS UNDER THE TERMS OF HIS DECEMBER 11, 2002 CONSENT AGREEMENT.**

Ms. Bickers stated that Dr. Reinglass will not appear before the Board again until 90 days from any request for reinstatement or restoration.

Dr. Egner asked Dr. Reinglass whether he has a timetable in mind for his future.

Dr. Reinglass stated that he has no set time. He thinks that decision will be made by his treating psychiatrist. He will leave that in his psychiatrist's hands. He doesn't wish to make that decision by himself. At this time, he has no idea when he will return to work. He does have some concern he would like to bring up at this time. Dr. Reinglass stated that he just received data from the National Practitioner Data Bank (NPDB), and in it there is an incorrect diagnosis, which is very harmful, and one that is very serious. It states that he has psychosis, when, in fact, the diagnosis was made as major depression without psychosis. The diagnosis as noted on the NPDB is a very serious and disabling diagnosis. He has no idea how many people have seen this report since it was released, or how it happened.

Dr. Egner stated that that will be corrected.

Mr. Schmidt advised that it is being fixed.

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

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

PROBATIONARY REPORTS

Mr. Browning referred the Board to the Compliance Staff's reports of conferences with probationers on January 6 and January 7, 2003. He noted that all probationers are in compliance.

**DR. SOMANI MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES WITH DOUGLAS BOSACK, M.D.; PAUL P. CHU, M.D.; RICHARD M. DONNINI, D.O.; MARK S. FLEMING, M.D.; JOHN D. FREED, M.D.; STEVE M. FRIDAY, D.P.M.; JAMES H. GRAY, JR., D.O.; WAYNE L. HARRISON, M.D.; THOMAS A. HUNTER, P.A.; ROBERT KAMERER, M.T.; BAK CHUL KIM, M.D.; TIMOTHY S. KRESS, M.D.; MICHAEL S. MCINTOSH, M.D.; ROSEMARY W. MCLAUGHLIN, M.D.; ANTHONY G. POLITO, D.P.M.; RAMACHANDRA K. PUDUPAKKAM, M.D.; MARY H. RABB, D.O.; SILVANA SABATO, L.M.T.; JAMES H. SCOTT, D.O.; FRANK R. SHARP, M.D.; JAMES E. STURMI, M.D.; AND VIRGINIA C. WOODROW, M.D. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

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The motion carried.

PROBATIONARY REQUESTS

EDWARD M. BIRDSONG, D.O.

Dr. Birdsong's request for modifications to the terms of the Board's Order of November 8, 2000, was presented to the Board for consideration at this time.

**DR. STEINBERGH MOVED TO APPROVE DR. BIRDSONG'S REQUEST FOR ELIMINATING THE "DIRECT SUPERVISION" LANGUAGE OF THE BOARD'S ORDER OF NOVEMBER 8, 2000, WITH THE UNDERSTANDING THAT DR. BIRDSONG WILL STILL HAVE A MONITORING PHYSICIAN THAT WILL BE REVIEWING PATIENT CHARTS. DR. STEINBERGH FURTHER MOVED TO DENY DR. BIRDSONG'S REQUEST TO WORK ON A CRUISE SHIP WITHOUT A MONITORING PHYSICIAN. DR. AGRESTA SECONDED THE MOTION. A vote was taken:**

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

ROBIN K. DHILLON, M.D.

Dr. Dhillon's request for approval of a revised practice plan, which would allow him to work full-time for Medical Care Group, performing initial evaluations, comprehensive examinations, and follow-up care for patients sustaining injuries during occupation or personal injuries, was presented to the Board for consideration at this time.

**DR. TALMAGE MOVED TO APPROVE DR. DHILLON'S PROPOSED REVISED PRACTICE PLAN. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:**

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

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Dr. Somani	- aye
Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Agresta	- aye
Dr. Steinbergh	- aye

The motion carried.

ANN V. GOVIER, M.D.

Dr. Govier's request for a determination of the frequency of unused "waste" medication assays required was presented to the Board for consideration at this time.

