

August 10, 2005

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**MINUTES**

**THE STATE MEDICAL BOARD OF OHIO**

**August 10, 2005**

Patricia J. Davidson, M.D., President, called the meeting to order at 1:00 p.m., at the Vern Riffe Center for Government and the Arts, 77 S. High St., Columbus, Ohio 43215, Room #1932, with the following members present: Andrew F. Robbins, Jr., M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Carol L. Egner, M.D.; Nandlal Varyani, M.D.; David S. Buchan, D.P.M.; Deepak Kumar, M.D.; R. Gregory Browning, Ph.D.; and Anquetette Sloan. The following did not attend the meeting: David S. Buchan, D.P.M.; Kamala Saxena, M.D.; and Anita M. Steinbergh, D.O.

Also present were: Richard A. Whitehouse, Executive Director; Diann K. Thompson, Assistant Executive Director; Lori S. Gilbert, Assistant Executive Director in charge of Investigations, Compliance & Enforcement; Mark R. Blackmer, Marcie P. Pastrick, Sallie J. Debolt, David P. Katko, Rebecca J. Marshall, Karen H. Mortland, Kathleen S. Peterson, and Charles A. Woodbeck, Enforcement Attorneys; Lauren Lubow, Senior Executive Staff Attorney; Tara L. Berrien, Assistant Attorney General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Coordinator for Assessment and Development; Danielle Bickers, Compliance Officer; Barbara Jacobs, Public Services Administrator; Jacqueline A. Moore and Annette Jones, Disciplinary Information Assistants.

**EXECUTIVE SESSION**

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

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- 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: Sharon W. Murphy and Patricia A. Davidson, Hearing Examiners.

#### MINUTES REVIEW

**MR. BROWNING MOVED TO APPROVE THE MINUTES OF JULY 13, 2005. MR. ALBERT SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

#### REPORTS AND RECOMMENDATIONS

Dr. Davidson announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of Kyle Howard, M.D.; Ralph Arden Hugunin, M.D.; and Ian Nunnally, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye

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Dr. Varyani	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Davidson	- aye

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

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

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

KYLE HOWARD, M.D.

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

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

Dr. Howard was accompanied by his attorney, Thomas W. Hess. Mr. Hess indicated that, in light of the hearing record, he requests that the Board adopt Ms. Murphy's Report and Recommendation. He commented that it is appropriate and fair in this particular circumstance.

Dr. Howard thanked the Board for allowing him the opportunity to make a statement. Dr. Howard stated that he did not intend to defraud anyone. The coding practices that he used had been something that he used over the years. When he had an increase in patient visits, he should have changed his coding practices, but he didn't. Dr. Howard stated that he made full restitution for that. He asked that the Board accept the Hearing Examiner's findings.

Mr. Hess indicated that they would answer any questions Board members had.

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

Ms. Berrien stated that, with all due respect, she objects to the Proposed Order in this case. Based on the facts, Dr. Howard's case warrants a harsher penalty. The Board took disciplinary action against

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Dr. Howard for his guilty plea to one count of Medicaid fraud. The State presented a certified copy of Dr. Howard's guilty plea in Warren County. Ms. Berrien stated that, under the Board's rules, a certified copy of a guilty plea in the courts to any crime is conclusive proof of the commission of all of the elements of that crime. One of the elements of Medicaid fraud is "knowledge;" so Dr. Howard knew what he was doing. When Dr. Howard pled guilty in federal court, he admitted that he knowingly made a false or misleading statement to gain Medicaid reimbursement; however, now, before the Board, he reverses his voluntary statement and says he mistakenly made false statements because he didn't understand the CPT codes.

Ms. Berrien stated that the Hearing Examiner correctly pointed out that Dr. Howard's failure to appreciate the codes was not an excuse to violate the law. Ms. Berrien stated that it shouldn't be used to mitigate any sanction in this case, either. As part of his plea, Dr. Howard was to pay fines and surrender his license. Dr. Howard was convicted for an intentional criminal act and now he's trying to mitigate something that can't be mitigated. The number of patients that Dr. Howard saw each day had increased to 40 to 50 patients, which meant that he spent less time with each patient but continued to bill at a CPT code that recommended a 25-30 minute visit. Ms. Berrien added that the mere number of patients that Dr. Howard was billing for indicates that he couldn't have been innocently confused about the billing codes.

Ms. Berrien continued that the Board members are welcome to take into account their own experience with learning the current CPT codes and how to bill, based on the complexity and the time of each visit. Is it really conceivable for Dr. Howard to innocently bill at this code when he saw each patient for, at most, 15 minutes? She noted that Dr. Howard said that he believed he could bill at a code that required medical decisions of moderate complexity, based not on the severity of the patient's problem, but on the number of problems that the patient presented. She asked whether that was a reasonable interpretation of the code. She stated that it's not, and added that Dr. Howard admitted that he didn't thoroughly read the codes. Dr. Howard was responsible for the billing. Did he knowingly disregard the billing code, or did he mistakenly disregard the billing code? Ms. Berrien reminded the Board that Dr. Howard told the court that he knew that what he was doing was wrong.

Ms. Berrien stated that, in his written motion for adoption of the Report and Recommendation, Dr. Howard tried to analogize this case to other cases where the Board imposed a short suspension. Ms. Berrien noted that the Board is allowed to consider each case on a case-by-case basis; but Dr. Howard has raised a proportionality argument, so she will review it.

Ms. Berrien stated that the Board has in past deliberations said that the dollar amount in these cases matters. She at this time summarized the cases listed in Dr. Howard's motion as follows:

- In the first case Dr. Howard mentions, Dr. Cadsawan's, the Board imposed a 180-day suspension. She noted that Dr. Cadsawan was ordered to pay \$86,000 in restitution. Although the Board didn't condone Dr. Cadsawan's illegal behavior, it did note that the physician was upcoding in order to provide care to the poor in Cleveland. Here, Dr. Howard was ordered to pay over \$215,000 in restitution. There has been no evidence to demonstrate that Dr. Howard was upcoding for anything

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but personal gain.

- In the case of Dr. Amro, who received a six-month suspension, Dr. Amro's restitution was \$21,000, again, significantly lower than Dr. Howard's.
- Dr. Godshall, who received a two-year suspension from the Board, paid restitution of \$500.00. Ms. Berrien noted that Dr. Howard forgot to mention that the actual sanction imposed on Dr. Godshall was a stayed permanent revocation.
- Dr. Redmond received a 90-day suspension for allowing an advanced practice nurse to provide services to patients and then bill Medicaid, using his number. That case is distinguishable because in that case there was no issue of upcoding.
- Dr. Neufeld, who received a 30-day suspension, was fined \$15.00 for five false claims to Medicare and \$132.00 to Medicaid.
- Dr. Boehm, who received a one-year suspension, was fined one-third of what Dr. Howard's fine was.

Ms. Berrien stated that the fact that the court, in this case, ordered a significantly higher amount of restitution, and ordered Dr. Howard to surrender his license speaks to the magnitude of Dr. Howard's actions. The cases that are most similar to Dr. Howard's case are not even mentioned in his motion to the Board. One of those cases concerned Dr. Michael, who, in 2001, was billing for longer periods of time spent with a patient than actually occurred. Dr. Michael was ordered to pay \$58,000 in restitution. Here, Dr. Howard was involved in a similar billing scheme and was ordered to pay almost four times as much in restitution as was Dr. Michael. The Board permanently revoked Dr. Michael's license.

Ms. Berrien stated that there were other cases where the Board has ordered permanent revocations for health care fraud and convictions. In these other cases restitution was paid, at most, in the amount of \$176,000. In the case of Dr. Howard, restitution was ordered in the amount of \$215,000.

Ms. Berrien stated that the poor choice to over bill for Medicaid has adverse effects, not only on the funding system, but also on other Medicaid patients. This case may not involve multiple counts of health care fraud, but the amount of restitution and forfeitures, which totaled over \$600,000, is telling. Dr. Howard was seeing 40-50 patients a day, and billing at a high code, requiring 30-minute visits. At most he was seeing them for 15 minutes. Dr. Howard admitted himself that his office was similar to running an emergency room.

Ms. Berrien stated that the Board can impose any sanction, but on a spectrum between 180 days, which was recommended here, and a permanent revocation, based on the facts and the amount of restitution, this case moves further away from 180 days and closer to a permanent revocation.

**MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED**

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**FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF KYLE HOWARD, M.D. DR. ROBBINS SECONDED THE MOTION.**

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

Dr. Kumar stated that he read this whole case; and at first glance, it is quite clear that Dr. Howard admitted to a fourth degree felony of fraud on the most vulnerable population in the state. However, when he looks at the case in detail, he gets more puzzled and a little bit befuddled to see exactly what is going on. He stated that he is a little bit lost.

Dr. Kumar explained that there is no question about the fact that Dr. Howard has never been charged for billing for tests that he did not do, procedures that he did not do, office visits that never took place, or any fancy scheme. What he essentially admitted to was that he up-coded to a certain level when he should have billed at a lower level. Dr. Kumar stated that, to understand that, he had to go back and inform what his understanding is of the trials and tribulations physicians went through with the EM coding and the CPT codes and so on and so forth. Dr. Kumar stated that, before 1996 or 1997, the coding system talked about the SOAP format, the “subjective, objective, assessment, plan” format. In the 1996-'97 or 1997-'98 time frames, the system was changed to the current EM (Evaluation and Management) coding, for office visits and so on and so forth. As it came out, it was very complex, very confusing, and very subject to interpretation by different people. The way it was, you had six or seven major groupings, the new patient codes, the established patient codes, the hospital codes, etc. Under each major grouping, there were up to five levels and in each level you have to take into account four or five elements, such as history, physical exam, decision making, time spent, etc., and each of the elements have sub-elements, given bullet points, and you score on the basis of bullet points. Dr. Kumar stated that it was really confusing when the new system came out.

Dr. Kumar stated that public comments started then, and he believes some of them are applicable to this case. Some of the things that were said at that time that were somewhat humorous was that the physician needs to go into the examination room, not with a stethoscope, but with a stopwatch. Another thing said was that it was so confusing to figure out, one essentially needed a mathematician or Ph.D. to figure out which was the valid code. Dr. Kumar stated that another humorous comment made was that, if an ophthalmologist needed to use more than one bullet-point per physical examination, he would need to start doing rectal or pelvic examinations.

Dr. Kumar continued that, with all that going on, there were changes made, and some of the changes are applicable in Dr. Howard's case. One of the changes that was made that is not applicable, is that instead of bullet points, there were system points, so that one wouldn't have to calculate all of the bullet points. The time element was eliminated from exact measurements of the CPT codes. The time measurement was left as a supplement, essentially to go and to be looked at if the other things did not exist. There was reasoning for this because of the fact that in the CPT code you will see the time element as a suggested subset. Currently today, if you look at any compliance program, they eliminate the time element out of any compliance codes.

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Dr. Kumar stated that the other thing that came out as a ruling in 1998 or 1999 was that innocent billing disputes or mistakes would not be prosecuted. Dr. Kumar stated that here the Board has a physician who has admitted to all of this. He asked whether he is missing something, or whether there is something deeper in the record to show that Dr. Howard really did something a lot more serious, and by admitting what he has, he is covering it up. Dr. Kumar asked whether this might have just been naiveté or innocence and Dr. Howard really didn't know how the EM codes are functioning. Dr. Kumar stated that that's where he's lost. If he has to simply go by the record, then he has to assume that Dr. Howard did not have effective knowledge of how the EM codes were developed and implemented. Dr. Kumar stated that, even if Dr. Howard up coded by one level, the difference of payments is no more than about \$45,000 to \$50,000 for the whole year. The difference between the lower level and the next level is \$9.00 to \$10.00.

Dr. Kumar stated that he wonders why Dr. Howard admitted to being paid \$215,000. He questioned whether there was something else going on. Dr. Kumar suggested that, based on the record, the Board should accept Dr. Howard's surrender of his license, to which he agreed in the plea bargain, and if conditions for reinstatement are necessary, the Board could add that. He commented that one of the conditions for reinstatement that must be included is that Dr. Howard must take an EM Coding course, which is not included in the Report and Recommendation.

