

October 12, 2005

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## MINUTES

### THE STATE MEDICAL BOARD OF OHIO

October 12, 2005

Patricia J. Davidson, M.D., President, called the meeting to order at 1:06 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.; Anquetette Sloan; 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; Rebecca J. Marshall, Chief Enforcement Attorney; Mark R. Blackmer, Marcie P. Pastrick, Sallie J. Debolt, David P. Katko, Karen H. Mortland, Kathleen S. Peterson, William J. Schmidt and Charles A. Woodbeck, Enforcement Attorneys; Kyle C. Wilcox, Tara L. Berrien and Damion M. Clifford, Assistant Attorneys General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Chief, Executive Staff; Danielle Bickers, Compliance Officer; Barbara Jacobs, Public Services Administrator; Jacqueline A. Moore and Annette Jones, Disciplinary Information Assistants.

#### EXECUTIVE SESSION

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

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

The motion carried.

October 12, 2005

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

The following joined the meeting after the executive session: Patricia A. Davidson, Hearing Examiner.

MINUTES REVIEW

**DR. STEINBERGH MOVED TO APPROVE THE MINUTES OF SEPTEMBER 14, 2005.**  
**DR. VARYANI SECONDED THE MOTION.** A vote was taken

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

The motion carried.

REPORTS & RECOMMENDATIONS

Dr. Davidson announced that the Board would now consider the findings and order appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matter of Arkady Peterman, M.D. A roll call was taken:

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

Dr. Davidson asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from

October 12, 2005

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dismissal to permanent revocation. A roll call was taken:

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

Dr. Davidson noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. In the matter 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 order in the above matter. No objections were voiced by Board members present.

The original Report and Recommendation shall be maintained in the exhibits section of this Journal.

Dr. Egner, who had been out of the room during the previous poll, returned to the meeting and indicated that she had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matter of Arkady Peterman, M.D., and that she did understand 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.

ARKADY PETERMAN, M.D.

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

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

Dr. Peterman was accompanied by his attorneys, Terry Gilbert, Esq., and Richard Ludgin, M.D., Esq.

Mr. Gilbert stated that Dr. Peterman would address the Board, after which he would sum up their position on the interpretation of the rule involved, and whether any of the limited exceptions apply for

Dr. Peterman.

Dr. Peterman thanked the Board at this time for the opportunity to appear before it. He stated that the reason he is so intent to have a license in Ohio is because his whole immediate and extended family live in Cleveland, Ohio, and he sees some room to build a practice in Cleveland because there are just a few Russian-speaking physicians there for a large Russian community which is desperately looking for Russian-speaking physicians.

Dr. Peterman stated that he understands that his licensing credentials may not be perfect, but there is nothing illegal in them. They do not quite fit within the seven-year rules, and don't quite fit in the number of attempts rules. He stated that he would like to call on the Board's humanity and ask that it find some room for an exception in his unique situation.

Dr. Peterman stated that he came to the United States ten years ago, having practiced for 23 years, and being Board certified. His intention upon arrival was to be a physician again. It took ten years for him to get his first license in another state that doesn't have the same restrictions as does Ohio. He's currently practicing medicine in New York. He also holds a license in California. Dr. Peterman stated that he would have provided a license in North Carolina, but he doesn't want to live there because his family is in Cleveland.

Dr. Peterman again asked the Board to reconsider its decision to deny his application for an Ohio license.

Mr. Gilbert stated that he thinks that this is, somewhat, a unique situation, because the Board is operating under a rule that was just recently promulgated. This rule allows some breathing space in terms of exceptions with respect to allowing discretion on a case-by-case basis to be able to accept the seven-year rule as a bar to licensure in the State of Ohio. Mr. Gilbert stated that Dr. Peterman has gone through a process in which very few people would say that he is not qualified to be a physician, not only in terms of his history in the Soviet Union, but in terms of his work here in this country, having gone through residency in St. Louis. The problem with the failures of U.S.M.L.E. Step 3 had to do with the fact that that was the clinical portion. Once he got into the clinical realm in his residency, and learned the protocols and learned the computer operation and all the other things that go along with the clinical process, he was able to pass it. He did this in eight and a half years. Mr. Gilbert stated that he thinks that the Hearing Examiner recognized this in his suggestion to the Board that there are two options: One is to read the new rule, Section C.3. in a very restrictive manner, or allow the language to be interpreted quite broadly.

Mr. Gilbert advised that he believes that the Hearing Examiner took the safe route. He denied the license based on a very strict interpretation of the rule, but he also suggested that this Board has the option of interpreting its own rules. If it exercises discretion, under the rule as drafted, as ambiguous as it is, the Board can find a basis and just cause for allowing Dr. Peterman a license. Mr. Gilbert stated that Dr. Peterman has an extraordinary history of coming to a strange country and devoting his entire life and being able to achieve the status of a physician in this country. Two states have already recognized that, and they hope that the State of Ohio also recognizes this wonderfully qualified, competent physician, who could do so much for his community.

October 12, 2005

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

Ms. Berrien stated that this is a case of first impression. It is the first time that the Board will consider an application case under the new rule for the U.S.M.L.E. It will set precedent, based upon how the Board interprets that rule. Ms. Berrien stated that in the past the Board struggled with the old U.S.M.L.E. rule because it tied the Board's hands from using its discretion to consider applications on a case-by-case basis. The old rule included exceptions for those seeking doctoral degrees and those with significant health conditions. It also required that all three steps be passed within ten years. The new rule has other exceptions. One of the revisions was to the sentence that now reads: "Limited exceptions to this rule may also be granted to an applicant who suffered from a significant health condition which by its severity would necessarily cause a delay to the applicant's medical study, or as the board deems appropriate." The other exception was the limited exception that they pass within ten years, they show good cause as to why they couldn't pass in seven years, and that they also have not failed any step more than three times. Unfortunately, Dr. Peterman does not satisfy that specifically defined requirement. In that regard, the State does agree with the Report and Recommendation, denying Dr. Peterman a license.

Ms. Berrien stated that there is also a question as to what the Board's intention was when it added the language, "or as the Board deems appropriate." She asked whether it was the Board's intention to have more discretion in all cases or did it specifically apply to the sentence to which it was attached, i.e., meaning the significant health conditions. If the Board intended for this term to apply to all application cases, it's important that the Board thoroughly explain on the record why a particular case is appropriate or inappropriate for licensure. The other exceptions in the rule are very well defined. They're very specific. The language, "or as the Board deems appropriate," is very broad. It appears that it only refers to the significant health issue. If the Board is reading it to apply to any case, it's very important for the Board to make the record clear as to why it is appropriate or inappropriate to grant an application for licensure.

Dr. Buchan stated that the rule says that the applicant can't have failed any part of the exam more than three times. He asked whether, in that case, the Board really has a question that needs to be answered

Ms. Berrien stated that she doesn't think that it does. It took Dr. Peterman seven times to pass Step III of the U.S.M.L.E.

Dr. Buchan stated that the Board would move outside the rule if it allows a failure rate of this sort to be licensed.

Ms. Berrien agreed. If the Board interprets the language, "or as the Board deems appropriate," to apply to the entire rule and not just to the significant health condition, it makes the rule somewhat null, as it stretches the rule as to what the intent was.

Mr. Gilbert asked to respond to Dr. Buchan's question. He stated that what he found interesting about paragraph 3 of the rule is that there are a number of locations where it talks about limited exceptions. Only one of those sentences involving limited exceptions talks about not failing any step three times or more. In the other parts of the rule where it talks about limited exceptions, it makes no reference to how many times one is afforded to pass any particular step.

Mr. Gilbert stated that, with respect to the question of “significant health condition”, it’s in the plural. The language reads: “Limited exceptions to this rule may also be granted to an applicant who suffered from a significant health condition which by its severity would necessarily cause a delay to the applicant’s medical study, or as the board deems appropriate.” Mr. Gilbert stated that that’s what he thinks the Hearing Examiner was getting at when he said that there may be other reasons, other than significant health problems.

**DR. EGNER MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ARKADY PETERMAN, M.D. DR. STEINBERGH SECONDED THE MOTION.**

Dr. Egner stated that she thinks that the Board really needs two discussions: How it interprets the rule, and how it will then apply the rule. She stated that she interprets the exceptions in a broader sense than just health. That’s how she reads the rule. But she doesn’t apply a broader interpretation to the number of fails. In this case, that is her problem. Dr. Egner stated that she understands Dr. Peterman’s explanation for his failures; he took the test prior to really being ready to take Step III. Dr. Egner stated that her problem is the number of failures, and she believes that the rule is very clear on that and doesn’t really allow the leeway. She doesn’t interpret limitations just to be limited to health concerns.

Dr. Kumar stated that his interpretation of the exception has to do primarily with health issues. That was because the Board was getting requests based on the health exception, which the Board did not really believe were truly health exceptions. When the discussion occurred, the language was put in giving the Board the discretion to really find out what the health exceptions are. Dr. Kumar stated that the Board discussed this extensively, and that’s why that language was only put in that sentence. The health problems are subject to interpretation, and the Board wants to see whether a particular health problem justifies giving the exception or not.