Dr. Davidson stated that this created a dilemma for her. Dr. Govier is an anesthesiologist with a significant alcohol problem. She has an agreement that allows a very restricted practice in anesthesiology, including a 20-hour work limitation, with no administration of intravenous operative opiates. She stated that she doesn't want the Board to get into the business of entering into "peculiar" agreements. Boilerplate language serves the Board well. Dr. Davidson stated that she doesn't understand this application very well, but it is what is in front of the Board, and the Board must deal with it, knowing that Dr. Govier has not had a problem with self-administering or diverting narcotics. This isn't really an accountable drug management system unless there is assay of waste medications. Frequency of unused waste medication assay should be done on a random basis, twice a month. That would probably be adequate, given this particular set of circumstances, but she would hate for it to be a precedent. Dr. Davidson stated that Dr. Govier is not going to be administering these drugs herself. She doesn't know how they're going to work that.

**DR. DAVIDSON MOVED THAT DR. GOVIER BE REQUIRED TO SUBMIT RANDOM ASSAYS ON A TWICE MONTHLY BASIS. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

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NORMAN I. HIRSCH, D.O.

Dr. Hirsch's request for approval of an ethics course was presented to the Board for consideration at this time.

**DR. STEINBERGH MOVED TO APPROVE THE PROFESSIONAL ETHICS COURSE TAILORED BY IDA C. SCHICK, Ph.D., AS FULFILLING PARAGRAPH 2e OF DR. HIRSCH'S JUNE 1, 2002 CONSENT AGREEMENT. DR. AGRESTA SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

GLEN A. IBEN, M.D.

Dr. Iben's request for direction on the frequency and number of charts to be reviewed by his monitoring physician, William J. Athens, D.O., was presented to the Board for consideration at this time.

**DR. STEIBNERGH MOVED TO DIRECT DR. ATHENS TO REVIEW 10 CHARTS ON A WEEKLY BASIS. DR. AGRESTA SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

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CYNTHIA J. JOHNSON, P.A.

Ms. Johnson's request for approval of a treating psychiatrist was presented to the Board for consideration at this time.

**DR. TALMAGE MOVED TO APPROVE TONI LOUISE CARMAN, M.D., TO SERVE AS MS. JOHNSON'S TREATING PSYCHIATRIST. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

ALLAN D. PACKER, M.D.

Dr. Packer's request for approval of a new monitoring physician was presented to the Board for consideration at this time.

**DR. STEINBERGH MOVED TO APPROVE ROBERT A. GIRMANN, M.D., TO SERVE AS DR. PACKER'S MONITORING PHYSICIAN. DR. SOMANI SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

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PAUL E. PANCOAST, M.D.

Dr. Pancoast's request for reductions in his drug screen requirement and his alcohol and drug rehabilitation meeting requirement was presented to the Board for consideration at this time.

**DR. STEINBERGH MOVED TO APPROVE DR. PANCOAST'S REQUEST TO REDUCE HIS DRUG SCREEN REQUIREMENT TO ONCE A MONTH. DR. STEINBERGH FURTHER MOVED TO REDUCE DR. PANCOAST'S ALCOHOL AND DRUG REHABILITATION MEETING REQUIREMENT FROM THREE A WEEK TO TWO A WEEK. DR. AGRESTA SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

THOMAS A. RANIERI, M.D.

Dr. Ranieri's request for approval of a monitoring physician was presented to the Board for consideration at this time.

**DR. STEINBERGH MOVED TO APPROVE DAVID J. DURKIN, M.D., TO SERVE AS DR. RANIERI'S MONITORING PHYSICIAN. DR. SOMANI SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

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LAWRENCE B. ROTHSTEIN, M.D.

Dr. Rothstein's request for approval of a new monitoring physician was presented to the Board for consideration at this time.