Mr. Browning asked whether Dr. Kumar is making a proposed amendment.

Dr. Kumar stated that he thinks that, instead of suspending Dr. Howard's license, the Board should accept his license surrender, which Dr. Howard already did. That takes the Board where it needs to be. Beyond that, if the Board wants to give Dr. Howard a chance to reapply, the Board needs to include conditions for that.

Dr. Egner stated that she doesn't think that Dr. Howard surrendered his license. He voluntarily closed his practice.

Dr. Kumar stated that Dr. Howard sent a letter surrendering his license.

Dr. Egner stated that the Board didn't accept that surrender. A physician can surrender his license to the Board, but the Board must determine whether or not it will accept that surrender. Dr. Howard has a license and the Board needs to act on that license.

Dr. Kumar suggested that the Board accept Dr. Howard's surrender.

Dr. Egner questioned accepting the surrender.

Mr. Browning asked for clarification.

Ms. Lubow advised that Dr. Howard tendered his surrender to the Board, but under statute, the Board must accept that surrender before it is effective. The Board did not accept Dr. Howard's surrender.

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Dr. Kumar stated that he is confused, and he questioned whether there is something more serious going on, or whether this is just a billing mistake that he accepted to cover something else that is going on.

Mr. Browning stated that he has a high degree of sensitivity to Medicaid fraud, given his professional background and his tenure on a recent Medicaid Reform Commission. It is a major problem in this state, costing citizens millions of dollars. Mr. Browning stated that treating this case very seriously is the right thing to do.

Mr. Browning stated that he agrees with Dr. Kumar that the fact pattern here is such that the Board finds itself in a gray zone. The Hearing Examiner, at least, thinks that it is reasonable to come forward with this approach because the Board doesn't have other facts to show that he has a broader pattern of manipulating the system to enrich himself. There is a single pattern. Mr. Browning noted that there may be some confusion here, and if the Board goes with this approach, it's giving Dr. Howard the benefit of the doubt that, in fact, that's what happened. It shouldn't have happened and it was not responsible, and it was not the good practice of medicine; and though it was large, it was limited to a certain fact pattern. Whether or not it was intentional is the big question. Mr. Browning stated that he thinks that he agrees with the proposal that, given what the Board knows, giving this person the benefit of the doubt is reasonable. He added that, if a Board member thinks that there should be a heavier penalty than what is proposed by the Hearing Examiner, he would be willing to consider that. He commented that 180 days out of practice is not a huge amount of time, and would be a further economic penalty on Dr. Howard. Mr. Browning stated that he feels that the assumptions that drive the Proposed Order are reasonable assumptions.

Dr. Kumar asked whether the Board wants the suspension of Dr. Howard's license to be retroactive since Dr. Howard hasn't practiced since September 1, 2004. Dr. Kumar noted that he has been out of practice for more than six months already.

Dr. Egner stated that she does not think that the suspension should be retroactive, as requested in Dr. Howard's objections. She stated that Dr. Howard voluntarily closed his office. Looking at what Dr. Howard did, she personally would like to see him out of practice for longer than six months. She would certainly not want the suspension to be retroactive. She would want the suspension to be effective from the date that the Report and Recommendation goes into effect and, at least, 180 days forward.

Dr. Egner stated that she thinks that this is more serious than some of the other cases. She stated that she feels that Ms. Berrien presented a very factual and excellent presentation of past cases the Board has had. The money amount is very large in this case, and it's only in keeping with the seriousness of what Dr. Howard did. The Board has no other conclusion to draw than that.

Dr. Kumar stated that he understands that. He added that, however, he is concerned. Dr. Kumar stated that if the billing issue, which can be so confusing, is the only thing there was, then Dr. Howard should have been paying the difference between the various levels of codes instead of the whole amount. Dr. Kumar advised that \$216,000 comes from seeing the entire patient population, 40-50 patients, half of them for the year. Dr. Kumar stated that he does not know why Dr. Howard agreed to pay back the entire amount.

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Dr. Egner stated that all doctors are subject to the same coding process. She agreed that it is a hassle to a physician's practice to have to see a patient, practice medicine and then decipher what code fits every step that she does; but that's the system that physicians live under, and they must all abide by it. When physicians don't abide by it, they're felons.

Dr. Robbins stated that he agrees with Dr. Egner. This is much more egregious. The Board has to go by the record, and the record is that Dr. Howard pled guilty to charges of Medicaid fraud. Dr. Robbins stated that, in his mind, it is not just a matter of Dr. Howard's not understanding the codes, of his upcoding a little bit. Dr. Robbins commented that he thinks that any logical person hearing that would say, "okay, I made a mistake, I'm willing to do restitution, but I'm clearly not going to plead and say that I committed fraud. It wasn't fraud, I just didn't know what was going on." Dr. Robbins stressed that there is a plea of fraud in this case. Dr. Robbins stated that that's what the Board has to go on. He added that the amount is incredible. Dr. Robbins stated that, if the Board does suspend Dr. Howard for six months, that suspension cannot be retroactive. He added that he thinks that six months is a very lenient sanction.

Dr. Robbins stated that all physicians are inundated with coding questions. When cases like this come out, physicians go to people to help them determine, in their offices, what this means: "How do we fix it, how do we get our staff on board, are we coding correctly?" Dr. Robbins stated that that is all part of medicine today, and that's what physicians have to do. What they don't do is decide on their own and start moving up in codes.

Dr. Robbins again noted that Dr. Howard pled guilty to Medicaid fraud. Dr. Robbins stated that he takes that very seriously; and, clearly, the judge took it very, very seriously, and wanted Dr. Howard's license. Dr. Robbins stated that, in his mind, this is much more serious, and he would be in favor of a harsher sanction than that proposed.

Dr. Kumar stated that he is struggling because if it was simply a case of billing or coding errors, why did Dr. Howard admit to fraud? That's what bothers him. In that sense, he is considering that the Board should give him more than a slap on the wrist, perhaps permanent revocation. Dr. Kumar indicated that he didn't feel that the record supported a permanent revocation. He noted that the record constantly talks about the time elements and the upcoding. If you only judge on that, he's not sure you can be harsher than the proposed sanction.

Dr. Robbins stated that he doesn't think that the Board can retry the case. The record is that Dr. Howard pled to Medicaid fraud. Putting himself in that situation, he would never, ever, ever plead to Medicaid fraud, if it was an innocent mistake. Dr. Robbins stressed that that's not what this record is. The Board has to go by the record, and the record is that Dr. Howard pled guilty to Medicaid fraud.

Dr. Egner asked Ms. Sloan to give the Board her opinion. She stated that she feels that it is especially important in these types of cases for the consumer members to voice their reactions.

Ms. Sloan stated that, in her opinion, the proposed sanction is a slap on the wrist and she would favor permanent revocation in this case. Her opinion is based on the fact that what the Board has in front of it, as

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Dr. Robbins indicated, is that Dr. Howard admitted to a felony charge. The amount of restitution he was ordered to pay is one of the largest she has ever seen. He was ordered to pay a \$400,000 fine in addition to the \$216,000 restitution. This is quite large, and it is unacceptable to say that this is what he had been doing on a regular basis and he never changed. Ms. Sloan stated that, when things change, it's your duty to keep up with the changes, whether medical or administrative. Ms. Sloan again spoke in support of permanent revocation.

**MS. SLOAN MOVED TO AMEND MS. MURPHY'S PROPOSED ORDER IN THE MATTER OF KYLE HOWARD, M.D., TO SUBSTITUTE AN ORDER OF PERMANENT REVOCATION. DR. EGNER SECONDED THE MOTION.**

Dr. Kumar stated that he understands what Ms. Sloan is saying, but that why he's a little bit lost. On one hand he sees one thing on the record, but the record itself is conflicting. There is a felony conviction in one place, and what that felony conviction is said to be for. He offered examples from his own practice: One of the criteria for determining what the coding should be is based on the complexity of the case. If he sees a patient with cancer of the rectum, and he wants to bill it on the basis of high complexity, he could argue that that's the right thing to do. At the same time, someone could argue that it's moderate complexity, and that changes the code level by one or two levels very easily. Dr. Kumar stated that he can come up with arguments on both sides, and very effective arguments. It's such a borderline thing. Dr. Kumar stated that he feels that that's where the complexity of the coding system is. Currently, he and his partners are going through this issue where they coded it "moderate complexity cancer of the rectum," and the insurance company said it's a mild complexity because they do it every day. Dr. Kumar stated that it's such an ambiguous thing, and that's one of the reasons why he has a problem.

A vote was taken on Ms. Sloan's motion to amend:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- nay
	Mr. Browning	- nay
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

It was explained to the Board that a motion to amend needs only a majority vote to carry. A motion to take action needs at least six votes.

**DR. EGNER MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF KYLE**

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**HOWARD, M.D. DR. ROBBINS SECONDED THE MOTION.**

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

Dr. Egner stated that she came to this meeting not 100% sure of what to do, and she thinks that she has benefited from the discussion. She agrees with a lot of the points Dr. Kumar has made, and she understands what he's saying; but Dr. Howard pled guilty to fraud, and the guidelines state that the minimum penalty is permanent revocation. To substantiate that sanction, the case involves a large restitution payment, as well as an extremely large fine. It's logical to take from that the seriousness of what Dr. Howard did. Dr. Egner stated that she feels confident that the amended order is the right thing to do.

Mr. Browning stated that there is too much gray area in this case. Mr. Browning stated that he thinks that a serious sanction is in order and would vote for one, but spoke against permanent revocation in this case. Mr. Browning noted that the Board has seen many, many cases of Medicaid fraud and has not taken people out permanently. All the cases are different, all the cases are individual, and he recognizes that. He understands the logic of permanent revocation; in some ways, it's the easiest thing to do, particularly given the significance of the problem of Medicaid fraud in this state and nation. Mr. Browning stated that he just thinks that there's too much gray area in this case for him to vote for it.

Dr. Kumar agreed with Mr. Browning. He added that, regardless of whether Dr. Howard gets a license back or not, he's not going to be able to practice effectively because he will be barred from Medicare, Medicaid and most of the insurance companies. If the Board grants Dr. Howard a license, the best he will be able to do is work with some sort of agency such as "Doctors Without Borders," or other charitable organizations.

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

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- nay
	Mr. Browning	- nay
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion failed.

Mr. Browning suggested amending the original Proposed Order to increase the suspension time to one year and to include a course in coding.

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Dr. Egner suggested including a stayed permanent revocation. She stated that this sanction is much less than many others the Board has imposed for Medicaid fraud.

**MR. BROWNING MOVED TO AMEND THE AMENDED ORDER TO READ AS FOLLOWS:**

- A. **PERMANENT REVOCATION; STAYED; SUSPENSION:** The certificate of Kyle Howard, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Howard's certificate shall be SUSPENDED for an indefinite period time, but not less than one year.
- B. **INTERIM MONITORING:** During the period that Dr. Howard's certificate to practice medicine and surgery in Ohio is suspended, Dr. Howard shall comply with the following terms, conditions, and limitations:
1. **Obey the Law and Terms of Criminal Probation:** Dr. Howard shall obey all federal, state, and local laws; all rules governing the practice of medicine and surgery in Ohio; and all terms of the sentence imposed by the Court of Common Pleas for Warren County, Ohio, in *State v. Howard*, criminal case number 04CR21649.
  2. **Personal Appearances:** Dr. Howard shall appear in person for quarterly interviews before the Board or its designated representative. The first such appearance shall take place within three months of the effective date of this Order, upon the reinstatement or restoration of his certificate to practice medicine and surgery, and/or as otherwise requested by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
  3. **Quarterly Declarations:** Dr. Howard shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
  4. **Evidence of Compliance with the Terms of Criminal Probation:** At the time he submits his quarterly declarations, Dr. Howard shall also submit declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by the Court of Common Pleas for Warren County, Ohio, in *State v. Howard*, criminal case number 04CR21649.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Howard's certificate to practice medicine and

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surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Howard shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Howard shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Professional/Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Howard shall provide acceptable documentation of successful completion of a course or courses dealing with professional and/or personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Howard submits the documentation of successful completion of the course or courses dealing with professional/personal ethics, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

4. **Course Requirement:** At the time Dr. Howard submits his application for reinstatement or restoration, Dr. Howard shall provide acceptable documentation of satisfactory completion of a course on medical billing coding, such course to be approved in advanced by the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Howard submits the documentation of successful completion of the course or courses on medical billing coding, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

5. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Howard has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

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- D. **PROBATION:** Upon reinstatement or restoration, Dr. Howard's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Howard shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
  2. **Tolling of Probationary Period While Out of State:** Dr. Howard shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
  3. **Violation of Terms of Probation:** If Dr. Howard violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Howard's certificate will be fully restored.
- F. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Howard shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Howard shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- G. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Howard shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Howard shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Howard shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless

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otherwise determined by the Board.