Dr. Robbins stated that he pretty much agrees with both Dr. Egner and Dr. Kumar. It’s his feeling that, in an attempt to help physicians whom the Board deemed licensable who, for one reason or another, health being the main reason, had difficulty with the seven-year rule. The Board was able to help that individual. The exceptions were put in to allow the Board to find things other than health that could delay taking the test within the seven years. His problem is that he sees absolutely no exception for failures greater than three within that rule. As for protecting the public, the worst that will happen is that Dr. Peterman will take Steps I, II and III over again, passes them, and gets a license. Dr. Robbins continued that, when you have someone who has multiple failures greater than three on any step, and requests a variance in the seven-year rule, that immediately kicks it out. There can’t be a variance or a waiver considered in that situation. Dr. Robbins stated that, although he is sympathetic, seven failures are too many to make an exception.

Dr. Steinbergh stated that she agrees that the language, “or as the Board deems appropriate,” was put in the rule because there was a case of a physician who, because of his cultural background, was overwhelmed by personal issues at home, health issues of members of his family, and the pressure that he had in maintaining his residency and then also passing the U.S.M.L.E. in that period of time. The Board was compassionate because, although that physician was not personally ill, there were ill members of his family

October 12, 2005

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for whom he was caring. The Board felt that it was appropriate to grant a waiver to this individual. The Board does have an ability to determine significant reasons why a person wouldn't pass within a seven-year time frame.

Dr. Steinbergh added that although Dr. Peterman gives the rules a sympathetic explanation, and understandable explanation, granting him a license would fall so far out of the Board's rules as to make a different standard in this state, and the Board would not be following its own rules. Dr. Steinbergh stated that she would, therefore, concur with the Report and Recommendation.

Dr. Buchan stated that, as he reflects on the spirit of the rule process, he personally interprets it in a more broad sense, and he's in favor of granting a license, based upon that review in that spirit. However, the failure rate puts him in a position where he thinks that he has no choice but to move forward with this Report and Recommendation. Dr. Buchan added that, as sympathetic as he is, he doesn't feel that he can rewrite the rule today, and therefore he must approve the Proposed Order, as written.

Mr. Browning stated that he concurs with the points made by Dr. Buchan. He thinks that the Board has the discretion in terms of making judgment calls, and not being entirely controlled by what the Board regards as very serious rules.

Dr. Varyani expressed agreement with Dr. Robbins' statements.

Dr. Steinbergh noted for the record that Dr. Peterman passed the U.S.M.L.E. on his seventh attempt, as opposed to having seven failures.

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

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

The motion carried.

October 12, 2005

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CITATIONS, PROPOSED DENIALS & ORDERS OF SUMMARY SUSPENSIONDEVENDRA K. VARMA, 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. VARMA. DR. BUCHAN SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

JOHN ANDERSON KING, D.O. – CITATION LETTER

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

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

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

October 12, 2005

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Dr. Davidson - aye

The motion carried.

**CYNTHIA DIANNE WESTER-BRONER, M.D. – CITATION LETTER**

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

**DR. STEINBERGH MOVED TO SEND THE CITATION LETTER TO DR. WESTER-BRONER. DR. SAXENA SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

**MICHAEL JOSEPH VJECHA, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING**

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

**DR. STEINBERGH MOVED TO ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF MICHAEL JOSEPH VJECHA, M.D., IN ACCORDANCE WITH SECTION 4731.22(G), OHIO REVISED CODE, AND TO ISSUE THE NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING. DR. BUCHAN SECONDED THE MOTION.** A vote was taken:

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

October 12, 2005

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

The motion carried.

#### RATIFICATION OF BOARD SETTLEMENTS

GREGORY TODD SCHULTE, M.D.

**DR. STEINBERGH MOVED TO RATIFY DR. SCHULTE'S PERMANENT SURRENDER OF HIS LICENSE TO PRACTICE MEDICINE AND SURGERY. MS. SLOAN SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

ALLAN WILLIAM CLARK, M.D.

**DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. CLARK. DR. ROBBINS SECONDED THE MOTION.**

Dr. Steinbergh stated that this was a difficult case with some significant impairment issues, both chemical and depression, as well as personality disorders. There are issues of previous non-compliance with a consent agreement, both here and in Pennsylvania. She stated that this physician will have to work very hard at his sobriety and wellness, if he is to continue with his licensure in Ohio.

October 12, 2005

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A vote was taken:

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

The motion carried.

BARBARA JEAN WILLOWS, D.O.

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

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

The motion carried.

CHARLES D. PHILLIPS, M.T. APPLICANT

**MR. BROWNING MOVED TO RATIFY THE PERMANENT WITHDRAWAL OF MR. PHILLIPS' APPLICATION FOR A LICENSE TO PRACTICE MASSAGE THERAPY. DR. KUMAR SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
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October 12, 2005

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Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Varyani	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Saxena	- aye
Dr. Steinbergh	- aye
Dr. Davidson	- aye

The motion carried.

DOUGLAS PAUL BOSACK, M.D.

**DR. VARYANI MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. BOSACK. DR. STEINBERGH SECONDED THE MOTION.**

Dr. Steinbergh stated that she sometimes questions whether or not the Board could take some of these long cases, revoke their licenses for five years, and make them come back to the Board to prove themselves. It's generous of the Board to be doing this.

Mr. Albert stated that he sometimes tells probationers that it would be easier for the Board to say, "give us your license and go away for two years or four years, and then come back, prove to the Board that you've been working the programs, the Board will send them for evaluations, and, if everything works, out they'll get their licenses back." Mr. Albert stated that the Board spends a lot of time, money and manpower monitoring these people. He stated that he and Ms. Bickers interviewed 42 probationers the previous month. He added that the Pharmacy Board does what he suggests. The Pharmacy Board takes a license away for a year, and then if they relapse, the person never gets his or her license back.

Dr. Buchan stated that the Board has been advised that, if it indefinitely suspends a license, terms for reinstatement are required. He asked whether that is a true statement.

Ms. Gilbert stated that it is true. The Board would have to include terms for the individual to fulfill in order to be reinstated if the Board imposes an indefinite suspension.

Dr. Buchan stated that what Dr. Steinbergh is suggesting is to indefinitely suspend and don't talk to the Board for some period of time. In order to do that, the correct course is to revoke.

Dr. Kumar stated that the Board has done one revocation for the record. The Board took that action on a licensee who abused cocaine. The Board revoked that individual's license and asked them to come back after so many years and proving to the Board.

October 12, 2005

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Dr. Egner stated that the problem is that you can't tell them they can't come back in five years or two years. They can come back anytime they want. They could come back every month.

Ms. Gilbert stated that also, under that scenario, the burden would be on the Board to prove that they're impaired. It's not their burden to prove that they're not impaired.

Dr. Steinbergh stated that that's a problem.

Dr. Robbins stated that he thinks that it's a positive for the Board that it acts as it has. It's something of which the Board should be proud. He added that if he was the Pharmacy Board, he wouldn't be proud.

Mr. Albert stated that he thinks that the Board members need to be aware of what goes along with these probations.

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

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

The motion carried.

GREGORY S. MASIMORE, M.D.

**DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. MASIMORE. DR. SAXENA SECONDED THE MOTION.** A vote was taken:

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

October 12, 2005

---

Dr. Robbins	- aye
Dr. Saxena	- aye
Dr. Steinbergh	- aye
Dr. Davidson	- aye

The motion carried.

JOSEPH C. CARVER, M.D.

**DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. CARVER. DR. SAXENA SECONDED THE MOTION.**

Dr. Steinbergh stated that this case was complicated, involving minimal standards and sexual boundary issues. She stated that she believes the Consent Agreement is well crafted and it fulfills the Board's ultimate goal, which is to remove this physician from practice for a year and require a CPEP evaluation. Dr. Steinbergh stated that she does believe this document adequately addresses the Board's issues.

Dr. Kumar agreed.

Dr. Talmage stated that consent agreements take people out of practice immediately, as opposed to going through the hearing process which wouldn't be accomplished for probably at least another year. That delays taking the physician out of office for a significant amount of time. This is one of the principles of consent agreements. It's immediate.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- nay
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

MILES E. DRAKE, M.D.

**DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH**

October 12, 2005

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**DR. DRAKE. DR. SAXENA SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

WILLIAM M. WOLERY, D.P.M.

**DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. WOLERY. DR. SAXENA SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

PAUL E. DUNCAN, M.D.

**DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. DUNCAN. DR. VARYANI SECONDED THE MOTION.**

Dr. Buchan spoke in favor of the consent agreement. He stated that he would like to compliment the Secretary and Supervising Member and the Enforcement staff on their efforts, noting that the consent

October 12, 2005

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agreements brought to the Board this month are extraordinary. He noted that these are complex cases that the Board hasn't seen at this level to this extent. Some of these cases are impairment, but one dealt with impairment along with some minimal standards situations. Historically, the Board would handle these as a full Board; these cases would go to hearing. He stated that he wanted to bring to the Board's attention the fact that there may be a shift of thought or focus on some of these matters. Dr. Buchan stated that the Board should continue its diligence in reviewing these cases before these meetings, but also keep its ear to the ground on, philosophically, how the Board feels about some of these disciplinary actions that the Board is taking. He finds them quite extraordinary.