**DR. TALMAGE MOVED TO APPROVE DOUGLAS R. MOLIN, M.D., TO SERVE AS DR. ROTHSTEIN'S MONITORING PHYSICIAN, WITH 20 CHARTS REVIEWED ON A MONTHLY BASIS. DR. SOMANI SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

JOHN R. TRUMBO, M.D.

Dr. Trumbo's request for a reduction in his appearance schedule, and for an elimination of the chart review requirement of his January 9, 2002 Consent Agreement was presented to the Board for consideration at this time.

**DR. STEINBERGH MOVED TO GRANT DR. TRUMBO'S REQUEST FOR A REDUCTION IN HIS APPEARANCE SCHEDULE FROM EVERY THREE MONTHS TO EVERY SIX MONTHS. DR. STEINBERGH FURTHER MOVED TO REDUCE THE FREQUENCY AND NUMBER OF CHARTS REVIEWED TO 10 CHARTS PER MONTH FOR THE NEXT SIX MONTHS, AND THEN TO DISCONTINUE CHART REVIEW IF THERE ARE NO CONCERNS RAISED IN THAT TIME, AT THE DISCRETION OF THE SECRETARY AND SUPERVISING MEMBER. DR. AGRESTA SECONDED THE MOTION.**

Mr. Albert stated that there was a short discussion at the Executive Committee meeting about probationers who are not minimal standards cases, and who have never been involved with a problem in their practice. It was suggested that the Board might consider removing the chart review requirement after one year if everyone is in compliance.

Dr. Steinbergh stated that the Consent Agreement Committee report will address that issue. In this particular case, Dr. Trumbo has been in compliance for a while.

Dr. Talmage stated that he thinks that chart review, if done reasonably well, can reveal a lot about how

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someone practices. He also believes that it would pick up recurrences. He doesn't think chart review is misplaced at all.

Mr. Albert stated that he can't remember when there was a complaint from a deficiency in charts. He commented that the reviewer may have discussed problems directly with the probationer.

A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

SAMUEL Z. WESTERFIELD, III, M.D.

Dr. Westerfield's request for direction on the frequency and number of charts to be reviewed by his monitoring physician, Cecil C. Graham, M.D., was presented to the Board for consideration at this time.

**DR. STEINBERGH MOVED TO DIRECT DR. GRAHAM TO REVIEW 10 CHARTS ON A MONTHLY BASIS. DR. SOMANI SECONDED THE MOTION.**

Dr. Davidson stated that Dr. Westerfield has a significant problem with a significant mental illness history. Monitoring is very important for him. She noted that in the letter Dr. Westerfield supplied to the Board from Dr. Graham, it appears that Dr. Graham has delegated the monitoring duties to two other physicians in the group.

Ms. Bickers advised that Dr. Garg reviewed the curricula vitae of the other two physicians and was comfortable with them being the physician observers. Both have the appropriate boards.

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

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye

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Dr. Davidson - aye  
Dr. Agresta - aye  
Dr. Steinbergh - aye

The motion carried.

REINSTATEMENT REQUESTS

WILLIE L. JOSEY, M.D.

Dr. Josey's request for approval of an assessor, pursuant to paragraph C (3) of the Board's Order of March 13, 2002, was presented to the Board for consideration at this time.

**DR. STEINBERGH MOVED TO APPROVE BURNS M. BRADY, M.D., AS ONE OF THE ASSESSORS REQUIRED BY THE BOARD'S ORDER. DR. SOMANI SECONDED THE MOTION.** A vote was taken:

Vote:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Bhati	- aye
Dr. Somani	- aye
Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Agresta	- aye
Dr. Steinbergh	- aye

The motion carried.

MARY MEI-LING YUN, M.D.

Dr. Yun's request for approval of an assessor, pursuant to paragraph 7.b.ii of her September 12, 2001 Consent Agreement, was presented to the Board for consideration at this time.