**EFFECTIVE DATE OF ORDER:** This Order shall become effective immediately upon mailing of notification of approval by the Board.

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

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- nay
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

**DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF KYLE HOWARD, M.D. DR. VARYANI SECONDED THE MOTION.** A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- nay
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

Mr. Albert left the meeting at this time.

**RALPH ARDEN HUGUNIN, M.D.**

Dr. Davidson directed the Board's attention to the matter of Ralph Arden Hugunin, M.D. She advised that objections were filed to Hearing Examiner Porter's Report and Recommendation and were previously distributed to Board members.

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

Dr. Hugunin was accompanied by his attorney, James M. McGovern.

Mr. McGovern stated that they are pleased with the Report and Recommendation authored by Mr. Porter. There is no disputing that Dr. Hugunin made some serious errors in judgment in this case. Dr. Hugunin has been frank in acknowledging those errors. Mr. McGovern commented that it's worth pointing out that Dr. Hugunin stopped prescribing to Patient 1 before this matter came to the Board's attention.

Mr. McGovern stated that Mr. Porter has done a fine job of summarizing the evidence and outlining the mitigating factors in this case. As Mr. Porter heard, and as the Board will hear briefly today from Dr. Hugunin, Dr. Hugunin recognizes his mistakes. He's deeply remorseful and committed to never repeating this conduct.

Mr. McGovern stated that they respectfully ask that the Board adopt the Report and Recommendation, effective October 1, 2005 to allow Dr. Hugunin to honor the current schedule set up by his anesthesiologist group which is already relying upon him to cover call. Vacations, etc., are scheduled for that month. The schedule for October could be adjusted, if necessary.

Dr. Hugunin addressed the Board, thanking the Board for the opportunity to address it. He stated that he sits before the Board very regretful, not because what he did was brought to the attention of the Board and was brought to this discovery, but because he failed in his professional responsibilities. Dr. Hugunin stated that he allowed his personal, emotional feelings to interfere with his professional responsibilities. He failed to honor the ethics of a physician. He made the mistake of yielding to emotion and to the relationship that he had with Patient 1, and he understands that the law that exists in Ohio that prohibits this is a very valuable law. Dr. Hugunin stated that he didn't appreciate that before, but you cannot have the type of emotional relationship that he had with Patient 1 and perform in the role of a physician. He added that at the time he thought that he was helping Patient 1. He would never allow such a situation to occur again.

Dr. Hugunin thanked the Board for the time, energy and expense that the State of Ohio has incurred in looking into this matter.

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

Ms. Berrien stated that a suspension is justified in this case; and, in fact, it's justified to the point of imposing the full one-year suspension. Dr. Hugunin committed what would have been felonies in a criminal court. He prescribed for a family member, but he concealed his conduct by writing prescriptions in the patient's maiden name and in her father's name. He further concealed his illegal conduct by filling prescriptions at different pharmacies. That's why he was able to remain undetected by the Board. He was pharmacy shopping and deceitful in writing prescriptions. He also jeopardized others in his scheme. He jeopardized the physicians who were filling these prescriptions, thinking that they're valid. He even jeopardized Patient 1 because he didn't disclose to her treating physician that he was writing prescriptions

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for her.

Ms. Berrien stated that Patient 1 had a legitimate medical condition, but that's why the Board has this rule. The Board recognizes that between family members there is a special relationship; there are emotional ties, there's compassion between that family member and the physician. The physician subconsciously or consciously loses his objectivity. Dr. Hugunin admits that happened here. Ms. Berrien stated that the rule protects the physician from being placed in a compromising position and feeling compelled to write prescriptions for his family member. Ms. Berrien stated that the Board knows that that happened here because Patient 1 admitted that she may have even been manipulative during this time.

Ms. Berrien asked that, in considering this case, the Board remember that Dr. Hugunin knew he was committing crimes, he knew he was violating the Board's rule, and he deliberately disregarded the law. Ms. Berrien stated that this is not just a case of making a bad judgment call. This was a case of willful misconduct and deliberate disregard.

Ms. Berrien referred to the cases of Dr. Michael Parker, who received a one-year suspension for prescribing for his girlfriend, and Dr. Michael Mikhail, who received a 30-day suspension. Ms. Berrien reminded the Board that Dr. Mikhail claimed that he didn't know that he was violating a Board rule. Even though ignorance of the law is no excuse, the Board accepted Dr. Mikhail's excuse and suspended him for 30 days.

Ms. Berrien stated that this is a different situation. Dr. Hugunin deliberately violated the Board's rules. She stated that, if the Board accepts a 30-day suspension, the State asks that the Board not stay that 30 days. She stated that the Board takes these actions seriously, and this is an abuse of the certificate that doctors carry.

Mr. Albert returned to the meeting at this time.

**DR. KUMAR MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF RALPH ARDEN HUGUNIN, M.D. MS. SLOAN SECONDED THE MOTION.**

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

Dr. Egner spoke in support of the Report and Recommendation, stating that she feels it is appropriate. She commented that, as she has said in the past, she likes to see the physician in these cases come before the Board. She's satisfied that Dr. Hugunin has learned from this and she doesn't think that he will ever do this again.

Dr. Egner continued that she thinks that, in many of these cases, where these kinds of rules are broken, the physician should put himself on the hospital talk circuit to let other physicians know of the dangers. When physicians aren't faced with these situations, it's so easy to say, "I'll never prescribe to a family member. I will never get myself into an inappropriate prescribing situation," and mean it, and know it. Then all of a

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sudden life circumstances change and you may do something that you never thought you would do. Dr. Egner stated that that's what she sees happened with Dr. Hugunin. She thinks that he is a dedicated physician who made a terrible judgment. She stated that Dr. Hugunin will have plenty of repercussions from this situation. Dr. Egner again spoke in support of the Board Order, with the 30-day period out of practice. She added that she has no objection to Dr. Hugunin's waiting until October to do the 30-day suspension.

Dr. Kumar stated that he would agree with Dr. Egner, but what continues to bother him is that Dr. Hugunin did act deceitfully. Dr. Kumar stated that he has trouble with Dr. Hugunin's trying to cover up, using different names, and going to different pharmacies. He asked whether that is big enough to increase the length of the suspension. Dr. Kumar stated that for these reasons, he feels that 30 days is a little too short.

Dr. Robbins stated that he agrees totally with the Assistant Attorney General. He stated that it really bothered him that these prescriptions were written in the patient's maiden name and in her father's name, and that they were put off on a lot of different pharmacies. That adds a level of complexity for which he personally feels 30 days is not enough. Dr. Robbins stated that he appreciates the doctor's response today; it clearly made a positive impact. He also agreed that it is doubtful that this will ever be done in the future. He added that it is his personal feeling that 90 days would be better. Dr. Robbins added that he doesn't like delaying the imposition of the suspension until October. This case is serious enough in his mind that he doesn't like giving Dr. Hugunin a convenience like that. Dr. Robbins stated that he would prefer a 90-day suspension, beginning immediately.

Dr. Varyani stated that he concurs with Dr. Robbins. He thinks Dr. Hugunin knew, and he appreciates Dr. Hugunin's candor today. He doesn't think that there is any question about the law in Ohio prohibiting prescribing to the family members. Dr. Varyani agreed that 90 days would be appropriate, and he also doesn't want to delay the effective date until October. Dr. Varyani stated that the Board isn't acting for Dr. Hugunin's convenience, but because he did something wrong. The Board is trying to teach others that what he did was wrong.

Dr. Davidson asked whether Dr. Robbins and Dr. Varyani were making an amendment to the Proposed Order.

Mr. Browning stated that he doesn't like the manipulation either, and he would be in favor of extending the suspension. He added that a 60-day suspension would probably be enough to send the right message. These are personal tragedies inside this whole situation, and one bad decision leads to the next. Because that happened, a longer timeout is warranted. Doubling it would be enough from his point of view.

Ms. Sloan stated that she's glad that Dr. Hugunin came in to speak to the Board today because it did make a difference in the way she feels about this case. Ms. Sloan stated that she would agree to 60 days out of practice. She added that she is truly bothered by the fact that Dr. Hugunin did write the prescriptions in different names to get around the system. She acknowledged Dr. Hugunin's statement today about knowing how important this law is in Ohio and why it is there made a difference. Ms. Sloan stated that she would agree to the October date because she believes that it is not only for Dr. Hugunin's convenience, but

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for the patients', since they have a schedule that was already set. It may affect his patients. She asked that the Board consider that for the sake of his patients in his office.

Dr. Kumar stated that Dr. Hugunin is an anesthesiologist. It's not a matter of treating patients in his office.

Ms. Sloan stated that there has been scheduling already done that would affect the patients.

Dr. Kumar stated that the scheduling changes could be done in the next two weeks. You don't have to give him six weeks for that.

Dr. Davidson suggested that the suspension and effective dates be done in two separate motions and votes.

**DR. KUMAR MOVED TO AMEND PARAGRAPH "A" OF THE PROPOSED ORDER TO IMPOSE A STAY OF ALL BUT SIXTY (60) DAYS OF THE ORDERED SUSPENSION. MR. BROWNING SECONDED THE MOTION.** A vote was taken

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye

The motion carried.

**DR. KUMAR MOVED THAT THE ORDER GO INTO EFFECT ON SEPTEMBER 1, 2005. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye

The motion carried.

**MR. BROWNING MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF**

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**RALPH ARDEN HUGUNIN, M.D. MS. SLOAN SECONDED THE MOTION.** A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye

The motion carried.

IAN NUNNALLY M.D.

Dr. Davidson directed the Board's attention to the matter of Ian Nunnally, M.D. She advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

**DR. KUMAR MOVED TO APPROVE AND CONFIRM THE PROPOSED FINDINGS OF FACT, CONCLUSIONS AND ORDER IN THE MATTER OF IAN NUNNALLY, M.D. DR. ROBBINS SECONDED THE MOTION.**

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

Dr. Robbins stated that the Board has a rule that an applicant for licensure must have completed the U.S.M.L.E. exam sequence within a seven-year period or show good cause why he or she was unable to do so. Dr. Robbins added that, from the information provided by Dr. Nunnally, he believes that Dr. Nunnally has shown good cause for not completing the exam sequence within the seven-year period. Dr. Robbins spoke in support of adopting the Proposed Order, granting Dr. Nunnally a license.

Dr. Kumar and Mr. Browning expressed their agreement with Dr. Robbins' opinion.

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

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

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The motion carried.

FINDINGS, ORDERS & JOURNAL ENTRIES

BONNIE SUE PEARSON, M.T.

By letter of June 1, 2005, the Board notified Ms. Pearson, who had not engaged in the active practice of massage therapy for more than two years, that it proposed to approve her application for restoration of her certificate to practice massage therapy provided that she take and pass the limited branch portion of the Massage Therapy examination. Said notice was mailed via certified mail, return receipt requested, to Ms. Pearson's address of record. A signed certified mail receipt was returned to the Medical Board documenting proper service of the notice. However, no hearing request has been received from Ms. Pearson and more than 30 days have elapsed since the mailing of that notice. The matter was presented to the Board for final disposition.