Dr. Steinbergh referred to the cases involving sexual boundary issues and minimal standards issues, and she asked whether it's possible to summarily suspend a license on these issues and then to proceed to hearing, effectively removing the physician from practice.

Dr. Talmage stated that the criteria for suspension calls for concerns of immediate harm to the patient. In boundary issues, he doesn't think that that standard could be met. In minimal standards cases, that might be a tactic to use.

Ms. Gilbert one consideration is how recent the conduct was. One of the issues the Board faces in building a standards case is how recent the occurrence, and whether that translates to "immediate and serious harm." The Board also has an elevated burden of proof to clear and convincing when using the summary suspension statute. There is also a hearing right that happens right away with a summary suspension. Ms. Gilbert stated that she doesn't know whether the Board's hearing unit can handle that at this time. They're scheduling hearings and those are being continued. On a summary suspension, the Board must be ready to go to hearing within 7 to 14 days.

Dr. Kumar stated that he agrees with the consent agreement. He expressed kudos to this physician's colleagues who were vigilant and caught the problem very quickly and took appropriate steps.

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

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

The motion carried.

October 12, 2005

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Mr. Browning stated that he voted yes, but he shares Dr. Buchan's concerns. The Board is starting to get into the outer limits of agreements that come before the Board. This is pretty serious stuff. The Board could easily go back through the cases that came before it and find less severe cases than this one. In terms of process, he votes yes, but with concern.

JEFFREY VAUGHN MEYER, M.D.

Ms. Gilbert advised that this consent agreement is with a physician who holds a training certificate, and who was found to be impaired and in need of treatment after an evaluation was performed.

Dr. Steinbergh stated that it also involves fraud on an application.

Dr. Egner stated that she doesn't understand why there isn't a citation for this individual.

Ms. Gilbert stated that it's a pre-citation consent agreement. She stated that the enforcement staff was able to reach what the Secretary and Supervising Member felt was acceptable as terms with the physician. In that situation, there is no citation.

Dr. Davidson stated that the Board will spend more time later in the meeting talking about the Pre-cite settlement agreement policy.

Dr. Steinbergh asked how the consent agreement deals with the fraud on the application

Ms. Gilbert stated that this person hasn't been treated before and hasn't been before the Board before, so it's not a relapse situation. They would otherwise have no minimum suspension. The 90-day minimum suspension imposed is something beyond what would have been required had it only been the impairment issue.

Dr. Steinbergh stated that she understands the 90-day suspension, but she wonders about this physician's understanding of his fraud on his application. She suggested that the Board should require a course on professional ethics to address that issue. If this were a simple impairment issue, she would be comfortable with the consent agreement, but she will vote "nay" on this agreement because of her concerns.

**DR. BUCHAN MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. MEYER. DR. ROBBINS SECONDED THE MOTION.** A vote was taken:

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

October 12, 2005

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Dr. Robbins - aye  
Dr. Saxena - aye  
Dr. Steinbergh - nay

The motion carried.

#### PERSONAL APPEARANCES

##### JOHN D. FREED, M.D.

Dr. Freed appeared before the Board pursuant to his request for release from the terms of his September 12, 2001 Consent Agreement.

In response to Dr. Davidson's questions, Dr. Freed stated that he is doing great. He's still following his program and now has six years clean and sober. He's not going to change anything he's doing when he is released from probation. Dr. Freed stated that he's doing a full-time emergency practice in Wheeling and Martins Ferry. Dr. Freed stated that he has some tools in place to relieve the stress of his job. He does a lot of meditation and prayer. He does a lot of patient satisfaction techniques. If the patients are happy, then he's happy, too, at the end of the day. He stated that he's very passionate about patient satisfaction and patient care. He added that recovery has really brought a new life to his practice and his personal life. Dr. Freed stated that this has been nothing but a positive experience for him.

Dr. Kumar asked whether Dr. Freed takes any time out in the middle of the day.

Dr. Freed stated that he doesn't really have time in the middle of the day. He usually gets up at 4:30 a.m. and does the things he's going to do. He goes to work at 7:00 a.m. He goes to the gym and spends about a half hour of meditation time, and then he's ready to go for the rest of the day. Dr. Freed stated that there are always little time-outs. Dr. Freed stated that his positive outlook, eliminating negative thoughts, has changed his way of looking at medicine and patient care.

In response to Dr. Steinbergh's questions, Dr. Freed stated that his family support is wonderful. He married a woman from Wheeling. They have been married for five years, and she is totally supportive. He also has children from a previous marriage. Dr. Freed commented that Mr. Albert has been after him to make contact with those children, and he has made attempts. His son is 26 or 27, and his daughter is three or four years younger. Dr. Freed stated that they have not made contact for some time. He stated that this is one thing out there for which he still must make amends. It will just take some time.

**DR. STEINBERGH MOVED TO RELEASE DR. FREED FROM THE TERMS OF HIS SEPTEMBER 12, 2001 CONSENT AGREEMENT. DR. BUCHAN SECONDED THE MOTION. A**  
vote was taken:

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

October 12, 2005

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

The motion carried.

Dr. Steinbergh asked whether Dr. Freed has any advice for the Board.

Dr. Freed stated that he has actually enjoyed the experience; it has been totally positive. He added that if people take recovery seriously and do what they are told to do, it will go well. He stated that he's not the man he was seven years ago. Dr. Freed also advised that he's involved in the physician wellness committee at his hospital.

MARK T. HALLE, M.D.

Dr. Halle appeared before the Board pursuant to his request for release from the terms of his October 11, 2000 Consent Agreement.

In response to Dr. Steinbergh's questions, Dr. Halle stated that he continues to practice psychiatry in Columbus on a part-time basis. He works about ten hours a week. Those ten hours include the times he's on call or works evening hours. Dr. Halle stated that his family has been very supportive. None of his immediate family is alcoholic, but they are understanding. They're all spiritual people, all born-again Christians, except for his father; but his father has been supportive, too. They're not drinkers. He was the only drinker in the family. His family has been understanding. Dr. Halle commented that he doesn't have the usual problem that alcoholics have, with family members drinking during family gatherings. He also has support from friends in A.A. Dr. Halle indicated that he really doesn't have many friends outside of A.A., aside from friends scattered throughout the country that were friends from childhood. There are also a few friends he met in medical school who will be friends for the rest of his life. He didn't drink with them. There's also his sponsor, his therapist, his psychiatrist and other people like that.

Mr. Albert advised that Dr. Halle had a hard time finding a job. He worked at numerous jobs, including telephone solicitation and newspaper subscriptions. Mr. Albert asked Dr. Halle how he is doing in his job with Netcare.

Dr. Halle stated that the job is working out pretty good. He really does like the job. Before, he was always in the state of anxiety, and he didn't enjoy practicing psychiatry. That's why he didn't go back to it right away. He was entertaining ideas of other professions. Dr. Halle stated that the program has worked so that he can go back in it, not fearing that he'll do something wrong, something will go terribly, and he will be

October 12, 2005

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sued. He's nowhere near the worrier he used to be, practicing in fear all of the time. Practice is now fun. He enjoys working with the people.

In response to Dr. Buchan's questions, Dr. Halle stated that he has drug screens done twice a month now. He stated that he doesn't feel that it played much of a part in his sobriety. He stated that he doesn't think he's getting any benefit from it. It's not what's keeping him sober. Dr. Halle added that his sponsor wants him to change one of his A.A. meetings to an Alanon meeting. He stated that that teaches you how to live more the style of life.

**DR. BUCHAN MOVED TO RELEASE DR. HALLE FROM THE TERMS OF HIS OCTOBER 11, 2000 CONSENT AGREEMENT. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

ERIC W. LOTHES, M.D.

Dr. Lothes appeared before the Board pursuant to his request for release from the terms of his October 11, 2000 Consent Agreement.

Dr. Lothes advised the Board that he's in his seventh year of recovery. He still does three meetings a week: Monday night meeting, Wednesday Caduceus meeting, and a Saturday morning NA meeting on the Ohio State campus. He sees his sponsor, who is in industrial construction, every Saturday morning. He also sponsors a local dentist and a local medical student at OSU. Dr. Lothes stated that last fall, when his agreement with OPHP (Ohio Physicians Health Plan) terminated, he signed a lifetime honoree agreement with them and he'll continue that. Dr. Lothes stated that he doesn't want to "rock the boat with what works."

Dr. Lothes continued that he's active in his church. He and his wife hang out with couples from the church, and that seems to work great for them. He has a solo practice in Powell, Ohio, working eight to five, Monday through Friday, and a couple hours on Saturday morning, after his meeting.

October 12, 2005

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Dr. Kumar asked Dr. Lothes what got him started on using the herbal anabolic steroids.

Dr. Lothes stated that he played college football and started lifting weights. He went to a health food store and asked them what would work to help put on muscle mass. When he started taking them, he was really clueless as to what they were doing. Everyone else around him noticed a change in his behavior, but he did not. He stated that he believes those substances are all banned now. Dr. Lothes stated that he's learned through this recovery that he never thought enough of himself. Even if he got the top grades in his class, he always wanted to be better. He thought he'd please his dad more that way. Dr. Lothes added that, somehow, taking this stuff and becoming bigger and stronger, fed into that idea. He's learned in recovery that he can be flawed and be happy with himself. He stated that, in a way, this is the best thing that's ever happened to him.