**DR. STEINBERGH MOVED TO APPROVE MICHAEL A. GUREASKO, M.D., AS ONE OF THE ASSESSORS REQUIRED BY DR. YUN'S CONSENT AGREEMENT. DR. AGRESTA SECONDED THE MOTION.** A vote was taken:

Vote:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Bhati	- aye
Dr. Somani	- aye
Ms. Sloan	- aye

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Dr. Davidson - aye  
 Dr. Agresta - aye  
 Dr. Steinbergh - aye

The motion carried.

LICENSURE

RODGER MARTING, D.O.

Dr. Marting's request for endorsement of his NBOME status was presented to the Board for consideration at this time. Dr. Marting has not been engaged in the active practice of medicine since July 2000; however, he did pass Part 3 of the NBOME in August, 2002.

**DR. SOMANI MOVED TO APPROVE DR. MARTING'S REQUEST FOR ENDORSEMENT LICENSURE, SUBJECT TO RECEIPT AND APPROPRIATENESS OF NECESSARY DOCUMENTATION, AND SUBJECT TO HIS PASSING THE SPEX. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Bhati	- aye
Dr. Somani	- aye
Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Agresta	- aye
Dr. Steinbergh	- aye

The motion carried.

JODI BOLLENBACHER, PA-C; RODGER W. MCMANUS, PA-C; AND DONNA ELAINE VERHASSELT, PA-C - P.A. APPLICANTS

The above-captioned applications for full registration as physician assistants were presented to the Board for consideration at this time.

**DR. TALMAGE MOVED TO APPROVE THE REQUESTS FOR FULL REGISTRATION AS PHYSICIAN ASSISTANTS OF JODI BOLLENBACHER, PA-C, RODGER W. MCMANUS, PA-C AND DONNA ELAINE VERHASSELT, PA-C. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:

Mr. Albert	- aye
Dr. Egner	- aye

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Dr. Talmage	- aye
Dr. Bhati	- aye
Dr. Somani	- aye
Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Agresta	- aye
Dr. Steinbergh	- aye

The motion carried.

HUBER HTS. MEDICAL CENTER, MEDINA EMERGENCY ASSOCIATES, OHIO HEART CARE, OHIO PHYSICAL MEDICINE & REHABILITATION, INC., AND OHIO PHYSICAL MEDICINE & REHABILITATION, INC. - P.A. UTILIZATION PLANS

The above-captioned P.A. Utilization Plans were presented to the Board for consideration at this time.

**DR. TALMAGE MOVED TO APPROVE THE P.A. UTILIZATION PLANS OF HUBER HTS. MEDICAL CENTER, MEDINA EMERGENCY ASSOCIATES, OHIO HEART CARE, OHIO PHYSICAL MEDICINE & REHABILITATION, INC., AND OHIO PHYSICAL MEDICINE & REHABILITATION, INC., SUBJECT TO RECEIPT AND APPROPRIATENESS OF NECESSARY DOCUMENTATION. DR. BHATI SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

PHYSICIAN LICENSURE APPLICANTS

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

**DR. SOMANI MOVED TO APPROVE THE APPLICANTS LISTED IN LICENSURE EXHIBIT (A) FOR ENDORSEMENT LICENSURE, SUBJECT TO RECEIPT AND APPROPRIATENESS OF ALL NECESSARY DOCUMENTATION. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

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Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

THE MILLHON CLINIC - P.A. UTILIZATION PLAN

The above-captioned P.A. Utilization Plan was presented to the Board for consideration at this time.

**DR. SOMANI MOVED TO APPROVE THE MILLHON CLINIC'S P.A. UTILIZATION PLAN, SUBJECT TO RECEIPT AND APPROPRIATENESS OF NECESSARY DOCUMENTATION. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

THE FEDERATION OF STATE MEDICAL BOARDS' MODEL GUIDELINES FOR OPIOID ADDICTION TREATMENT IN THE OFFICE SETTING

Dr. Somani advised that he and Mr. Schmidt had attended a workshop, sponsored by the Federation and the National Association of Boards of Pharmacy. They had continued question marks about some of the differences between what the Board approves and the Federation's recommendations. Primarily, the amount of training required under the federal guidelines does not appear appropriate to them.