**DR. KUMAR MOVED TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, GRANTING MS. PEARSON RESTORATION OF HER LICENSE TO PRACTICE MASSAGE THERAPY, SUBJECT TO HER PASSING THE LIMITED BRANCH PORTION OF THE BOARD'S MASSAGE THERAPY EXAMINATION. DR. ROBBINS SECONDED THE MOTION.**

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

Dr. Kumar stated that, basically, Ms. Pearson was offered an opportunity to request a hearing in this matter and chose not to do so. His motion for a Proposed Order is therefore appropriate.

A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

DALIA ENID PEREZ-GONZALEZ, M.D.

By letter of June 3, 2005, the Board notified Dr. Perez-Gonzalez that it proposed to deny her application

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for a certificate to practice medicine and surgery in Ohio based upon the fact that she holds a medical degree from a school that is not accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and does not hold certification from the Educational Commission for Foreign Medical Graduates. Said notice was mailed via certified mail, return receipt requested, to Dr. Perez-Gonzalez's address of record. A signed certified mail receipt was returned to the Medical Board documenting proper service of the notice. However, no hearing request has been received from Dr. Perez-Gonzalez and more than 30 days have elapsed since the mailing of the notice. The matter was at this time presented to the Board for final disposition.

**DR. EGNER MOVED TO ENTER AN ORDER, DENYING DR. PEREZ-GONZALEZ A LICENSE TO PRACTICE MEDICINE AND SURGERY. MS. SLOAN SECONDED THE MOTION.**

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

Dr. Kumar stated that the record is clear. Dr. Perez-Gonzalez did not graduate from an approved school, nor does she have E.C.F.M.G. certification.

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

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

#### CITATIONS, PROPOSED DENIALS AND ORDERS OF SUMMARY SUSPENSION

##### GERALD BRIAN APPLGATE, M.D. – CITATION LETTER

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

**DR. KUMAR MOVED TO SEND THE CITATION LETTER TO DR. APPLGATE. MS. SLOAN SECONDED THE MOTION.** A vote was taken:

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

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

The motion carried.

JEFFREY DOWNES BAIRD, JR., M.D. – CITATION LETTER

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

**DR. KUMAR MOVED TO SEND THE CITATION LETTER TO DR. BAIRD. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

STEVEN C. DILSAVER, M.D. – CITATION LETTER

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

**DR. KUMAR MOVED TO SEND THE CITATION LETTER TO DR. DILSAVER. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye

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

The motion carried.

VENU GOPAL MENON, 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. EGNER MOVED TO SEND THE CITATION LETTER TO DR. MENON. DR. ROBBINS SECONDED THE MOTION.** A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

JEFFREY JAMES FIERRA, M.D. – CITATION LETTER

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

**DR. KUMAR MOVED TO SEND THE CITATION LETTER TO DR. FIERRA. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye

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Dr. Davidson - aye

The motion carried.

RATIFICATION OF CONSENT AGREEMENTS

BRIJ MOHAN MITRUKA, M.D.

**DR. EGNER MOVED TO RATIFY DR. MITRUKA'S "RELINQUISHMENT OF CERTIFICATE TO PRACTICE MEDICINE AND SURGERY." DR. ROBBINS SECONDED THE MOTION. A vote was taken:**

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

MICHAEL BRUCE BURGHARDT, M.D.

**DR. ROBBINS MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. BURGHARDT. MS. SLOAN SECONDED THE MOTION. A vote was taken:**

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

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JOHN HOUSE ROCKWOOD, P.A.

**DR. KUMAR MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH MR. ROCKWOOD. DR. VARYANI SECONDED THE MOTION.** A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

ANDREW SCHNEIDER, M.D.

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

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

PERSONAL APPEARANCES

MARK A. CAMPANO, M.D.

Dr. Campano appeared before the Board pursuant to his request for release from the terms of the Board's Order of July 12, 1995.

In response to Dr. Davidson's questions, Dr. Campano stated that he has been doing pretty well. He advised that it feels very good to be this close to release from probation. He added that his main priority is

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to stay clean and sober and to do whatever is necessary to do that. He's been getting along very well in that regard. Dr. Campano stated that it's been eleven and a half years since he's had the problem.

Dr. Davidson asked whether Dr. Campano plans to change anything in his program.

Dr. Campano stated that he doesn't really. He goes to meetings because he needs people who are friendly, who understand the problem, and who are non-judgmental. He attends the meetings mainly for the fellowship. He has not sponsored others. He advised that he does not attend Caduceus meetings, adding that doing so was not part of his consent agreement.

Dr. Davidson asked for Dr. Campano's opinion of the Board's 28-day treatment requirement. She noted that the 28-day requirement postdates Dr. Campano's treatment.

Dr. Campano stated that he was in treatment for four months. He added that 28 days is probably adequate, but it depends on the individual and how serious he or she is about changing.

Mr. Albert commented that a lot of programs are now three to four months.

**MR. ALBERT MOVED TO RELEASE DR. CAMPANO FROM THE TERMS OF THE BOARD'S ORDER OF JULY 12, 1995. DR. ROBBINS SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

RICHARD M. DONNINI, D.O.

Dr. Donnini appeared before the Board pursuant to his request for release from the terms of the Board's Order of September 9, 1998.

Dr. Kumar asked Dr. Donnini how he has modified his practice pattern.

Dr. Donnini stated that in 1996, one of the first things he was required to do, and which was a very good idea, was to take a test on the State laws concerning the use of P.A.s. He stated that he didn't understand the laws very well; and it is important to understand the laws, to make sure that they are implemented, to keep the supervisory agreement up-to-date and to make sure that the laws aren't violated.

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Dr. Kumar asked what Dr. Donnini's practice is concerning the writing of prescriptions.

Dr. Donnini stated that the physicians in his practice have 100% direct supervision with the P.A. in the practice. They review every chart, including the date and time that the patient is seen. The prescriptions are signed by the physician at the time the chart is reviewed.

Dr. Kumar asked Dr. Donnini which track he took to get board certification in pain management.

Dr. Donnini did a one-year fellowship in pain management in 1991. The requirement was three years of practice in pain management referrals and then a test. He's certified by both the old pain management board and the new board as well.

In response to further questions by Dr. Kumar, Dr. Donnini stated that he stopped doing spinal stimulators and spinal pumps about five years ago, but he does a wide array of interventional procedures, that include nucleoplasty, radio frequency, neuro ablation and epidural blocks. He spends most of his time as an interventionalist.

**DR. KUMAR MOVED TO RELEASE DR. DONNINI FROM THE TERMS OF THE BOARD'S ORDER OF SEPTEMBER 9, 1998. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

Dr. Donnini at this time stated that he appreciates the way the Board, particularly Mr. Albert and Ms. Bickers, has treated him. He commented that this was a difficult time, but he's always been treated with respect by the Board, and he appreciates that very much. He's glad to be released from probation, but he's definitely learned his lesson. Dr. Donnini thanked the Board at this time.

JOHN H. GRAY, D.O.

Dr. Gray appeared before the Board pursuant to his request for release from the terms of his August 13, 2003 Consent Agreement. If approved, release from probation would become effective August 13, 2005.

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In response to Mr. Browning's questions, Dr. Gray stated that he has changed his practice by totally extricating himself from the use of diet medications, and he will continue to do so. Anyone who needs diet medications is sent to an endocrinologist whose office is across the hall from his. He will continue that pattern.

Dr. Kumar noted that Dr. Gray has implied that the Board's action was an unnecessary stain on his record.

Dr. Gray stated that he wasn't implying that it was an unnecessary stain. He was implying that, like most other physicians, including those on the Board, he wasn't interested in having any stain on his record that would last for the rest of his life. Dr. Gray commented that people are rewarded for doing a good job over a long period of time. Dr. Gray stated that there was no offense intended towards the Board's action.

**DR. KUMAR MOVED TO RELEASE DR. GRAY, EFFECTIVE AUGUST 13, 2005, FROM THE TERMS OF HIS AUGUST 13, 2003 CONSENT AGREEMENT. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

SHARADCHANDRA PATEL, M.D.

Dr. Patel appeared before the Board pursuant to his request for release from the terms of the Board's Order of August 11, 1999. If approved, release from probation would become effective on August 26, 2005.

In response to Dr. Kumar's questions, Dr. Patel stated that he does have an active, unrestricted license in Michigan. There was never any probation on that license. Dr. Patel stated that he went through the process in Michigan and his license was reinstated.

Dr. Kumar noted that Dr. Patel is doing missionary work. He asked what Dr. Patel's plans are.

Dr. Patel stated that, basically, he is semi-retired. He will continue doing voluntary work. He stated that he will also continue getting his C.M.E. He travels a lot, and has been to South Africa, and he donates his pain management services. He also goes to colleges in India to discuss anesthesia practices in this country. He no longer gives anesthesia himself.

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**DR. VARYANI MOVED TO RELEASE DR. PATEL, EFFECTIVE ON AUGUST 26, 2005, FROM THE TERMS OF THE BOARD'S ORDER OF AUGUST 11, 1999. DR. KUMAR SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

SUZANNE M. SMITH, M.T.

Ms. Smith appeared before the Board pursuant to her request for release from the terms of her August 13, 2003 Consent Agreement. If approved, release from probation would become effective August 13, 2005.

In response to Dr. Varyani's questions, Ms. Smith stated that she feels that she has come far. She thanked the Board for all of its support and added that it's comforting to know that this is here in Ohio for her. Going to other states and practicing, you don't get this kind of concern shown. It makes her feel more like a professional than she's every felt before.

Dr. Talmage stated that when Ms. Smith first appeared before the Board, she had been having panic attacks rather frequently. He asked whether that frequency has diminished.

Ms. Smith stated that the panic attacks are due to stress and what's going on within your life and how many things you can handle at once.

Dr. Talmage noted that the medications Ms. Smith takes do have side effects. He asked whether she has ever attempted to go off any of those medications because of the side effects.

Ms. Smith stated that she has not. She stated that the medications are very important.

**DR. VARYANI MOVED TO RELEASE MS. SMITH, EFFECTIVE IMMEDIATELY, FROM THE TERMS OF HER AUGUST 13, 2003 CONSENT AGREEMENT. MR. BROWNING SECONDED THE MOTION.**

Dr. Davidson noted that the Board is awaiting a psychiatric report for Ms. Smith. Release would be effective on August 13, 2003 if the report is received. If it is not received by August 13, release will then be effective upon receipt of the report.

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Ms. Smith stated that she will contact her psychiatrist and urge him to file his report with the Board.

A vote was taken:

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

The motion carried.

RICHARD W. THOMAS, M.D.

Dr. Thomas appeared before the Board pursuant to his request for release from the terms of the Board's Order of May 10, 2000. If approved, release from probation would become effective September 13, 2005.

Dr. Talmage noted that Dr. Thomas has indicated that he does not intend to return to practice.

Dr. Thomas stated that he intends to work in medical missions in other countries, so he will keep his license active in order to do that. He added that he's not sure how medical missions work in the United States, and suggested that each state has its own requirements. Dr. Thomas stated that he is pretty much committed to working for foreign missions.

**DR. VARYANI MOVED TO RELEASE DR. THOMAS, EFFECTIVE SEPTEMBER 13, 2005, FROM THE TERMS OF THE BOARD'S ORDER OF MAY 10, 2000. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

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JOHN W. SHAW, M.D.

Dr. Shaw made his initial appearance before the Board, pursuant to the terms of his Consent Agreement of May 19, 2005.

In response to Dr. Kumar's questions, Dr. Shaw stated that he is currently trying to do the program the best he can with A.A. and Caduceus. He went to the International Doctors of A.A. (IDAA) meeting the previous week, and that was very energizing, trying to really throw some spirituality into the program. That's been a big part of the last couple of weeks. You go to the rehab, they kind of shock you into where you are, and then you start the program. When you start the program, you don't know anything about it, and you kind of just do what you're told. You go to meetings, you get a sponsor, and he's trying to take it from the head to the heart and get the spirituality into it. That's where he is this week. He got sparked last week at the IDAA meeting. Those are the kinds of things he's doing right now.

Dr. Kumar stated that he wants Dr. Shaw to recognize that the Board is here to support him through this. He asked whether Dr. Shaw understands his consent agreement.