Dr. Kumar asked whether this product is still available in health food stores.

Dr. Lothes stated that it's not. He added that these are the pills that all the baseball players were taking, but they're all banned now. He's been told that you can only get them by prescription now. He has not seen any replacement products out there.

Dr. Buchan asked Dr. Lothes whether his wife was impaired.

Dr. Lothes stated that she wasn't impaired, but she did have a back problem. It was more a matter of abuse than impairment. His wife has gotten help. Now they don't have drugs or alcohol in their house, and they hang out with couples who don't drink.

Dr. Lothes stated that he wants to thank Mr. Albert, Mr. Schmidt and Ms. Bickers because they were kind, fair and firm, and just what he needed.

**DR. KUMAR MOVED TO RELEASE DR. LOTHES FROM THE TERMS OF HIS OCTOBER 11, 2000 CONSENT AGREEMENT. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

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

October 12, 2005

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The motion carried.

ERICA A. SEWELL, D.O.

Dr. Sewell appeared before the Board pursuant to her request for release from the terms of her October 9, 2002 Consent Agreement. Also requested is approval of the Compliance Staff's report of conference on August 9, 2005.

In response to Dr. Steinbergh's questions, Dr. Sewell stated that right now she's in an interim phase, getting ready to start her own practice. She will probably work part time to start out with, and do locum part time until she builds her practice. Dr. Sewell stated that she's committed to staying where she is, in Cape Coral, Florida. Currently she's doing family practice, seeing patients on a day-to-day basis, Monday through Friday.

In response to further questions by Dr. Steinbergh, Dr. Sewell stated that she had a consent agreement in Florida for one year, but she was never on probation. It was just a C.M.E. requirement and a fine. She has an unfettered license in Florida.

In response to Dr. Kumar's questions, Dr. Sewell explained that her problem in Florida was a result of a patient having requested lab work to be done. When the results came back abnormal, they couldn't reach him. The patient showed up three months later for a separate Workers Compensation issue, and the two charts didn't match, so he didn't get his lab results. He therefore filed a complaint with the State of Florida. There was no untoward result to the patient, it's just that he didn't get his results in a timely fashion.

Dr. Robbins asked Dr. Sewell how she would handle that same scenario now.

Dr. Dr. Sewell stated that now they have a computer database in the office where they track every abnormal lab value. It's checked every Monday and charts are pulled, specialists and patients are called to make sure that every lab is followed up.

**DR. KUMAR MOVED TO APPROVE THE COMPLIANCE STAFF'S REPORT OF CONFERENCE ON AUGUST 9, 2005, AND TO RELEASE DR. SEWELL FROM THE TERMS OF HER OCTOBER 9, 2002 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. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye

October 12, 2005

---

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

The motion carried.

JAMES H. SCOTT, D.O.

Dr. Scott appeared before the Board pursuant to his request for release from the terms of the Board's Order of October 11, 2000. If approved, release from probation would become effective October 13, 2005. Also requested is approval of the Compliance Staff's report of conference on August 9, 2005.

Dr. Kumar asked Dr. Scott what he was doing to a colleague under local anesthesia and what kind of major surgery he was performing under a local.

Dr. Scott stated that it really was not what he would consider a major surgery. It was a lipectomy to remove a Pfannenstiell scar. There was some indication that there had been an umbilical transplant, but he had no idea where that came from because he didn't do an umbilical transplant. Dr. Scott stated that he's done dozens of these in practice and surgery. It was a procedure that was done as a favor. He stated that he'd advised the patient to do no lifting or straining and the next day she was up mopping the floor. She tore a stitch loose and it caused some bleeding. He reprimanded her. Two days later she was up painting her ceiling, tore some more stitches and had more of a bleeding problem. That's when he put her in the hospital. He revised the scar, taking about two cm around and then pulled it down. She had like a mini tummy tuck. The previous scar looked like a keloid; it was not a very good scar.

In response to further questions by Dr. Kumar, Dr. Scott stated that he was an urgent care physician. He's boarded in family practice, but most of his work has been urgent care, emergency medicine and trauma medicine in third world countries.

Mr. Browning asked Dr. Scott what he has learned through all of this.

Dr. Scott stated that he's learned several things: Play by the rules; don't do any favors for anyone unless you write it down somewhere. Those are the big lessons. He will not go down this path again.

Dr. Steinbergh stated that, having been part of the Board at the time it placed Dr. Scott on probation, she needs to point out that this was not a hard thing for the Board. The California Board found Dr. Scott guilty of gross negligence and incompetence, and so did this Board. It may sound like a simple error, but it was not. She stated that if the Board members read the record, they will know that this was of tremendous concern to the Board. She added that she's glad to know that Dr. Scott has learned lessons from this and that he wouldn't repeat that type of behavior, would maintain appropriate records, and not to perform surgery under conditions like that.

October 12, 2005

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**DR. KUMAR MOVED TO APPROVE THE COMPLIANCE STAFF'S REPORT OF CONFERENCE ON AUGUST 9, 2005, AND TO RELEASE DR. SCOTT, EFFECTIVE OCTOBER 13, 2005, FROM THE TERMS OF HIS OCTOBER 11, 2000 CONSENT AGREEMENT. DR. BUCHAN SECONDED THE MOTION. A vote was taken:**

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

The motion carried.

GRADY B. CAMPBELL, M.D.

Dr. Campbell made his initial appearance before the Board, pursuant to the terms of his July 13, 2005 Consent Agreement. Dr. Campbell was also seeking approval of community service and approval of a personal/professional ethics course.

Dr. Steinbergh stated that she is in favor of approving the ethics course proposed by Dr. Campbell, but she also indicated that she does tend to disagree with the community service proposal. She stated that she doesn't think the community service he's suggesting serves the public in terms of medical care. She sort of felt after reading this proposal that Dr. Campbell would be hauling supplies and construction materials. Although that's nice, she had it more in mind that he would do some community service in regards to the field of medicine; for instance, providing a lecture to service groups. That seems to be more appropriate for community service for a physician. Dr. Steinbergh stated that, although Habitat for Humanity is a wonderful project, hauling supplies is something a lot of people can do, but a lot of people can't educate the public in terms of medical issues.

Dr. Davidson asked Dr. Campbell whether he explored any other possibilities.

Dr. Campbell stated that he called the Cincinnati Academy of Medicine and asked them if there were other positions for physicians, such as working in free clinics. He hasn't gotten a response from them. He stated that his understanding of the terms of the agreement was that the community service was not specifically related to medical activities. He's already started working for Habitat for Humanity, and his sister worked for them. He's been thinking about doing this for a while anyway, and his feeling was that it was a very good community service opportunity. Hauling supplies is just a beginning position. It won't be the end.

October 12, 2005

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He really likes the idea of Habitat of Humanity being a hand up and not a handout. Dr. Campbell stated that he didn't understand that the community service has to be medically related.

Dr. Steinbergh indicated that the agreement doesn't actually specify that the service be medically related, but it was her take on it that it should. She noted that there are hospitals that provide community lectures. She stated that she's only sharing her sense of what she feels is appropriate for a physician.

Dr. Campbell stated that he may well do that. He'd already pursued that and is now waiting for a response.

Dr. Campbell stated that he feels absolutely terrible and very remorseful for what he did (mislabeling dates on x-rays). His mental state before this happened was not in a real good place at all, and he thinks that there are a lot of reasons for that. The major reason was the fear of malpractice. Dr. Campbell stated that he thinks that a lot of physicians these days have a great deal of fear. It varies as to how well the physician handles it. Some people handle it well and some don't. Dr. Campbell stated that he was not in a good place. He added that he was sued fifteen years ago by a patient with whom he's probably worked harder than he's worked with any other patient, and that changed his whole approach to practice. He became very defensive. He became angry, and with that he became very scared and very phobic of being sued. He did some expert witnessing during that time, kind of preparing him in case he did get sued one day. That was not a good thing to do because he reviewed numerous depositions. To see the way some lawyers went after physicians was terrifying. It was not to find the truth. It was to humiliate them, degrade them and destroy them.

Dr. Campbell stated that he felt so bad about this incident that he got major depression. He lost weight, couldn't sleep and couldn't eat. He was ashamed of himself. He tried to correct things as best he could, which included telling the patient and his wife, his partners, who have been incredibly supportive, his kids and the Board. Dr. Campbell stated that he's beginning to believe that things happen for a reason or that people needed some lifesaving event to occur. When he faced the fact that he may lose his license, which did happen, he realized how much he loves medicine and how much he needs it. Dr. Campbell stated that he realizes that there's nothing worse than going through this for him. Being sued is not a problem anymore.

Dr. Campbell continued that he did get some psychiatric help to deal with his own issues of accepting his own mistakes, the phobia and fear of malpractice he had, and his depression. He stated that he's a lot better and in a different place now. He's back to enjoying medicine for the first time in fifteen years and he hopes to enjoy it for a few more years until he can retire. Dr. Campbell stated that he now feels that it is a privilege to practice medicine.

Dr. Kumar asked whether Dr. Campbell self-reported to the Board.