Mr. Schmidt stated that he thinks that there was a consensus of the Prescribing Committee last month that, all in all, this law is going to provide real opportunities for treatment that didn't exist previously. It will help, rather than hurt the situation. The Committee felt that it would be appropriate to adopt the Model Guidelines as a Policy Statement of the State Medical Board of Ohio, with the two provisos noted in the

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draft Policy Statement, a copy of which shall be maintained in the exhibits section of this journal.

**DR. STEINBERGH MOVED TO ADOPT THE PROPOSED POLICY STATEMENT ON OFFICE-BASED TREATMENT OF OPIOID ADDICTION. DR. SOMANI SECONDED THE MOTION. A vote was taken:**

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

#### ADMINISTRATIVE REPORT

Mr. Dilling referred to his written report, a copy of which shall be maintained in the exhibits section of this journal.

At this time Mr. Dilling presented “25 year pins” to Eileen M. Schmidt, Executive Assistant to the Director and Jewell M. Bates, Administrative Assistant, celebrating their 25 years of state service.

Mr. Dilling reminded Board members that the deadline for filing the Ethics Commission’s Financial Disclosure Statement and Conflict of Interest form (R.C. 102.04(D) Statement) is April 15, 2003. He asked Board members to contact Ms. Schmidt with any questions they may have about these forms.

Mr. Dilling stated that there was a press conference on public radio for Ohioans First, a project in which the Board is involved with the Department of Health and other private and public agencies in Ohio. Its goal is to make some impact on medical errors. The first initiative involves legible prescriptions and eliminating abbreviations, and it seems to be very well received. He stated that, hopefully, the Board can get engaged in more of these types of efforts.

Mr. Browning at this time presented a “15 year pin” to Mr. Dilling, celebrating 15 years of state service.

#### REPORTS OF ASSIGNED COMMITTEES

##### EXECUTIVE COMMITTEE

Mr. Dilling advised that the Committee discussed the budget. He believes things went as well as they possibly could at the Board’s budget hearing. Representative Merle G. Kearns is backing an amendment to

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get the additional money the Board requested. Mr. Dilling stated that there is a debate going on about the rotary funds, and how much reserve is proper for an agency to have is one of the issues being debated. The Board has to aggressively get the word out that this is money that the Board collected through licensure fees and were non-General Revenue Fund (GRF) oriented from the start. The State does have the authority to take some of the Board's money.

#### PRESCRIBING AND PAIN MANAGEMENT COMMITTEE

Dr. Davidson stated that she reported on the Committee on Prescriptive Governance (CPG). Dr. Davidson stated that she feels that there is a rush to get new drugs on the formulary. She has expressed some concern that there is not enough information about some of these drugs to approve for the formulary. She advised that Dr. Somani recommended a six-month window for new drugs. Dr. Davidson stated that at the CPG meeting she passed out an article from JAMA, looking back at the number of drugs, and there was a very high number, that within the first six to twelve months of FDA approval were either pulled or got a black box warning for adverse problems. Dr. Davidson stated that she doesn't believe that nurses receive the letter doctors get when black box warnings are put out by the FDA. Dr. Davidson stated that Dr. Somani has recommended developing a memo from the Board to the CPG, reflecting the concern and proposing the six-month window, after introduction of the new drug, prior to placing it on the formulary.

Dr. Davidson stated that the next CPG meeting is in April.

**DR. SOMANI MOVED TO SEND THE PROPOSED LETTER TO THE CPG. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

#### CONSENT AGREEMENT COMMITTEE

Dr. Steinbergh At this time reviewed a revised draft of her memorandum on "Monitoring Probationers Using Chart Review."