Dr. Shaw stated that he does understand his consent agreement. He doesn't have any questions about it.

In response to Mr. Browning's questions, Dr. Shaw stated that was an inpatient at the Cleveland Clinic Foundation. The requirement was for 28 days, but he didn't feel that 28 days was enough. He voluntarily did the intensive outpatient program for another month. He was there from April 12 until about June 12. The second 30-day period consisted of the following: Monday through Friday they would meet in the mornings for four hours in a group session. Dr. Shaw stated that he found that to be extremely helpful for him because he was not ready to go out. You kind of get shocked in to where you are and it's very safe in that inpatient environment. Everybody has a lot to deal with, but he had a lot when he went home for the weekends. He's from a small town and he had to face people again and run into a lot of patients that he knew. That was very hard. It was nice to go back to the Cleveland Clinic. He stated that there were no programs in Defiance, Ohio, for him. He did feel it was good to go back on Mondays through Fridays.

In response to further questions by Mr. Browning, Dr. Shaw stated that he has another two weeks of aftercare to do, where he will be monitored for eight weeks after he leaves and go back once a week. He'll have the counselor who did his initial intensive outpatient treatment. He'll have about two more weeks of that. He'll also go to the Caduceus meeting, which will become his main aftercare, in Toledo. He's started going to that already. He's also trying to work the A.A. program. Trying to do it locally has been kind of hard. He does feel like he's making progress, but commented that you hit plateaus. He stated that that idea wasn't pushed very much in rehab. He learned that at his IDAA meetings, and this has helped with a lot of shame and guilt. It also gave him some resources. Dr. Shaw stated that you see people in all different stages of this, which helps him to feel somewhat normal, while being completely honest. Dr. Shaw stated that it's been hard to feel normal since the day he started this.

In response to Dr. Robbins' questions, Dr. Shaw stated that his family situation is really good. In these programs, everyone asks about participants' wives or spouses, and it seems that most of the time that goes

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bad, but things with his wife have been really good. Their relationship has strengthened. He commented that his wife is working the 12-step Alanon program, and she embraces A.A. They are doing this together, and it's helped them both grow. Dr. Shaw stated that he hopes that it will continue with them being a lot better off than where they were.

Dr. Robbins noted that the records in this case indicate that Dr. Shaw would write a prescription in a family member's name, but then he would share the drug with that family member. Dr. Robbins stated that that indicates that there's a side-by-side problem in the family.

Dr. Shaw stated that it's a little complicated. His wife was talking Ultrams, which were prescribed by a legitimate source for her headaches. When the Pharmacy Board and the Medical Board came to his office with all of these scripts that he had written over a long period of time, they really believed that his wife was the one with the problem, mainly because no one would go to all those pharmacies just for co-dependency. They had a lot to go through. They tried to tell the truth, and it didn't go over very well; people didn't believe that. So his wife went into the Cleveland Clinic and got assessed as well for 18 days. They did a hair sample. It came out that she was very co-dependent and that there was no addiction there. His wife is also in aftercare and is being monitored. Dr. Shaw explained that his wife wasn't sharing most of her meds. He took them, and if she ran out, she might take a couple from him. He stated that that is definitely sharing, and they're trying to deal with that. Dr. Shaw stated that his wife told her Board.

Dr. Shaw stated that it has been very hard, and he wouldn't wish it on anybody. It goes up and down, but he really believes that getting away from that anchor around his neck will make them a lot better. Dr. Shaw added that they have a one-year-old child. That's when he knew that he really had a problem. They went through a lot trying to get him to stop and he thought that he was okay because he thought he was functioning. He promised to stop taking the drugs when she got pregnant, but he couldn't. He promised again when his child was born, but still couldn't. When the Medical Board representatives confronted him, he was grateful that they were there.

Dr. Egner asked Dr. Shaw to tell the Board more about his history of addiction.

Dr. Shaw stated that he had not really had much experience with drugs. He did drink alcohol in college and he did get drunk, but that was about the extent of it. When he got to Defiance, he did two to three years of good practice. He was a busy surgeon, doing every other night on call, with no problem. He went skiing in 1998 and fractured his ribs. He got some Vicodin for that, and that was no problem. He took them for three days and put the rest up on the shelf. He never even thought about an addiction problem. Then that summer he was cleaning the pool or hot tub and he fell and reinjured his ribs. That time was different. It was a weekend and he didn't want to go to the office. He didn't want to go see someone. He knew what you do for them. He told his wife he was going to write one script for her, it would be easier. She saw he was in pain and she knew what happened in the winter, and that's how he started. He took the drugs, but this time was different. He took them for a longer period. He doesn't know when it changed.

Dr. Shaw stated that another part of his problem was that he had back problems. He broke his back in college, and he's always had neck problems and pain associated with it when standing. He was in physical

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therapy two years before this happened and never thought of taking pain meds. He doesn't know when it switched from the acute rib fracture to taking them for a headache, and then, at some point, just taking them when it wasn't right. Dr. Shaw stated that he took them very slowly. It was a slow process. He first took one and worked slowly up to taking two. He didn't want to be out of it, he was way too busy.

Dr. Egner asked whether he was in a group practice.

Dr. Shaw stated that he was in a 35-man, multi-specialty group.

Dr. Egner asked whether Dr. Shaw plans to go back to that.

Dr. Shaw stated that there are a lot of fences to be mended and a lot of complex relationships, but he does intend to go back. He added that 90% of the people there really want him back. The patients have been positive. He added that his wife, who is an optometrist, worked at that clinic, too, but they fired her instead of him. Dr. Shaw stated that he doesn't know what they will be able to do. They'll have to work on that resentment. They are looking at their options. Dr. Shaw added that he's not sure that that is the healthiest place for him.

Dr. Egner stated that Dr. Shaw seems pretty insightful. She stated that the Board does have probationers who get through this without relapsing and they come back for release and are never disciplined again. She added that it doesn't always feel like that to the Board, though, because they see so many people who relapse. Dr. Egner stated that she hopes that Dr. Shaw is one of those whom the Board never sees again. She stated that it is a struggle and there are a lot of big decisions for Dr. Shaw to make. She added that Dr. Shaw must also take into consideration the stress of being a general surgeon in making his decision.

Dr. Kumar asked whether Dr. Shaw's wife is currently practicing. Dr. Shaw stated that she is.

**DR. KUMAR MOVED TO CONTINUE DR. SHAW UNDER THE TERMS OF HIS MAY 19, 2005 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. BROWNING SECONDED THE MOTION.**

Dr. Robbins asked Dr. Shaw whether he thinks he navigated the system for a little over six years.

Dr. Shaw stated that he did.

Dr. Robbins stated that he thinks Dr. Shaw is on the right road and can succeed. He asked Dr. Shaw to look back and see whether there were things that could have alerted someone to help get him into this path sooner.

Dr. Shaw stated that he and his wife have discussed that a lot. Dr. Shaw stated that it just didn't hit home that there was a way to get help without the major consequences. Dr. Shaw stated that it's not all Board consequences or licensure consequences, but your hometown, personal and patient consequences. He stated that his wife picked up the phone to call the Board twice and couldn't do it. Dr. Shaw stated that one

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way that they did it for so long was in not doing too many. They got caught when they started doing too many. He doesn't know why it took six years – it should probably have been faster. Dr. Shaw stated that he doesn't know why all the pharmacies aren't hooked up to see trends sooner.

Dr. Davidson stated that that's coming on line.

Dr. Talmage stated that there's a monograph that the American College of Surgeons has on the addicted surgeon, and it makes the point that surgical people, particularly, are able to hide it probably longer than most other people.

Ms. Sloan stated that her concern is how Dr. Shaw would take care of his pain now.

Dr. Shaw stated that he doesn't have much pain now. He didn't take the pain medicine for his back and neck originally. He never sought it for that, it wasn't bad enough. But, after he'd been taking it, and had it available, and crossed the line, then it's like he was taking it so he wouldn't have pain. The pain justified his taking the meds a little longer before he knew that he had definitely crossed the line

Ms. Sloan stated that it's a concern. She noted that the Board sees people who have an injury and who think that they can take a pain medication and then stop the medication and it's not going to be a problem.

Dr. Davidson commented that there are three things working against Dr. Shaw and a couple of things working for him. Working against him is that he's a surgeon, he's strong and he's right. What he has working for him is O.P.E.P. She urged Dr. Shaw to listen to O.P.E.P. Another thing against him is that he has a very addictive drug, opiates, that he's had for a very long time. He now has a life-threatening, chronic disease that he will have to fight for the rest of his life. Dr. Davidson stated that that is something that Dr. Shaw will really have to fight, but with the help of a lot of people, he will fight it. She stated that the role the Board will play is the stick. The Board has his license and it will take it away if necessary.

Dr. Davidson stated that what she likes about Dr. Shaw is that he's very articulate, and he can play a very good part in this drama by, some day down the line, helping other physician to learn what they should know concerning addiction and the first-bite rule, where they can enter treatment without coming to the Board's attention.

Mr. Albert stated that the Board does have the one-bite rule, and had Dr. Shaw gone to the internet and read the Board's rules before he was contacted by the Board, he could have gone to an approved treatment provider, gotten his treatment, aftercare, and the Board would have never known about him.

Mr. Albert added that he doesn't buy excuses such as using drugs because of a skiing accident.

Dr. Shaw stated that he didn't mean to imply that.

Dr. Davidson stated that he's here because he's an addict.

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

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

The motion carried.

#### LICENSURE & PROBATIONARY REPORT CONSENT AGENDA

Dr. Davidson advised that at this time she would like the Board to consider the probationary reports, the probationary requests, and the licensure applications on today's consent agenda. Dr. Davidson thanked Dr. Saxena, Dr. Steinbergh, Ms. Bickers, and the members of the Consent Agreement Committee for their efforts to streamline the Board meeting by making more things eligible to be placed on the consent agenda. She noted that the Secretary and Supervising Member are doing a stellar job. The proposed motion would be to accept their recommendations for each request and not to approve the request itself.

Dr. Talmage advised that if a probationer makes a request for which he and Mr. Albert recommend denial, the denial is reportable. If any Board members disagree with their recommendation on any request, they should ask that that request be pulled from the list for full Board discussion.

Dr. Davidson asked whether any Board member wished to consider either an application for licensure or a probationary report or request separately. She noted that all probationers are in compliance.