Dr. Campbell stated that he did.

Dr. Steinbergh suggested that Dr. Campbell share his story with medical students and house officers. It's part of their education in ethics and professionalism.

October 12, 2005

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Dr. Campbell stated that he actually talked to someone and he feels that they should actually come to a Board meeting and experience that. Dr. Campbell stated that he feels terrible about the incident.

Dr. Kumar stated that, apart from the issue of changing the dates on the x-rays, he asked what Dr. Campbell could suggest to others so they don't miss an x-ray.

Dr. Campbell stated that he devised a plan for his group wherein x-rays that are developed are not touched by anyone but the physicians. The doctors put the new x-rays on the view box. No x-rays are put on the view box by anyone but the physician. Dr. Campbell noted that the dates are on the x-rays, he just didn't look at it. He assumed it was the most current x-ray.

**DR. STEINBERGH MOVED: TO APPROVE DR. CAMPBELL'S COMMUNITY SERVICE PROPOSAL TO WORK FOR HABITAT FOR HUMANITY; TO APPROVE THE PERSONAL/PROFESSIONAL ETHICS COURSE TAILORED FOR DR. CAMPBELL BY IDA C. SCHICK, Ph.D.; AND TO CONTINUE DR. CAMPBELL UNDER THE TERMS OF HIS JULY 13, 2005 CONSENT AGREEMENT, WITH HIS NEXT APPEARANCE BEFORE THE BOARD AT THE TIME OF HIS RELEASE. DR. SAXENA SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

JASON V. CHURCH, M.D.

Dr. Church made his initial appearance before the Board, pursuant to the terms of his July 13, 2005 Consent Agreement. Dr. Church is also seeking approval of a monitoring physician.

In response to Dr. Davidson's questions, Dr. Church stated that there are a lot of things going on in his life. He noted that life doesn't stop being stressful when you, technically, have time off from work. He is actively attending meetings. He attends weekly continuing care meetings at an aftercare center, as well as attending four other twelve-step meetings during the week. He has a very good support system. He has a wife and two young children. He and his wife have been in counseling together, and he's also receiving some individual counsel. Also, his in-laws are also in Utah, and they have been very supportive in a

October 12, 2005

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number of ways. Dr. Church stated that he's always been active in his Church from the standpoint of physically. He has not been very spiritually active for quite some time. He has now returned to that.

In response to Dr. Saxena's questions, Dr. Church stated that he completed two years of pediatric residency at Columbus Children's Hospital. He had been offered a position as a pediatric cardiology fellow at Primary Children's Hospital in Utah. It was a new pathway that involved a four-year fellowship instead a three-year fellowship. That's why he left his residency early. When he told them that he was in rehab and what the situation was, they opted not to work with him. He'd already moved his family out to Utah. Columbus Children's Hospital has, at this point, agreed to let him come back and finish his residency. He is pursuing finishing his residency in Utah, since that's where his family is; but right now, Columbus is where he'll be finishing.

Dr. Steinbergh commented that Dr. Church learned early on in his career that there are significant consequences for him.

Dr. Church stated that it was a very gradual process for him. In retrospect, it was a situation of abuse of narcotics; but in his mind, early on, he thought there was a reason for his needing the narcotics. Dr. Church stated that he grew up in a family where they didn't really take medicine. His parents don't really like doctors. His wife noticed that he was taking more medicine than he ever had in the past, and she had talked with him about it, and he realized that there was a problem. He stopped for a while, but he's had ongoing problems with his neck and with depression, as well, and he found himself in a position where he had some cough medicine available to him and he began abusing. This ultimately led to a full-fledged addiction. Dr. Church stated that he actually realized he had a problem when he was interviewing a teenage heroin abuser. That was the first time he realized he had a problem. He tried to stop, but by that point he was chemically dependent physically. He tried to withdraw himself, and he was unsuccessful in doing so. He actually became addicted to Ultram as well.

Dr. Saxena asked Dr. Church to explain his reasons for getting into these drugs.

Dr. Church stated that he'd had some orthodontic work while in medical school. He received Vicodin at that time. In retrospect, he would say that that was the first innocent initiation or exposure to opiates and the effect they had on him. It wasn't until more than two years later that he found himself to be chemically dependent. Before starting residency, he began having neck problems, related to posture. He still has ongoing neck problems now. He thought, because of that, that he had a "pain" reason to take the drugs. He also has frequent sinusitis from allergies, and it became easier to ask a fellow resident for a prescription for cough medicine than it was for a painkiller.

In response to further questions by Dr. Steinbergh, Dr. Church stated that at the time he applied for his training certificate, he was not inappropriately using medication. At that point he was more frequently receiving medication, but he wasn't using mega doses or anything like that. At the time he applied for his full license, in his mind, he was not abusing medications, he was taking them as prescribed. In retrospect, he can see more of the timeline of when this began, and that the frequency of use increased over a period of time.

October 12, 2005

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Dr. Steinbergh asked whether, at the time of licensure, when he answered “no” to the question, “Do you use chemical substance(s) which in any way impair or limit your ability to practice medicine with reasonable skill and safety,” he did so honestly.

Dr. Church stated that he thought, at that time, that he did it honestly.

Dr. Steinbergh asked whether his judgment was impaired in any way because of his abuse of medications.

Dr. Church stated that it’s a little bit tough to answer. He’s thought about this a lot. During the period of time he applied for a license, in the summer of 2004, there was quite a break in his use of any prescription medication at all.

In response to Mr. Browning’s questions, Dr. Church stated that he definitely understands the agreement. He added that, as others have said, if this hadn’t happened now, it was going to happen sometime down the road. He realizes that and he’s actually grateful that it did happen now. He’s not grateful that he’s in the position that he’s in now. He and his wife are both working and they can’t pay the bills and they have no medical insurance. He’s certainly not grateful for those things, but he is grateful that this occurred now because he would have had to confront this at some point. It’s better that it happened now, while he has his future ahead of him.

Dr. Steinbergh asked what kind of work Dr. Church is doing currently.

Dr. Church stated that he was selling cars, but that was too demanding of a schedule for what he needed with his wife working, as well, and taking care of the children. He went to a part-time job selling T-Mobile, a mobile phone company.

**DR. STEINBERGH MOVED TO CONTINUE DR. CHURCH UNDER THE TERMS OF HIS JULY 13, 2005 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. SAXENA SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

October 12, 2005

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RICHARD G. DAY, M.D.

Dr. Day made his initial appearance before the Board, pursuant to the terms of July 13, 2005 Consent Agreement.

Dr. Steinbergh noted that Dr. Day has quite a significant relapse history and other ethical issues, including violation of a consent agreement. Dr. Steinbergh stated that Dr. Day has been before the Board several times, and she's very concerned about him and his history. She asked what Dr. Day is doing differently in terms of his recovery program at this time, and whether he is introspective enough to understand his failures and why he's here again.

Dr. Day stated that he believes he is. He just transitioned from Shepherd Hill on September 30, and he came home on October 1. One of the things he's doing differently this time is that he now has an O.P.E.P. monitor, Dr. Keller in Cambridge, to do his urine screens. Dr. Day stated that Dr. Keller has been a good friend and is in recovery himself, and he is willing to not only work with Dr. Day, but also to call Dr. Day on things that he sees. Dr. Day stated that he really values that relationship.

Dr. Day continued, stating that he had been in treatment, not just at Harding in 1997, but at Shepherd Hill in 1994. At that time he left treatment early. He did two weeks in Shepherd Hill and then went over to Central Ohio Recovery Residences (CORR), Shepherd Hill's residential facility and rationalized that he was well and could go home. Dr. Day stated that the other thing he didn't do at that time was to get an A.A. sponsor, and when he did get one, he didn't utilize the sponsor as he should have. He didn't actively work the steps. Consequently he didn't get better. This time he had a temporary sponsor while he was in treatment at Shepherd Hill, and now he has a permanent sponsor who has 15 years in the program, and whom he really likes. They have a good working relationship.

Dr. Day stated that he has been to endless meetings, listening and talking about relapse, and it's really not that surprising, mysterious or magical. He stopped doing what he needed to do. After his last sponsor died, he didn't get another one, he started cutting back on his meetings, he stopped working the steps, he stopped doing service work. When he doesn't put that first and foremost in his life, he really doesn't have anything else.

In response to further questions by Dr. Steinbergh, Dr. Day stated that he doesn't know at this time what he will do in terms of returning to practice. He stated that is a long time away. The earliest would be January 2007. He's meeting this week to put his belongings in storage. The hospital owns the facility in which he and two other physicians practice. Dr. Day stated that he has also been encouraged to apply for a substitute teacher position in the Zanesville City schools and the Cambridge schools. Dr. Day stated that he thinks that that would be good for him, and added that he would enjoy it.

Dr. Day stated that when Mr. Beck came to review the consent agreement, he was so despondent and discouraged that he was ready at that point to surrender his license. He didn't know that he could do this again. Dr. Day stated that Mr. Beck was very kind and encouraged him not to do that, as did several other physicians who are in recovery themselves. Regardless of whether he's able to go back to practice or not,

October 12, 2005

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he needed to get back into treatment, he needed to get back into A.A., and he needed to start doing the things that he had stopped doing.