**DR. BHATI MOVED TO APPROVE THE GUIDELINES PROPOSED IN DR. STEINBERGH'S MEMORANDUM. DR. SOMANI SECONDED THE MOTION.** A vote was taken:

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Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

#### LICENSURE COMMITTEE

Dr. Somani stated that the Committee met and reviewed proposed guidelines for applications to be referred to the Licensure Committee before being presented to the full Board. Only those who do not fit the criteria for licensure will be brought to the Licensure Committee. This includes those who do not have 24 months of approved training, those who have not been engaged in the active practice of medicine for two years, and USMLE and Limited Branch Examination accommodation requests. The Committee will make its recommendation to the Board on licensure.

Dr. Somani continued that the Committee also discussed visiting medical faculty certificates. The Board staff has learned that there are 16 other states that issue a visiting faculty license. Most of them issue the license for one year, but then allow them to be renewed up to four years. Some states allow this experience to count towards fulfilling the requirement for permanent license. Dr. Somani stated that the Ohio statutes do not allow the Board to issue such a certificate for more than one year. There is no renewal, or no ability to apply for a second certificate. No exceptions can be made.

Dr. Somani stated that the third issue discussed by the Committee is the profile of Ohio physicians. This is a work in progress and does not give a full picture of the contribution of the doctors of osteopathic medicine. He will update that information for a future report. There is some interesting information that has been collected. One out of four practicing physicians is an international medical graduate (IMG). In many underserved counties, the number of IMGs is even higher. Some have more IMGs than U.S. M.D. physicians. More complete information will be gathered to include D.O.s.

Dr. Somani stated that the Committee discussed the impact of malpractice and what is happening in Ohio with physicians quitting practice. He stated that the Committee has no information about what is happening, or what may happen as soon as the stock market changes, but what he found from the analysis is that almost 25% of the physicians in practice in Ohio are above age 60. This is the group that you would expect to retire. That may have quite a bit of impact over the next few years on access to care. He noted that it is already difficult to find physicians in certain specialties in Ohio. Dr. Somani added that there is a greater percentage of D.O.s in underserved areas than M.D.s.

Dr. Steinbergh stated that 64% of the graduates of Ohio University's College of Osteopathic medicine stay

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in Ohio.

#### LEGISLATIVE LIAISON COMMITTEE

Mr. Browning stated that the Committee talked about the budget and the introduction of a revised physical therapy bill that narrows the ability of physical therapists to deal with patients directly, without patients being referred by physicians.

Mr. Wayda stated that a Legislative Report memorandum, a copy of which shall be maintained in the exhibits section of this journal, has been distributed to the Board members. That memorandum indicates that the PT bill has been rewritten this year and takes into account many of the concerns that the Board suggested to the Legislature last year. There are some other issues that staff will be working on with the association. They are quite amenable to language changes within the basic parameters they set out.

Mr. Wayda stated that the Board also needs to talk to the association about tying the performance of these individuals to their grounds for discipline in their statutes. Mr. Wayda stated that he can't imagine that that would be a problem.

Dr. Talmage asked whether the issue of allowing direct access only for patients willing to pay cash is going to pass.

Mr. Wayda stated that the language says that there is no effort in this bill to force insurance companies to pay for these services without a referral. Insurance companies can make that decision on their own. Last year and this year the insurance companies were silent on this legislation.

Dr. Bhati commented that PT treatments are not inexpensive.

Dr. Steinbergh stated that her concern is that, if the therapist is performing without physician referral, he or she should have sufficient malpractice coverage.

Dr. Egner commented that they will have to charge the same amount for their services, whether or not the patient is referred. They can't have two different fee schedules.

#### LIMITED BRANCH COMMITTEE

Dr. Talmage advised that the Committee reviewed a request for a certificate of good standing from the Omaha School of Massage Therapy, and a request of course approval from the Cosmetic Therapy Training Center. The Committee recommends approving the Omaha School's request, but tabled the course request due to the fact that both collaborating physicians proposed for this course are emergency room physicians. The Committee is concerned that their expertise in light-based hair removal is insufficient.

**DR. TALMAGE MOVED TO APPROVE OMAHA SCHOOL OF MASSAGE THERAPY'S REQUEST FOR A CERTIFICATE OF GOOD STANDING. DR. SOMANI SECONDED THE MOTION.** A vote was taken:

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Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Talmage stated that the other two schools on the agenda did not submit documentation in time for consideration.