**DR. KUMAR MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES WITH: FRANK R. BRUENING, M.D.; WILLIAM L. CRAWFORD, M.D.; LYNNE A. EATON, M.D.; WILLIAM H. FIEGENSCHUH, JR., M.D.; VICKIE M. FLOWERS, M.T.; JOHN D. FREED, M.D.; MICHAEL SHANE GAINEY, M.D.; LAMBERTO T. R. GALANG, JR., M.D.; ANN V. GOVIER, M.D.; W. ANDREW HIGHBERGER, M.D.; RICHARD M. HOFSTRA, M.D.; KATHERINE A. HUMES, M.D.; VIKAS K. JAIN, M.D.; ANIL H. JHANGIANI, M.D.; MICHAEL SOLIMAN MIKHAIL, M.D.; DAVID R. MILLER, M.D.; FRANCINE R. MOSLEY, M.D.; ERDULFO PAZ PAAT, M.D.; WILLIAM DENNY ROBERTSON, M.D.; KENT ROBINSON, M.D.; STEPHEN J. ROLFE, M.D.; WILLIAM A. ROMER, M.D.; BRIAN D. SOUTHERN, M.D.; EUGENE F. TARESHAWTY, JR., M.D.; DEBORAH L. TAYLOR, M.D.; JOSEPH A. TORE, M.D.; PAUL W. WILSON, D.O.; REGINALD O. WINDOM, M.D.; AND BRUCE S. WORRELL, D.O.; DR. KUMAR FURTHER MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES AND THE SECRETARY AND**

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**SUPERVISING MEMBER'S RECOMMENDATIONS AS FOLLOWS:**

- **TO APPROVE CRAIG L. BIERER, D.O.'S REQUESTS TO REDUCE HIS APPEARANCE SCHEDULE FROM EVERY THREE MONTHS TO EVERY SIX MONTHS, AND TO REDUCE HIS DRUG SCREEN REQUIREMENT FROM ONE PER WEEK TO TWO PER MONTH;**
- **TO APPROVE MARK E. BLAIR, M.D.'S REQUEST TO CHANGE HIS MONITORING PHYSICIAN TO RANDON S. WELTON, M.D.;**
- **TO DENY JEFFREY A. BRIGGS, M.D.'S REQUEST TO CHANGE MONITORING PHYSICIANS;**
- **TO APPROVE MARK S. FLEMING, M.D.'S REQUEST FOR A REDUCTION IN HIS APPEARANCE SCHEDULE TO ONCE EVERY SIX MONTHS AND HIS REQUEST TO ELIMINATE HIS CHART MONITORING REQUIREMENT;**
- **TO APPROVE MARK E. GOLDSMITH, M.D.'S REQUEST TO REDUCE HIS PSYCHIATRIC SESSION REQUIREMENT TO ONCE EVERY THREE MONTHS;**
- **TO APPROVE TAMMY HABERBERGER, D.O.'S REQUESTS FOR APPROVAL OF PAUL J. FRANCIS, PH.D., TO SERVE AS HER MENTAL HEALTH COUNSELOR AND APPROVAL OF PETER W. COFFMAN, M.D., TO SERVE AS DR. HABERBERGER'S TREATING PSYCHIATRIST;**
- **TO APPROVE PAUL F. HEYSE, M.D.'S REQUESTS TO REDUCE HIS APPEARACHE SCHEDULE TO EVERY SIX MONTHS, TO REDUCE HIS SALIVA TESTING REQUIREMENT TO TWO PER WEEK (PRIOR TO WORK PERIOD), AND TO REDUCE HIS DRUG SCREEN REQUIREMENT TO TWO PER MONTH;**
- **TO APPROVE CYNTHIA J. JOHNSON, P.A.'S REQUESTS TO REDUCE HER PSYCHIATRIC SESSION REQUIREMENT TO ONCE EVERY THREE MONTHS AND HER COUNSELING SESSION REQUIREMENT TO ONCE EVERY THREE MONTHS;**
- **TO APPROVE JEFFREY T. JONES, P.A.'S REQUEST FOR PERMISSION TO DISCONTINUE THE ADVOCACY CONTRACT WITH OPHP;**
- **TO APPROVE MELANIE E. JUNGBLUT, M.D.'S REQUEST FOR A REDUCTION IN HER APPEARANCE SCHEDULE TO EVERY SIX MONTHS AND A REDUCTION IN HER PSYCHIATRIC SESSION REQUIREMENT FROM ONCE EVERY FOUR WEEKS TO ONCE EVERY THREE MONTHS;**

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- TO APPROVE LARRY J. LITTLE, M.D.'S REQUEST FOR A REDUCTION IN HIS APPEARANCE SCHEDULE TO ONCE ANNUALLY;
- TO APPROVE JAMES M. MCGINNIS, D.O.'S REQUEST FOR PERMISSION TO ADMINISTER, PERSONALLY FURNISH OR POSSESS CONTROLLED SUBSTANCES WITH DRUG LOGS TO BE MAINTAINED, AND TO REDUCE THE FREQUENCY OF HIS PSYCHIATRIC SESSION REQUIREMENT TO ONCE EVERY THREE MONTHS;
- TO APPROVE WILLIAM O. MURTAGH, JR., M.D.'S REQUEST TO CHANGE HIS SUPERVISING "PHYSICIAN" TO THE IMPAIRED PRACTITIONERS PROGRAM OF FLORIDA, PROFESSIONALS RESOURCE NETWORK;
- TO APPROVE RALPH G. OSTING, D.P.M.'S REQUEST FOR APPROVAL OF CASE WESTERN RESERVE UNIVERSITY'S *INTENSIVE COURSE IN PHYSICIAN COMMUNICATION*, AS PARTIAL FULFILLMENT OF PARAGRAPH 2.b. OF DR. OSTING'S JANUARY 12, 2005 CONSENT AGREEMENT;
- TO APPROVE SARAVANA E. SIVASHANKER, M.D.'S REQUEST TO CHANGE HIS MONITORING PHYSICIAN TO HARRY STEPHEN KING, M.D.; AND
- TO APPROVE GEORGE A. SOUTHIERE, JR., M.D.'S REQUEST TO CHANGE HIS SUPERVISING "PHYSICIAN" TO RHODE ISLAND MEDICAL SOCIETY'S PHYSICIANS' HEALTH COMMITTEE;

DR. KUMAR FURTHER MOVED TO APPROVE FOR LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS, THE PHYSICIAN APPLICANTS LISTED IN EXHIBIT "A", THE P.A. APPLICANTS LISTED IN EXHIBIT "B", AND THE P.A. UTILIZATION PLANS SUBMITTED BY THE FOLLOWING: BERTA BRIONES, M.D.; ALBERT CAMMA, M.D.; COMMUNITY BEHAVIORAL HEALTH; INCARCERCARE, INC.; OSU ORTHOPAEDICS; OHIO VALLEY PULMONARY SERVICES; NES OH, INC.; ANITA SHOWALTER, D.O.; SOUTHWEST CARDIOLOGY; TUSCARAWAS COUNTY GENERAL HEALTH DISTRICT; UH CLEVELAND-EMERGENCY DEPARTMENT; AND WEST AVE. FAMILY PRACTICE. MR. BROWNING SECONDED THE MOTION. A vote was taken.

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye

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Dr. Robbins - aye

The motion carried.

(Note: Later in the meeting, Mr. Browning asked to change his vote concerning the P.A. Utilization Plan of UH Cleveland Emergency Department to “abstain.”)

Dr. Robbins suggested that requests for which the Secretary and Supervising Member recommend denial be noted on the agenda with an asterisk so that they’re more obvious to Board members. Ms. Schmidt advised that she will do so in the future.

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

#### REINSTATEMENT REQUESTS

##### CHARLES B. BERTANI, D.O.

Dr. Bertani’s request for reinstatement of his license to practice osteopathic medicine and surgery, which was suspended by consent agreement of November 12, 2003, was presented to the Board for consideration at this time.

**DR. KUMAR MOVED TO REINSTATE DR. BERTANI’S LICENSE TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY, SUBJECT TO THE PROBATIONARY TERMS AND CONDITIONS OF HIS CONSENT AGREEMENT OF NOVEMBER 12, 2003. MS. SLOAN SECONDED THE MOTION.** A vote was taken.

VOTE:	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

##### TIMOTHY J. HEYD, M.D.

Dr. Heyd’s request for reinstatement of his certificate to practice medicine and surgery, which was suspended by Board Order of May 18, 2005, was presented to the Board for consideration at this time.

Dr. Kumar stated that he is abstaining on this case due to a conflict of interest.

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**DR. VARYANI MOVED TO REINSTATE, EFFECTIVE SEPTEMBER 6, 2005, DR. HEYD'S LICENSE TO PRACTICE MEDICINE AND SURGERY, SUBJECT TO THE PROBATIONARY TERMS AND CONDITIONS OF THE BOARD'S ORDER OF MAY 18, 2005. MR. BROWNING SECONDED THE MOTION.** A vote was taken.

VOTE:	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- abstain
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Davidson	- aye

The motion carried.

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

Thereupon at 3:42 p.m. the August 10, 2005 session of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on August 10, 2005, as approved on September 14, 2005.



Patricia J. Davidson, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)



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## MINUTES

### THE STATE MEDICAL BOARD OF OHIO

August 11, 2005

Patricia J. Davidson, M.D., President, called the meeting to order at 1:00 p.m., at the Vern Riffe Center for Government and the Arts, 77 S. High St., Columbus, Ohio 43215, Room #1932, with the following members present: Andrew F. Robbins, Jr., M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Nandlal Varyani, M.D.; Deepak Kumar, M.D.; R. Gregory Browning, Ph.D.; and Anquetette Sloan. The following joined the meeting at a later time: Carol L. Egner, M.D.; The following did not attend the meeting: David S. Buchan, D.P.M.; Kamala Saxena, M.D., and Anita M. Steinbergh, D.O.

Also present were: Richard A. Whitehouse, Executive Director; Diann K. Thompson, Assistant Executive Director; Lori S. Gilbert, Assistant Executive Director in charge of Investigations, Compliance & Enforcement; David P. Katko, Enforcement Attorney; Lauren Lubow, Senior Executive Staff Attorney; Tara L. Berrien, Assistant Attorney General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Coordinator for Assessment and Development; Danielle Bickers, Compliance Officer; Barbara Jacobs, Public Services Administrator.

#### ADMINISTRATIVE REPORT

Dr. Davidson stated that the Management Committee has decided to do a series of management/educational type sessions where the Board would look at different divisions of the Medical Board staff functions. One of the first things they felt a need to learn more about was the financial structure of the Board. Dr. Davidson stated that she has asked Mr. Holben to report to the Board on that.

Prior to the presentation, Dr. Davidson advised that on September 12, 2005, Mr. Holben, who was commander of the U.S. Army's 705<sup>th</sup> Transportation Company out of Dayton, Ohio, deployed to Iraq in April 2003 in support of Operation Iraqi Freedom, would be receiving an award from the National Defense Transportation Association (NDTA) at its annual meeting in San Diego on behalf of his unit. Dr. Davidson advised that each year the NDTA honors the outstanding military units that have accomplished unusual and outstanding service in the field of transportation and logistics. Units chosen to exceed the award must have clearly exceeded normal standards of performance while deployed in support of Operation Iraqi Freedom. During his unit's 12 months in Iraq, the unit of 148 soldiers hauled a record 25.1 million gallons of fuel; drove more than 1.7 million miles; completed 266 missions; and sustained 38 attacks without a fatality, while maintaining a monthly operational readiness of 92% or better during the unit's 12-month deployment. The award will be presented by Vice Admiral Harvey E. Johnson, Jr., Commander, U.S. Coast Guard, Pacific Area.

Dr. Davidson continued that Mr. Holben served as Commander of the 705<sup>th</sup> Transportation Company from June 1, 2001 through August 6, 2005. He is currently a Battalion Operations Officer for the 718<sup>th</sup>

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Transportation Battalion at Rickenbacker Air Force Base. He also received the Meritorious Service Medal on August 6, 2005 for outstanding service as a company commander.

The Board acknowledged Mr. Holben's achievements with applause.

Dr. Egner joined the meeting during Dr. Davidson's introduction.

At this time Mr. Holben announced that Board members will be receiving a pay raise, following the two-year freeze in State employee pay raises. Mr. Holben advised that state employees have recently received a cost-of-living increase, and therefore it is only fair that Board members also receive a raise. The new rate will have an impact on seven Board members: Mr. Albert, Mr. Browning, Dr. Buchan, Dr. Egner, Ms. Sloan, Dr. Steinbergh and Dr. Talmage. Mr. Holben stated that a new state employees contract will be negotiated in February, and he doesn't believe that there will be any pay freezes for a while.

Mr. Holben at this time reviewed his budget report, a copy of which shall be maintained in the exhibits section of this journal, on the Board's budget.

Mr. Holben stated that staff is working to develop a strategic plan. Upon its development, the Board will possibly go to the Controlling Board to ask for an increase in appropriation authority to allow the Board to hire additional employees and do some special projects that may be high dollar. He noted that difference in the revenues for FY04 and FY05 is a result of the renewal period and more money being brought in during that time. Mr. Holben stated that, reviewing the budget, the Board is spending about \$7.5 million and bringing in about \$7.2 million a year. The Board has a cash balance of \$5.2 million, which is really good, but the Governor likes to tap into that from time to time.

Mr. Browning commented that the Board is spending more than it's taking in, and is bringing down its cash balance.

Mr. Holben asked whether the Board should ask for an increase in certain fees to offset budget expansion that may be required by the strategic plan, or whether it should draw down its cash balance.

Mr. Browning asked what the cash balance will be at the end of FY06 and FY07.

Mr. Holben stated that he thinks that it will be pretty much the same, unless the Board changes its appropriation authority without increasing its fees.