Dr. Kumar asked whether Dr. Day would have the impetus to go through what he is going through right now to keep himself sober if he didn't have the threat of the loss of his license.

Dr. Day stated that he would. He had to get back into treatment. Dr. Day stated that he tried to stop drinking on his own, and he tried to recover on his own. That never worked. Dr. Day stated that he's very grateful to have gone through treatment again. He has learned and continues to learn a lot about himself. When he leaves the Board meeting, he will go to Shepherd Hill for his Caduceus meeting this evening and his aftercare. Fear that the Board will take his license away for a longer period of time, or permanently, or fear of anything has never been enough to keep him sober and he doesn't think that it is for anyone.

In response to Dr. Steinbergh's questions, Dr. Day stated that he has good personal support. His family resides in the Cambridge area, and they have been wonderfully supportive. He had a tremendous outpouring of support from numerous patients. He sent a letter to all 3,000 of his patients, informing them that he had relapsed and that he would be closing his office and they would have to find another physician. The response has been very gratifying. He also has a wonderful support system in A.A. and N.A. Dr. Day stated that he just needs to utilize that system.

Dr. Buchan asked Dr. Day what his most or difficult dangerous drug of choice was.

Dr. Day stated that his most difficult would be benzodiazepines. Alcohol was his drug of choice, and he ordered some Ativan earlier this year to try to get off alcohol. That worked for a short period of time. He was basically medicating his withdrawal symptoms. Several years ago he was taking a lot of benzodiazepines, he stopped taking them precipitously, and he had a withdrawal seizure from that. Dr. Day stated that there is no "safe" drug that he could ever use.

**DR. STEINBERGH MOVED TO CONTINUE DR. DAY UNDER THE TERMS OF HIS JULY 13, 2005 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

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

October 12, 2005

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The motion carried.

Mr. Browning and Dr. Robbins left the meeting at this time.

MOUNIR BASHEER EL-BADEWI, M.D.

Dr. El-Badewi made his initial appearance before the Board, pursuant to the terms of the Board's Order of October 10, 2001. Dr. El-Badewi was accompanied by his counsel, Daniel J. White.

At this time Dr. El-Badewi explained the events leading to his misdemeanor conviction; i.e., the solicitation of an undercover police officer to engage in sexual activity for hire for the sum of \$20.00. He did not seek legal representation and pled "no contest" to the charges against him. Dr. El-Badewi advised that he reported his conviction on his license renewal application, and added that he didn't think that he did anything wrong. Eight months later he was cited by the Board for moral turpitude. At that time he sought legal counsel. By the time he appeared before the Board, his conviction record had been expunged. He explained the situation, and the Board ordered a one-month suspension and one-year probation.

Dr. El-Badewi stated that he committed no crime in his medical practice. This has nothing to do with medicine. This was an aberrant incident that happened. There was no intention of his going with a prostitute. This was just a pure accident. Dr. El-Badewi stated that the Board didn't listen, so he fought the Board's action in court for five and a half years. It literally ruined his entire medical career, his family and everything for a crime that never occurred.

Dr. Egner asked Dr. El-Badewi if, in retrospect, he would still go through that whole legal battle, i.e., the appeal process.

Dr. El-Badewi stated that he would because he did not feel that he really did anything wrong at the time. He felt that the Board's sanction was too severe for the acts that occurred. He asked whether there is any such thing as forgiveness or compassion. He applied to three different hospitals and his application was rejected. He applied to different licensing institutions and was rejected for an incident that never occurred.

Dr. Buchan stated that something did occur, so Dr. El-Badewi shouldn't say that it didn't occur. He stated that Dr. El-Badewi is in error when he says that.

Dr. El-Badewi stated that the sex act never occurred.

Dr. Buchan stated that the Board's not talking about that; it's talking about his misdemeanor conviction. That occurred.

Dr. El-Badewi agreed.

Dr. Steinbergh stated that that's why the Board ordered the suspension.

October 12, 2005

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Dr. El-Badewi stated that he finally stopped fighting the case. It cost him so much money. He can't do it anymore.

Dr. Steinbergh noted that that was Dr. Egner's question. Was the fight worth it?

Dr. El-Badewi stated that he also did research. He researched almost every single case in the entire country. There was not another case when a physician was convicted by a medical board that did not involve in one way or another some form of medical practice. This has nothing to do with his medical practice.

Dr. Egner stated that that is not true. She stated that Dr. El-Badewi can look at this Medical Board's records and he will see that he is not the only person who has ever had a disciplinary action for acts not associated with practice.

Dr. Davidson stated that the Board has had cases involving indecent exposure among other types of cases. The Board considers those very seriously.

Dr. Kumar stated that Dr. El-Badewi might be under the impression that we are going to take action for acts involving the medical practice. He stated that physicians are held to a higher standard than just being a physician and involved in medical standard. The Board will take action for acts that are not directly related to the practice of medicine.

Dr. El-Badewi asked again whether there is anything called forgiveness. Physicians make mistakes, they're human, too. The size of his crime was not so severe for him to pay five and a half years of his career.

Several Board members indicated that that was Dr. El-Badewi's choice.

Dr. El-Badewi stated that it wasn't his choice.

Dr. Varyani stated that Dr. El-Badewi did plead "no contest" to the misdemeanor charge in court. The Board suspended his license for one month. Dr. El-Badewi has indicated that he felt that, since he hadn't committed the act for which he pled "no contest," he should not be sanctioned in any way. Dr. Varyani stated that, to him, it sounds like Dr. El-Badewi believes that the Board has taken an unduly harsh action against him.

Dr. El-Badewi stated that he does believe that.

Dr. Varyani stated that Dr. El-Badewi needs to think about what he's saying, because he thinks that the Board has acted very properly. The Medical Board has certain criteria by which it judges doctors. Dr. Varyani noted that the Board has treated Dr. El-Badewi mildly. Dr. El-Badewi on the other hand took legal action against the Board.

Dr. El-Badewi stated that he didn't take legal action against the Board.

October 12, 2005

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Dr. Varyani explained that when Dr. El-Badewi hired an attorney to take the Board's action to court, that was taking a legal action. Dr. Varyani stated that Dr. El-Badewi did commit something, and he needs to change his way of thinking.

Dr. El-Badewi stated that he accepts the punishment now because he has no other choice.

Dr. Varyani again stated that the Board's action was lenient, and yet Dr. El-Badewi is still maintaining that it was too harsh. He stated that he doesn't understand that.

Dr. El-Badewi stated that he has to live with the consequences. It's already been five and a half years. He's played a terrible price for this incident.

Dr. Varyani stated that he understands, but the Board was not responsible for Dr. El-Badewi's actions. It was not responsible for his pleading "no contest," it was not responsible for Dr. El-Badewi trying to prevent the Board from taking a mild action. Dr. Varyani stated that he doesn't understand where Dr. El-Badewi is going with his complaints.

Dr. El-Badewi stated that, basically, he's accepting the punishment.

**DR. VARYANI MOVED TO CONTINUE DR. EL-BADEWI UNDER THE TERMS OF THE BOARD'S ORDER OF OCTOBER 10, 2001, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. BUCHAN SECONDED THE MOTION.**

Mr. White at this time stated that he and Dr. El-Badewi did research this. They did not take this up against the Board to the Court of Common Pleas on a whim. There is a specific statute that says that if a misdemeanor is expunged, it can no longer be used for any purpose whatsoever in any type of thing. They tested that with the Court and found out that the court did not agree with them. However, the Court took a long time to decide this. This case was submitted to the Court in 2003 and it did not decide it until 2005. He does not know why the Court took so long, but they obviously had some issue there that the Court had some trouble with.

Mr. White stated that Dr. El-Badewi, as per his rights, took an issue that was in doubt to the Court. Mr. White stated that, as far as he's concerned, that issue is still in doubt. An appropriate case may well turn a different way. However, Dr. El-Badewi took his chance in Court, the Court agreed with the Board, and he is now willing to agree with the Board. Mr. White stated that what he's hearing now is that the Board wants to increase the sanction.

Board members disagreed.

Dr. Steinbergh stated that Dr. El-Badewi had a 30-day suspension in 2001. Dr. El-Badewi would be done with all of this now if he just understood that the Board has the responsibility of public protection. The Board had the responsibility, if it believes it is necessary based on Dr. El-Badewi's conviction, to apply discipline. The Board judged it, ordered a 30-day suspension, which, for this Board, is a very minimal

October 12, 2005

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thing, and a one-year probation. He had a criminal conviction. It's that simple. Dr. El-Badewi is now here, four years later, because he wanted to appeal the Board's Order to the Courts, which was his right. The Board isn't changing anything.

Mr. White stated that he misunderstood.

Dr. Steinbergh stated that it's not up to this Board to forgive Dr. El-Badewi. It is the Board's responsibility to protect the public, which the Board believes that it did. Dr. El-Badewi has a criminal conviction, and the Board was, by law, obligated to assess that, which it did. The Board does that on a number of occasions. Month after month that is what the Board must do. Sometimes the Board is lenient and sometimes it is less lenient. In this case the Board was lenient. The Board does hold physicians to a higher moral standard; Dr. El-Badewi's acts were inappropriate for a physician. That was the basis of the Board's judgment.