#### REPORT BY RONALD C. AGRESTA, M.D., ON F.S.M.B. BOARD OF DIRECTORS MEETING

Dr. Agresta noted that Mr. Dilling also attended the Board of Directors meeting. He stated that the Board discussed the Clinical Skills Exam (CSE) and the Federation's financial position. He commented that the Federation's finances have been hit by the Stock Market, but there are still enough reserves to run the organization for at least one year.

Dr. Agresta continued that it also discussed improving relationships between the Federation and the osteopathic community, and some joint ventures. The osteopathic community is going to do a joint venture with the NBME and the ECFMG in relationship to clinical skills testing. The osteopathic physicians and organizations are committed to doing clinical skills testing. They're doing it with less turmoil than the allopathic side is having. Dr. Agresta stated that clinical skills testing will happen, whether the allopathic physicians want it to or not. He stated that it's the right thing to do. A Harris Poll does show that citizens do want their physicians to be trained in clinical and communications skills, and they expect physicians to be tested for it. Unfortunately, the allopathic students have equated the increase in cost of their education, and they are claiming that adding another \$1,000 to the testing process will break their backs. Dr. Agresta stated that the problem is really with what the schools charge, and they should focus their arguments in another area. Most students graduate with a \$130,000 bill, and it's not because of licensure. A couple schools last year increased their tuition by 10%.

Dr. Agresta stated that another topic discussed was the continued existence of a seamless initiative to try to form a common licensure pathway. It's on track, but running slow. Dr. Agresta stated that, although compromises will have to be made, he believes that both the NBME and the NBOME are committed to doing something that will be appropriate for everybody.

Dr. Agresta stated that, because many states are having budgetary problems, there probably won't be as many people attending the Federation meeting this year as there have been in the past. Dr. Agresta stated that this is going to be an exciting meeting because the format is changing so drastically from what has

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been done before. There will be more interaction with the audience. He noted that Dr. Steinbergh is on the Program Committee for the meeting.

Dr. Talmage stated that the A.M.A. has taken the tack that medical schools should administer clinical skills examinations. He asked whether schools have come forward to indicate that they can do it.

Dr. Agresta stated that there are schools that teach clinical skills, but you can't test yourself. If you could, you wouldn't need licensure at all. You could just say that someone went to medical school and can go out and practice. That's what happened before the FLEX exams. Nobody wants to go back to that.

Dr. Agresta added that Jordan Cohen, the President of the American Association of Medical Colleges, has come out in favor of clinical skills testing by licensing boards. That is the organization that all the allopathic institutions belong to. The AOA also believes that clinical skills testing is important enough that they have pursued the same pathway to test their students. This will happen in 2004 or 2005.

Dr. Steinbergh stated that she and Dr. Bhati were supposed to go to Philadelphia to tour one of the testing sites, but the trip was canceled because of inclement weather. This will be rescheduled.

Mr. Albert stated that Dr. Agresta mentioned something about communication skills. Communication skills is the basis of most complaints.

Dr. Steinbergh stated that it's a big issue in terms of malpractice. People like to blame the cost of malpractice insurance, but one of the biggest issues in malpractice claims is simply the fact that physicians are not communicating properly with their patients and there is a disruption of the respect the patients have with their physicians. She stated that, with improved communications skills, there could potentially be a decrease in malpractice claims.

Mr. Albert commented that many complaints the Board receives are due to poor communication skills.

Dr. Agresta stated that licensure does drive curriculums. That's not entirely bad. Schools that didn't teach clinical skills are now becoming interested in teaching it. Teaching the ability to communicate is one area in which the osteopathic schools are doing very well.

Dr. Agresta commented that he has seen two of the test sites, and there will be five others developed. They're totally monitored, taped. The standardized patients become very, very good. He described the facilities and explained the procedure for examining these students. Dr. Agresta stated that everyone who has seen the setup has been impressed with it, and added that some people who were totally against this have said that it's the right way to go. It's a very impressive setup.