Mr. Albert stated that former House Speaker Joanne Davidson once suggested to him that the Board should get the authority to raise fees without having to go to the Legislature. He asked whether that is possible.

Mr. Browning stated that it probably isn't in the current environment. He added that he hasn't talked to anyone about this issue.

Mr. Albert stated that some of the fees are out of line.

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Mr. Browning asked how long the fees have been at the current levels.

Mr. Holben stated that they've been at this level since 1999. Mr. Holben stated that the Board will need to ask for additional appropriation authority to hire the additional employees that will be part of its strategic plan. As the budget remains steady, the amount of discretionary authority slowly decreases. The question arises as to whether the Board wants to look at increasing select licensure fees to increase the revenues, or just hold steady on the fees. He commented that the cash balance could be a target in the future, as the state budget gets tighter and tighter.

Dr. Robbins asked what amount would be safe to keep in the cash balance before the fund is raided.

Mr. Holben stated that he thinks that the Legislature would be hard-pressed to allow the Board to increase fees when it has a cash balance on hand of \$5 million.

Dr. Talmage stated that he and Mr. Albert have talked about the small fees paid by the P.A.s and the A.A.s. The investigation and licensure processing is the same as it is for physicians. M.T.s pay a great deal more for their exams, and that compensates for them.

Dr. Talmage stated that another thing they have discussed is fining authority. As long as it is judiciously used and not a substitute for Board actions, it is something that would be more palatable to the medical community. Dr. Talmage asked whether Mr. Holben was able to find out what the administrative fee for Ohio licensure.

Mr. Holben stated that it used to be that the Board paid the Treasurer's office 3%, but now the Board has other methods to receive its fees. A 3% fee is paid to BankOne for a lockbox and 3% is paid to the credit card companies.

Mr. Holben continued that the Board's rent will increase when it moves to the Rhodes Tower, plus the Board will have to pay the moving costs. The only thing that DAS is picking up the tab for is infrastructure changes; i.e., the phone lines and computer lines. The Board will have to pay for any new furniture it might need. The staff is considering making the Board conference room there into a teleconference site where the Board could do videoconferencing. Mr. Holben stated that he thinks that the Board will be able to get DAS to pay more.

Mr. Whitehouse stated that, in a climate of consolidation, when the State is talking about sharing the wealth, he would suggest that half of what the Board currently has in its cash balance would be more than sufficient to deal with any kind of emergency situation. In terms of fees, the Board will have to figure out how it adjusts to make sure that the money it brings in can be correlated with what the Board is spending. He indicated that the current P.A. legislation may also have an impact on the Board's budget.

Mr. Holben stated that the strategic plan is important in that the Board doesn't want to go to the Legislature for extra money more than once during a fiscal year. He believes that the Board should draw from its cash

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balance and then look at a readjustment of the fees. A realistic timetable for looking at increasing the appropriation authority would be mid-year. January or February would be the time to look at adding employees. The only problem with that is the space requirement. The Board has limited space in its current offices.

Mr. Albert stated that the Board needs to know what the cost is for processing a licensure application and for doing an investigation.

Dr. Davidson stated that that would make it very clear that the Board isn't covering those costs.

Dr. Varyani stated that, if the Board begins to do criminal background checks on applicants, it will need a fee increase for that. He stated that he thinks that physicians' licensure fees are already high enough, and he suggested that P.A. fees might need to be increased to cover the costs that will arise from the new P.A. legislation.

Mr. Whitehouse at this time reviewed the proposed agenda for the September 2005 retreat. A copy of the agenda shall be maintained in the exhibits section of this Journal.

Dr. Davidson advised that, following the retreat, the Executive Committee will spend time discussing what was learned at the retreat and Mr. Whitehouse will develop a long-range strategic plan based on those discussions. She stated that Committee members only will be allowed to take part in those discussions. Dr. Davidson added that she has invited Mr. Browning to be a member of the Executive Committee, and he has accepted.

Mr. Browning expressed concern that the retreat agenda calls for staff to just stand up and tell the Board members what they do. He questioned where the strategic plan is.

Mr. Whitehouse explained that this will be a "Town Hall" type of meeting, where staff members will briefly explain what their departments do and the remainder of the time allotted to them will be devoted to answering Board members questions. As Dr. Davidson indicated, following the retreat, he will work with the Executive Committee to use the ideas discussed at the retreat to develop the Board's long-range strategic plan for presentation to the full Board in November or December.

## REPORTS BY ASSIGNED COMMITTEES

### LICENSURE COMMITTEE

Dr. Robbins stated the Committee discussed five licensure applications:

Pradeep Manikoth Nambiar, M.D.

Dr. Robbins stated that Dr. Nambiar's application for endorsement licensure was considered by the Board at its July 2005 meeting. Dr. Nambiar is a graduate of a non-LCGME approved school and has not

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completed any U.S. training. He's asking the Board to consider his previous training and experience as being equivalent to 24 months of approved graduate medical education through the second year level. The Board tabled Dr. Nambiar's application, pending a report by the Licensure Committee on the equivalency issue.

Dr. Robbins stated that the Committee is in the process of trying to come up with a better way to help the Board to deal with equivalency issues, and it hopes to bring something to the Board in September. Based on previous actions of the Board, however, the Committee feels that Dr. Nambiar has training and expertise equivalent to two years of approved graduate medical education through the second year level, and recommends approving Dr. Nambiar's licensure application.

Dr. Talmage stated that he assumes that the Committee has legal advice that the Board is able to find such an equivalency. He stated that, as long it is legally possible, it would seem that it would be correct to do so in this case.

Dr. Robbins stated that the Committee did not have legal advice on that issue. It only considered prior actions of the Board. In September the Committee hopes to be able to list for the Board the specific training requirements for fellows of the Royal College, to show that there is equivalency.

Mr. Albert stated that the Board has found such equivalency in the past and has never been challenged.

Dr. Kumar expressed concern, stating that rules and regulations for the practice of medicine are different in other countries. Also, terminology is different. Dr. Kumar stated that applicants should have some American training. Dr. Kumar noted that Dr. Nambiar may be very well qualified. He also noted that Dr. Nambiar will be doing a fellowship at the Cleveland Clinic. He suggested giving Dr. Nambiar a training certificate.

Dr. Varyani stated that about two months ago the Board gave an applicant a license and that individual had done nothing but research in the United States. Now that individual is the Chairman of his department. Dr. Varyani asked why the Board should use a different standard for Dr. Nambiar.

Mr. Browning asked whether Dr. Varyani is suggesting that the Board made a mistake in that previous case.

Dr. Varyani stated that he is not. He is only stating that the Board should be consistent.

**DR. TALMAGE MOVED TO FIND THAT DR. NAMBIAR'S PREVIOUS TRAINING AND EXPERIENCE ARE EQUIVALENT TO TWO YEARS OF APPROVED GRADUATE MEDICAL EDUCATION THROUGH THE SECOND YEAR LEVEL AND TO APPROVE DR. NAMBIAR'S APPLICATION FOR A LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO. DR. TALMAGE FURTHER MOVED TO CHARGE THE LICENSURE COMMITTEE WITH EXAMINATION AND REVIEW OF THE RULES RELATIVE TO FOREIGN ENDORSEMENTS. MR. BROWNING SECONDED THE MOTION. A vote was taken.**

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VOTE:

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

The motion carried.

Paul Thodiyil, M.D.

Dr. Robbins advised that Dr. Thodiyil's request that the Board find equivalency in his prior training and experience to the 24 months of graduate medical education, through the second year training, required by statute was considered by the Board and tabled at its July 2005 meeting. Dr. Thodiyil has the following training in the United States: Fellowship in foregut surgery, at USC Medical Center from July 2002 through June 2003, and a fellowship in minimal invasive surgery, at University Health Center of Pittsburgh from June 2003 through December 2004. He advised that the Board tabled this application for the same reasons as it tabled the previous case. The Committee again recommends that the Board find equivalency and grant Dr. Thodiyil a license. Dr. Robbins noted that Dr. Thodiyil's C.V. shows that he has one year of training at U.C.L.A. and one year at the University of Pittsburgh. Both were in the high 90 percentile of clinical experience.

**DR. KUMAR MOVED TO FIND THAT DR. THODIYIL'S PREVIOUS TRAINING AND EXPERIENCE ARE EQUIVALENT TO TWO YEARS OF APPROVED GRADUATE MEDICAL EDUCATION THROUGH THE SECOND YEAR LEVEL AND TO APPROVE DR. THODIYIL'S APPLICATION FOR A LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO. MR. BROWNING SECONDED THE MOTION. A vote was taken.**

VOTE:

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

The motion carried.

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Alberto Noel Diaz, M.D.

Dr. Robbins advised that the Committee reviewed Dr. Diaz' application for a waiver of the U.S.M.L.E. seven-year rule on the basis of the newly adopted rule 4731-6-14 (3), which allows the Board to grant a limited exception to the rule to applicants who show good cause for not having completed the examination sequence in the seven-year period. Dr. Diaz was ten months outside of the seven years.

Dr. Robbins stated that he had requested that Ms. Rieve ask Dr. Diaz to send a letter explaining his "good cause." He added that, although he personally was disappointed in Dr. Diaz' response, which indicates that he had deferred taking the U.S.M.L.E. until such time as he could afford it, and until such time as he could improve his knowledge and skills in medicine, the Committee does recommend that the Board grant the waiver. He noted that none of the steps taken by Dr. Diaz had more than three failures.

**DR. ROBBINS MOVED TO APPROVE DR. DIAZ' REQUEST FOR A WAIVER OF THE BOARD'S SEVEN-YEAR RULE. DR. KUMAR SECONDED THE MOTION.** A vote was taken.

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

The motion carried.

Joseph Foss, M.D.

Dr. Robbins advised that Dr. Foss' application for licensure was presented to the Committee for consideration because Dr. Foss has not been engaged in the active practice of medicine since August 2001.

**DR. ROBBINS MOVED TO APPROVE DR. FOSS' APPLICATION FOR ENDORSEMENT LICENSURE, SUBJECT TO HIS PASSING THE SPEX. DR. KUMAR SECONDED THE MOTION.** A vote was taken.

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye

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Dr. Robbins - aye

The motion carried.

Eve Chung Tsai, M.D.

Dr. Robbins advised that Dr. Tsai has requested a waiver of the seven-year rule for taking the U.S.M.L.E. He noted that she is seven months beyond the seven-year deadline, and that she passed all three parts of the exam in the first sitting. Dr. Robbins commented that she did that with significant honors. Dr. Tsai has recently completed ten years of training in neurosurgery.

**DR. ROBBINS MOVED TO GRANT DR. TSAI'S REQUEST FOR A WAIVER OF THE SEVEN-YEAR RULE AND TO GRANT DR. TSAI A LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF OHIO. MR. ALBERT SECONDED THE MOTION.** A vote was taken.

VOTE:

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

The motion carried.

Dr. Robbins stated that the Committee will continue its deliberations concerning the equivalency issue, and he added that it will take Dr. Kumar's concerns into consideration during its deliberations.

Dr. Robbins stated that other topics the Committee is currently working on are: criminal background checks for licensure applicants; and survey questions to be included on the renewal card.

LEGISLATIVE LIAISON & RULES COMMITTEE

Mr. Browning stated that the Committee's discussion was limited to S.B. 154 and H.B. 305, concurrent legislation on P.A.s. He referred the Board to Ms. Thompson's memorandum of July 26, 2005, a copy of which shall be maintained in the exhibits section of this journal, summarizing both pieces of legislation. Mr. Browning noted that Senator Wachtmann, the sponsor of S.B. 154, is no longer Chair of the Health, Human Services and Aging Committee. He added that, in all likelihood, these bills will become law.

Dr. Davidson commented that she was pleased and surprised to see that OSMA has changed its position on the legislation from one of support to one of neutrality with technical advice.

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Mr. Browning advised that some changes that will occur include the raising of licensure fees, and changes to the way license applications are processed. He commented that standard P.A. plans, for instance, are not decisions. It's a paperwork routine. The Board has never denied certification to a P.A.