Mr. White stated that that's why Dr. El-Badewi pled "no contest" to the underlying charge and took his punishment from the Court. They are here today and agree with the Board having jurisdiction over this case at this point because they did not appeal it. One of his points is that this isolated incident is not a course of conduct of drug abuse or anything like that. He doesn't understand the necessity of a lengthy period of probation, over and above the five years that Dr. El-Badewi's already been on "probation."

Dr. Egner stated that he's not been on probation.

Mr. White stated that what he's saying is that, if there's been no repetition in five years, what is the purpose of another period of probation?

Dr. Steinbergh stated that the Board doesn't have the ability to change its Order at this time. Dr. El-Badewi has delayed the process by going into the appeal process, which was his right.

Mr. White stated that he thinks that the Board does have plenary ability, according to the way it was presented.

Mr. Albert stated that he's not an attorney, but the Board isn't here today to retry this case.

Dr. Egner stated that the Board isn't going to make the sanction worse, and it's not going to make it better. Dr. Egner stressed that Dr. El-Badewi pled "no contest" to a misdemeanor. The Board has disciplinary guidelines, and the Board's sanction in this case was way under the disciplinary guidelines. The maximum penalty for what Dr. El-Badewi did could be permanent revocation of his license. The minimum penalty is a stayed revocation, indefinite suspension with a minimum of 30 days, with conditions for reinstatement and a subsequent five-year probation. So when the Dr. El-Badewi looks at the Board and asks whether or not it has forgiveness, and don't we look at the circumstances, the answer is "yes, we do, and yes we did." He has a 30-day suspension and a one-year probation. He doesn't have stayed revocation. The sanction doesn't even meet the minimum penalty by the Board's disciplinary guidelines. The Board did take into consideration that it was one act, not associated with his practice. Still, he was guilty of a misdemeanor involving moral turpitude. These are the same rules for Dr. El-Badewi as they are for every other physician, including the Board members.

October 12, 2005

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Dr. El-Badewi stated that he respects what Dr. Egner said, but he wants to bring to the Board's attention is that when the incident occurred, he didn't have a clue of the legal ramifications of this. Neither did he have the intention to do the act.

Dr. Steinbergh stated that the Board doesn't know that.

Dr. El-Badewi stated that he's just trying to make his point, adding that that is where his agony has been all along because it was just a freak accident happening within moments and it led him to all of this. There was no intention on his part at that time to do this.

Mr. Albert stated that after five years of fighting this and delaying this, that doesn't diminish the Board's findings five years ago. After five years, this is not going to go away. It's not the Board's fault that Dr. El-Badewi chose to delay this for five years. He needs to accept the Board's Order, do what he's supposed to do and move on.

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

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

BRUCE JEFFREY MERKIN, M.D.

Dr. Merkin made his initial appearance before the Board, pursuant to the terms of July 13, 2005 Consent Agreement.

In response to Dr. Steinbergh's questions, Dr. Merkin stated that he is doing very well.

Dr. Steinbergh commented that Dr. Merkin is also asking for approval of Dr. Adelman to serve as Dr. Merkin's monitoring physician. She asked Dr. Merkin to tell the Board about his recovery process and his support system.

Dr. Merkin stated that he recently celebrated four years of sobriety. He was in treatment in Atlanta in the fall of 2001. Subsequent to that, he surrendered his West Virginia license. The conditions for

October 12, 2005

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reinstatement there required him to obtain a medical job and supply a plan of action to the Board of Medicine in West Virginia. Dr. Merkin stated that this was a very difficult task. He wasn't able to get work there. Finally, through a recovery friend, who happened to be an addiction psychiatrist, he found out about the fellowship program in addiction medicine in Cleveland, co-directed by Dr. Parran. Dr. Merkin stated that he was offered a position and moved to Cleveland in June 2004, one month before his job was to start, specifically so that he could become entrenched in the recovery community. He moved to a location about a half a mile away from the clubhouse. He attends meetings regularly, three to four meetings per week. He attends two Caduceus meetings.

Dr. Merkin continued that he doesn't have any family in Cleveland, but he thinks that his connections in the recovery community, as well as his connections with other physicians who are working in addiction medicine, have been a tremendous support system for him. He does stay in touch with his friends in recovery in West Virginia, as well as others. Dr. Merkin stated that he thinks his support system is good.

Dr. Merkin stated that he's a very busy person. He's taken a position with Dr. Parran and Dr. Adelman subsequent to finishing his fellowship, and they have him pretty busy. Dr. Merkin stated that he's busy, but happy and very grateful.

Dr. Steinbergh asked whether Dr. Merkin is still in a consent agreement with West Virginia.

Dr. Merkin stated that he is not. The reason that he is not is because he requested that his license be allowed to expire there. He has no plans to return to West Virginia. At the time he needed to renew that license, his financial situation was such that he could not afford the renewal fee. He saw no point in renewing it. The West Virginia Board sent him a letter indicating that he hadn't fulfilled the terms of its consent agreement, and that should he return to West Virginia to practice, he will have to meet with that Board to discuss terms. The West Virginia Board's terms weren't as detailed as Ohio's agreement. Dr. Merkins explained that he believes that the reason for that involved the circumstances under which his license in West Virginia was reinstated. Specifically, his license was reinstated in West Virginia so that he could go to Ohio to practice.

Dr. Davidson stated that this Board has problems with that, adding that this is no reflection on Dr. Merkin. She noted that the Board's former Executive Director became rather exercised over that and had conversations with the West Virginia Medical Board's Medical Director and with the Federation of State Medical Boards about the practice of one state reinstating a license with the stipulation that a licensee go practice in another state.

Dr. Merkin stated that the requirements for him to become re-licensed in West Virginia, which is obviously something he needed to do before applying anywhere else, was to pass the SPEX, which he did handily, to catch up on his C.M.E., which he did, and then get a medical job without a license, explaining to the potential employer that, if they agreed to hire him, he would be able to get his license back. Dr. Merkin stated that this proved to be an impossible situation. He stated that he can understand the spirit of what the West Virginia Board wanted to do, but in practical reality it was impossible.

**DR. STEINBERGH MOVED TO APPROVE CHRISTOPHER L. ADELMAN, M.D., TO SERVE**

October 12, 2005

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**AS DR. MERKIN'S MONITORING PHYSICIAN, WITH TEN CHARTS PER MONTH REVIEWED. DR. STEINBERGH FURTHER MOVED TO CONTINUE DR. MERKIN UNDER THE TERMS OF HIS JULY 13, 2005 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. BUCHAN SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

Dr. Davidson stated that Dr. Merkin should know that the Board has taken licenses away permanently for relapses. The Board doesn't have endless patience with people who cannot maintain their sobriety.

JOHN RUSSELL OGDEN, M.D.

Dr. Ogden made his initial appearance before the Board, pursuant to the terms of July 13, 2005 Consent Agreement.

In response to Dr. Steinbergh's questions, Dr. Ogden stated that he's a fifth year neurosurgery resident at Ohio State University (OSU), Riverside Methodist Hospital and Childrens' Hospital. Dr. Ogden stated that he's been spending his time since July in the lab. It's been good. He's working with the Department Chair, E. Antonio Chiocca, M.D., Ph.D., in Dr. Chiocca's lab. Dr. Ogden stated that Dr. Chiocca is also his supervising physician.

In response to Dr. Davidson's questions, Dr. Ogden stated that he's not impaired. He advised that he underwent a three-day evaluation where they saw that he has no substance abuse problem and didn't need further treatment. Dr. Ogden explained that, when he arrived in Columbus as an intern, he came from a very conservative background. He married very young, had never tried alcohol or any drugs. He had been recently separated when he moved to Columbus. During the week of orientation, his wife delivered their baby, and this was a very hard time for him. He missed a lot in that orientation, including the rules of prescribing. He should have used his common sense and good judgment, but he didn't and he wrote some prescriptions for a girlfriend very early in his first year and second year of residency. Subsequently, he wrote a script for Percocet for a girl he was dating, who had just had surgery. Dr. Ogden stated that he did self-report to his boss, and that's what brings him before the Board.

October 12, 2005

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Dr. Steinbergh noted that Dr. Ogden did utilize some of that medication for himself.

Dr. Ogden stated that he did on a handful of occasions, about three or four times.

Dr. Egner asked how Dr. Ogden's case came to the Board's attention.

Dr. Ogden stated that he tried to make a lot of positive changes in his life, one of which was getting rid of the girlfriend for whom he previously prescribed. That was a difficult process which entailed his going to court to obtain a protection order against her. In court, her lawyer made some false statements. The lawyer stated that, whether Dr. Ogden knew it or not, he was under investigation by the State Medical Board for writing these prescriptions. He was later told that that wasn't the case. When he found this out, he went to his boss so that he wasn't blindsided by this information. He explained what he'd done and the reality of the situation. Dr. Ogden was instructed to go to the Chief Medical Officer's office and then the Board was informed.

In response to Dr. Egner's questions, Dr. Ogden stated that he has two daughters, ages 7 and 4.

Mr. Albert asked whether Dr. Ogden has gone back to his wife.

Dr. Ogden stated that he hasn't, adding that his wife has remarried.