Dr. Bhati stated that he is one of the bigger critics of this because he feels that it is the responsibility of the medical schools and residency programs. He does understand where Dr. Agresta is coming from, and he respects Dr. Agresta's opinion, but his problem is that he believes there could be a better way to find this one percent of people who will fail after three tests. Imagine someone going through medical school and then a residency, and then being told that they are no good.

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Dr. Agresta stated that the truth of the matter is that, in the pilot studies done, the numbers were higher than that.

In response to Dr. Egner's questions, Dr. Agresta stated that the CSE will be part of USMLE 2. He stated that you can't do it with USMLE 3, because the individual is done with school when he takes that and there is no way to remediate him or her. The student will take it in USMLE 2, between the third and fourth year of medical school, and if there are deficiencies, the school still has an opportunity to help the student with his or her clinical skills. You're going to know where you're deficient.

Dr. Steinbergh stated that most of the schools today start clinical work from day 1. Certainly by that time, you can see if a person's going to be an effective practitioner.

Dr. Bhati stated that he believes these people can be eliminated at the time of admission into medical school.

Dr. Talmage stated that he thinks faculties will be orienting toward that.

Dr. Agresta stated that that puts too much pressure on the schools. It's very difficult to kick someone out after the second year of medical school, unless they fail didactically. But some people who do well in school are still going to be bad physicians. It would be very difficult for schools to do this without getting into some kind of a legal battle. If this doesn't catch them, it will at least teach them how they are supposed to communicate with people, as opposed to what is done today.

Dr. Bhati commented that he was appointed to the Federation Finance Committee in April 2002, yet the first time they met was a month ago. He stated that he raised quite a stink about this, because it's unlike any other Finance Committee he's ever served on.

Dr. Agresta stated that the Board of Directors discussed that issue and are going to incorporate that in with the elective leadership process to see if there is a way to restructure the Finance Committee. There is also a subcommittee of the Board itself that works on finance, too. The process always ends up late for the Finance Committee. Everything is approved before it gets to them.

Mr. Dilling stated that next month the agenda will include resolutions that will be voted on at the Federation meeting. One is for the Federation to take more of a stand and give advice to state boards on allied practitioners and increased scopes of practice. He remarked that there is a concern that, with the allied practices obtaining broader scopes, there will be little impetus for individuals entering medical schools. He added that there is no CSE for those individuals. The Federation needs to work with citizen groups, professionals and schools, and try to get on the same page on this.

Dr. Agresta stated that that was brought up in a resolution one or two years ago that was put in limbo. It has resurfaced and it needs to be looked at in a different ways than it was in the past.

Dr. Steinbergh stated that nurse anesthetists have a big billboard on I 375 stating that 65% of anesthesia is delivered by nurse anesthetists. Who is educating the public on physician care? What is the point of

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training people to be primary care physicians and anesthesiologists and every other group, when people with less education can do the same thing. There's something really wrong with the educational process that allows this.

Dr. Somani stated that, when he did his analysis, this stood out as a major concern. What should the health care workforce be like in ten years?

Mr. Dilling stated that, at the Board of Directors meeting, there was discussion about grants that the Federation obtained, and the Board thought that the grants were great. He reminded the Board that two years ago the Federation voted down the Ohio resolution to devote someone on staff to writing grants.

At this time, referring to a Report and Recommendation the Board considered earlier in the meeting, Mr. Dilling noted that the individual involved had not appeared at his criminal trial, and did not appear before the Board, which had caused question in some Board members' minds. Mr. Dilling cautioned the Board against retrying something that was previously tried in the courts.

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

Thereupon at 4:40 p.m. on March 12, 2003, the March 12, 2003 meeting of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on March 12, 2003, as approved on April 2, 2003.



R. Gregory Browning, President



Anand G. Garg, M.D., Secretary

(SEAL)