Mr. Albert asked what percentage of the Medicaid/Medicare fees the P.A. gets.

Dr. Kumar stated that they get 80% of the fees. He added that many of the P.A.s don't take care of Medicare patients because of financial issues.

Dr. Robbins stated that Medicare still requires direct supervision by the doctor. Dr. Robbins added that he agrees that the legislation will become law, and that there's nothing the Board can do to stop it. The Board needs to do whatever it can to get on board. He added that he still feels that someone in medicine should take a stand and say that this is just wrong, and he'd like the Board to do that. Dr. Robbins stated that he fully believes, down the road, when they see what happens, everybody's going to look and ask whether everyone was asleep at the switch. If they look at the record, they're going to see that everybody said it was fine.

Mr. Albert stated that he's opposed this for 18 years.

Dr. Davidson stated that opponent testimony will be taken, and that is one place to get on the record. She suggested that Mr. Whitehouse or one of the Board members could testify at that time. She stated that that could be reasonably worded so that the Board isn't cutting off its nose to spite its face.

Dr. Kumar suggested that the Board go on the record to be opposed to P.A.s seeing patients for specialist care, when they have not had training beyond minimal training. The Board doesn't want P.A.s to be allowed to see new patients with new conditions when that P.A. is working for a cardiologist or neurosurgeon.

Dr. Egner agreed with Dr. Kumar, stating that that is the biggest problem. It's not the P.A.s in a primary care setting that are a concern. It's the P.A.s asking to do all of this high-tech, specialized treatment without any formal training. She stated that the Board has broached this subject on multiple occasions, saying that the apprentice-type training is outdated and not the way to go. They've been very clear to say that that's what they believe in and they're not going to set up P.A. residency programs. That's not the direction that they want to take. Dr. Egner stated that if you don't want to take the mainstay education process, you ought not be doing it.

Dr. Kumar stated that he thinks that this type of modification would be acceptable. The Board isn't taking away anything that is commensurate with the training the P.A.s have.

Dr. Robbins stated that that would be true if all of medicine agreed with what this Board is saying and would stand up and elucidate exactly like the Board is saying. The trouble is, they won't.

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Dr. Kumar stated that if the Board starts saying that to the Legislature, it will start to resonate, and the OSMA and AOA and whoever is looking at it won't be opposed to it. He stated that he doesn't think that there is any way that anyone could oppose that.

Dr. Varyani stated that his understanding of this bill is that the P.A.s aren't going to be doing too much; but when they're in the hospital setting the hospital will be responsible for the quality assurance and the Board will not be.

Dr. Davidson stated that the hospital will decide the P.A.'s scope.

Dr. Varyani agreed and stated that this Board is not approving anything new. Hospitals will decide what they want P.A.s to do, how they will do it, and they will monitor the P.A.s. He stated that he doesn't think that anything has changed for P.A.s in the office setting.

Mr. Browning stated that from a patient point of view it is changing in the sense that the legislation arguably allows the P.A. to diagnose and treat tomorrow what they can't do today. A new patient will walk in, or an established patient with a new condition, and he sees a P.A., the P.A. diagnoses the situation and prescribes drugs if that's part of the response. Mr. Browning stated that that is a fundamentally different day.

Dr. Varyani stated that that's not what is in the law. The law is stating that the hospital will regulate P.A.s and their policies. That's all.

Mr. Browning stated that the legislation also allows the P.A.s to do things.

Dr. Davidson commented that the Board won't even know which P.A.s the hospital employs.

Dr. Kumar stated that there are two parts to the legislation. He agreed that in the hospital component, the hospital will take care of it. He understands that. But, even on the private side, there is this broad permission for the P.A.s to see new patients and new conditions beyond primary care. If they Board goes simply with the idea that P.A.s should be allowed to see new patients and new conditions, commensurate with their training. If they have had residency training or a year of training after P.A. school, the Board can consider it. If they haven't done that, they shouldn't be allowed to see new patients anywhere.

Mr. Albert stated that doctors have created all these P.A.s, and they're the ones that want the P.A.s to do all these things. He stated that the previous day the Board released a doctor from probation who had two P.A.s running his office while he was laying on the beach in the Caribbean.

Dr. Robbins commented that, as soon as this law passes, that action is eliminated.

In response to Dr. Davidson's questions, Ms. Thompson stated that the list of functions that are allowed under a standard plan is currently in the bill. The P.A.s would like it out, because they would like to have a scope of practice that says that they can do whatever the doctor wants them to do.

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Mr. Browning stated that he feels the Board needs to stick to the fundamental problems it has with this bill as opposed to drifting off to the hundred things the Board could talk about.

Dr. Kumar stated that he still thinks that the Board needs to take a stand on the specialty issue.

Dr. Davidson stated that she believes that the Board's opposition to the bill is clear.

Mr. Browning suggested that the Board direct Ms. Thompson to draft a statement reflective of the Board's concerns, with the understanding that less is more in the statement.

#### P.A. COMMITTEE

Dr. Talmage stated that the Committee reviewed supplemental plans submitted by two groups: Canton Cardiovascular Surgery, Inc., and University Internal Medicine Associates.

**DR. TALMAGE MOVED TO APPROVE CANTON CARDIOVASCULAR SURGERY, INC.'S REQUESTS FOR ITS P.A.S TO PERFORM THE FOLLOWING FUNCTIONS: EMERGENCY INSERTION OF CHEST TUBES, IN A HOSPITAL SETTING, UTILIZING 100% DIRECT SUPERVISION WITH THE P.A. OBSERVING THE PHYSICIAN PERFORM 25 PROCEDURES AND THE PHYSICIAN OBSERVING THE P.A. PERFORM 25 PROCEDURES TO DETERMINE COMPETENCY; REMOVAL OF CHEST TUBES, IN A HOSPITAL SETTING, UTILIZING 100% ONSITE SUPERVISION WITH THE P.A. OBSERVING THE PHYSICIAN PERFORM 10 PROCEDURES AND THE PHYSICIAN OBSERVING THE P.A. PERFORM 10 PROCEDURES TO DETERMINE COMPETENCY; REMOVAL OF INTRA AORTIC BALLOON PUMP, IN A HOSPITAL SETTING, UTILIZING 100% ONSITE SUPERVISION WITH THE P.A. OBSERVING THE PHYSICIAN PERFORM 5 PROCEDURES AND THE PHYSICIAN OBSERVING THE P.A. PERFORM 5 PROCEDURES TO DETERMINE COMPETENCY; AND VEIN AND ARTERY HARVESTING AS PART OF CARDIOVASCULAR SURGERY, IN A HOSPITAL SETTING, UTILIZING 100% DIRECT SUPERVISION WITH THE P.A. OBSERVING THE PHYSICIAN PERFORM 25 PROCEDURES AND THE PHYSICIAN OBSERVING THE P.A. PERFORM 25 PROCEDURES TO DETERMINE COMPETENCY. DR. KUMAR SECONDED THE MOTION. A vote was taken.**

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

The motion carried.

Dr. Talmage advised that University Internal Medicine Associates' requests are for permission for the P.A.s to perform bone marrow aspirations and biopsies in both the anterior and posterior iliac crests. The P.A.P.C. reviewed this request and indicated that its members didn't believe there was a lot of separation between the functions being performed in either location and recommended approval of both.

Dr. Talmage continued that Dr. Davidson has expressed concern that the training listed for the procedures include "conscious sedation for the patients" as part of the curriculum, as well as those drugs used to reverse conscious sedation. Dr. Talmage stated that the Committee had not noticed that the previous day. He suggested that, if the Board approves the P.A.s to perform these functions, it also send a letter saying that "conscious sedation" is not a privilege granted to P.A.s and, therefore, should not be a part of the curriculum.

Dr. Egner asked whether the Board has granted this procedure in the past.

Dr. Talmage stated that it has on one occasion recently.

Dr. Egner stated that the Board should have some discussion as to whether this is appropriate under any circumstance.

Dr. Davidson stated that this is certainly less risky to a patient than putting in a chest tube. You can kill somebody putting in a chest tube. You just hurt them trying to get bone marrow out of them. She commented that, of interest, the application doesn't say anything about using local anesthesia. She stated that, hopefully, someone is putting in a local.

Dr. Talmage stated that these were procedures that, as a med student, he did. He stated that they may not have done aspirations, but they did do bone marrow biopsies.

Dr. Egner stated that it is her understanding that this is a fairly painful procedure. She stated that in the past the Board has looked at the technical part of the test, the complications that can arise from the test, and why the test is being done. She stated that she would assume that most bone marrows are being done for a cancer or serious haematological diagnosis. Dr. Egner stated that she thinks it is the physician's role to make the diagnosis and to establish the plan of care.

Dr. Davidson stated that this is just a technical thing. The patient has been on chemotherapy and shows up at week 15 for a bone marrow biopsy. Why does a doctor have to do it? Dr. Davidson added that she was at the receiving end of this needle for a lot of weeks. It didn't matter that it was a doctor or a haematologist. It was better if the individual performing the procedure was technically better at it.

Dr. Kumar stated that he agrees with Dr. Davidson. This is not that difficult a technical procedure. He will concur that the application should not be approved with the conscious sedation.

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Dr. Talmage stated that the assumption in all of these applications has always been that the decision to aspirate is made by the physician. The actual technical procedure of aspirating the fluid from the knee can then be done by a P.A. Dr. Talmage stated that in all cases it is presumed that the physician makes the decision that the procedure be done because the P.A. is a dependent practitioner. He stated that, if the legislation passes, there might be a debate as to whether they truly are a dependent practitioner.

**DR. TALMAGE MOVED TO APPROVE THE FOLLOWING PROCEDURES REQUESTED BY UNIVERSITY INTERNAL MEDICINE ASSOCIATES, DELETING ALL REFERENCES TO CONSCIOUS SEDATION, WHICH IS NOT AN APPROVED PROCEDURE: PERFORMANCE OF BONE MARROW ASPIRATIONS FROM THE ANTERIOR ILIAC CREST, IN A HOSPITAL SETTING, UTILIZING 100% DIRECT SUPERVISION WITH THE P.A. OBSERVING THE PHYSICIAN PERFORM 25 PROCEDURES AND THE PHYSICIAN OBSERVING THE P.A. PERFORM 25 PROCEDURES TO DETERMINE COMPETENCY; PERFORMANCE OF BONE MARROW ASPIRATIONS FROM THE ANTERIOR ILIAC CREST, IN A HOSPITAL SETTING, UTILIZING 100% DIRECT SUPERVISION WITH THE P.A. OBSERVING THE PHYSICIAN PERFORM 25 PROCEDURES AND THE PHYSICIAN OBSERVING THE P.A. PERFORM 25 PROCEDURES TO DETERMINE COMPETENCY; PERFORMANCE OF BONE MARROW ASPIRATIONS FROM THE POSTERIOR ILIAC CREST, IN A HOSPITAL SETTING, UTILIZING 100% DIRECT SUPERVISION WITH THE P.A. OBSERVING THE PHYSICIAN PERFORM 25 PROCEDURES AND THE PHYSICIAN OBSERVING THE P.A. PERFORM 25 PROCEDURES TO DETERMINE COMPETENCY; AND PERFORMANCE OF BONE MARROW BIOPSY FROM THE POSTERIOR ILIAC CREST, IN A HOSPITAL SETTING, UTILIZING 100% DIRECT SUPERVISION WITH THE P.A. OBSERVING THE PHYSICIAN PERFORM 25 PROCEDURES AND THE PHYSICIAN OBSERVING THE P.A. PERFORM 25 PROCEDURES TO DETERMINE COMPETENCY. MR. BROWNING SECONDED THE MOTION. A vote was taken.**

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

The motion carried.

Dr. Davidson at this time stated that any statement made concerning the P.A. legislation should include the need for informed consent. Patients need to know that P.A.s, not physicians, are performing procedures.

Dr. Talmage commented that the A.M.A. Code of Ethics does say that all members of the medical team

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must be identified.

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

Thereupon at 10:27 a.m. on August 11, 2005, the August 10-11, 2005 meeting of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on August 10-11, 2005, as approved on September 14, 2005.



Patricia J. Davidson, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)