Dr. Egner asked whether Dr. Ogden is involved with his children.

Dr. Ogden stated that he is very much involved with his children.

Dr. Steinbergh noted that Dr. Ogden also did some alcohol, marijuana and ecstasy.

Dr. Ogden stated that he experimented with those real early. Dr. Ogden added that he thinks that what he went through was what a lot of people go through when they go off to college their freshman year. It was a very immature period of his life.

In response to further question by Mr. Albert, Dr. Ogden stated that his wife did not leave him because he had girlfriends. He stated that the marriage had been a struggle for seven years. He added that he actually left her a month before medical school graduation, when he didn't have a relationship going on with anyone. His ex-wife did work for two of the years he was in medical school.

**DR. STEINBERGH MOVED TO CONTINUE DR. OGDEN UNDER THE TERMS OF HIS JULY 13, 2005 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MS. SLOAN SECONDED THE MOTION.** A vote was taken:

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

October 12, 2005

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Dr. Buchan	- aye
Dr. Kumar	- aye
Ms. Sloan	- aye
Dr. Saxena	- aye
Dr. Steinbergh	- aye
Dr. Davidson	- aye

The motion carried.

KOLLI M. PRASAD, M.D.

Dr. Prasad made his initial appearance before the Board, pursuant to the terms of the Board's Order of May 18, 2005.

In response to Dr. Steinbergh's questions, Dr. Prasad stated that his sobriety is going well. He sees his psychiatrist every four months. The medications he takes are Effexor, Trazadone and Paxil. Dr. Prasad stated that he has been sober for eight years. He attends meetings and sponsors others in A.A. Dr. Prasad stated that he thinks sponsoring helps because when he tells others to do something, he feels that he should be doing the same things.

In response to Dr. Egner's questions, Dr. Prasad stated that his most recent violation occurred towards the end of January 2004. At that time he got a call that his brother was sick. He left town without telling the Board. He missed meetings and he didn't do enough toxicology tests when he was in New York. For three months he stayed there and he missed all the things he was supposed to be doing for the Board. He did talk to Board staff over the phone, but he never asked for permission from the Board to miss those things.

Dr. Egner noted that Dr. Prasad has a long history with this Board. Even though Dr. Prasad didn't relapse, she's concerned that he's walking a tightrope. Dr. Egner stated that Dr. Prasad has had multiple relapses, but what brings him before the Board today is not a relapse, it's a violation of a Board Order. Dr. Egner stated that people do lose their licenses, even when the violation is not a relapse. It's not just staying away from the alcohol; it is working through this process. Dr. Egner stated that she wants Dr. Prasad to understand how important it is for him to stay with this process.

Dr. Kumar added that it is Dr. Prasad's responsibility to make certain that he is submitting those samples for testing, as required, even when he's on vacation or out of town. He needs to make arrangements to do that himself.

Mr. Albert asked Dr. Prasad how long he has been sober.

Dr. Prasad stated that he has been sober eight years and six months.

Ms. Sloan asked whether Dr. Prasad's paperwork is current.

Ms. Bickers stated that the Board doesn't have all of his paperwork. She added that she's talked to

October 12, 2005

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Dr. Prasad about it before this meeting, and they will continue to work on getting it all in. Dr. Prasad sent in his A.A. logs, but the Board needs to receive drug screens, supervising physician reports and a declaration of compliance. The monitoring of compliance is ongoing.

Dr. Kumar stated that the fact that, despite being reminded, the Board doesn't have all the necessary paperwork from Dr. Prasad doesn't speak very well.

Dr. Prasad stated that in mid May he had back surgery for herniation of a disc, and it got worse after that. He did speak to Danielle prior to surgery and also e-mailed her a request to be away from his probationary terms because he wouldn't be able to drive for a few weeks. For the next two months he underwent two epidurals and neither helped. He had an MRI and they found a big fragment sitting on the nerve cushion. He had to go back in September 7, and they took care of the problem. For the past two weeks he's been able to walk and stand without pain. In between he did go to meetings, and he faxed that information to the Board last week. Dr. Parran told him that he would fax his drug screens. Dr. Prasad stated that he didn't have a compliance form, so he wrote a letter and sent it by e-mail last Friday.

Dr. Kumar stated that Dr. Prasad might think that he is making all the efforts; the Board sympathizes with him for his back problems and the other situations. But still, Dr. Prasad's efforts obviously haven't been enough. Dr. Kumar stated that Dr. Prasad needs to make a bigger effort to get these things done.

Mr. Albert stated that Dr. Prasad's problem has always been his failure to comply with the paperwork. He has never relapsed on alcohol. It's just been getting him to comply with the paperwork requirement.

Ms. Sloan stated that that's part of the agreement.

Mr. Albert agreed, stating that it's a very important part of the agreement.

Ms. Sloan stated that she's not really sure what's going on if Dr. Prasad hasn't complied. Dr. Prasad can say anything he wants to, but the Board doesn't have the paperwork to back up what he's saying. She advised Dr. Prasad that he must get the paperwork in because it is important for the Board to have it. She stated that the Board hasn't been able to track his recovery during all this time. At this point, Dr. Prasad is out of compliance.

Dr. Prasad stated that the psychiatric report was sent in July, Dr. Parran's report was sent, the meeting logs were faxed, the urine toxicology report was sent last week. Dr. Prasad stated that he is concerned because there's nothing really missing. He sent everything, the paperwork is in the office.

Ms. Bickers stated that the paperwork was due in the office on the first of the month. Ms. Bickers stated that Dr. Prasad knows what is due, and she and he need to talk about the paperwork that is still missing.

Dr. Buchan stated that Dr. Prasad needs to iron out these details with the Secretary and Supervising Member next month. He noted that Dr. Prasad is not compliant at this time, and, quite honestly, he's not using the Board's time very well right now.

October 12, 2005

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**DR. BUCHAN MOVED TO CONTINUE DR. PRASAD UNDER THE TERMS OF THE BOARD'S ORDER OF MAY, WITH HIS NEXT APPEARANCE TO BE BEFORE THE BOARD SECRETARY OR DESIGNEE IN ONE MONTH. DR. VARYANI SECONDED THE MOTION. A vote was taken:**

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

Dr. Egner asked Dr. Prasad whether he's working full-time.

Dr. Prasad stated that he hasn't found a job yet. He would like to work full-time.

Mr. Albert stated that Dr. Prasad will have to submit a practice plan for the Board's approval.

ANDREW SCHNEIDER, M.D.

Dr. Schneider made his initial appearance before the Board, pursuant to the terms of August 10, 2005 Consent Agreement. Dr. Schneider also sought approval of a practice plan, a monitoring physician, a treating psychiatrist and a supervising physician.

In response to Dr. Davidson's questions, Dr. Schneider stated that he has been better than he's ever been in his life. He owes his life to the Medical Board. A year ago he became so miserable running his own urgent care and financial trouble, that he actually thought that his four children and his wife would be better off with the \$2.5 million life insurance than with him. Nothing seemed to help. There was a summary suspension, which he fought because there were some false accusations; but, basically, the Board forced him to go to Parkside and Parkside saved his life. Dr. Schneider stated that it wasn't that he was out abusing drugs again. He'd gotten some legal prescriptions, but in the Big Book there's a line that says, "life had become so miserable that I couldn't imagine life with or without drugs." He knew that he couldn't use drugs. He has so much to be grateful for, including his wife and his four healthy children, but he'd really gotten into a rut and nothing got him out of it. The second or third week at Parkside he just, all of the sudden, felt like living again. Dr. Schneider apologized to the Board for hiring a lawyer and fighting everything as he did, but he was so focused on the fact that they said that he took this morphine, and he knew that he didn't take the morphine. That's all he focused on. He didn't focus on the fact that his thinking was sick. Addiction is a "thinking" disease, it's not a "using" disease. His thinking had gotten to

October 12, 2005

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the point where he was just miserable and couldn't see things the way they really were.

Dr. Schneider commented that it was more the other patients at Parkside who helped. Dr. Edna Jones was great and the counselors were great; but what saved him was meeting other people like him and seeing how they got through it.

Dr. Steinbergh noted that Dr. Schneider's proposed practice plan calls for his working in an emergency room "less than 50 hours per week." She asked how he felt about working that many hours.

Dr. Schneider stated that it's not a busy emergency room so that probably a third of the time is actually spent with patients. There are about 40 to 50 patients per day. Usually between midnight and 6:00 a.m., nine out of ten nights you're sleeping and not seeing patients.

Dr. Steinbergh asked how that many hours a week will fit into his recovery program.

Dr. Schneider stated that the plan gives him five free days a week. He works 24 hours, two days a week. That gives him five days to be with his daughter, to go to his meetings, and to see Dr. Fettman (his psychiatrist). It allows him plenty of time. Dr. Schneider stated that he's pretty good at falling asleep now. One of the things that bothered him last year was that he couldn't sleep. That's why he asked for a prescription for Valium. Since he's gotten things straightened out, he falls asleep less than five minutes after lying down. He also does transcendental meditation, something he had done as an adolescent and which he picked up again at Parkside. After 20 minutes of that he feels as though he's slept several hours.

Mr. Albert stated that what he thinks pushed Dr. Schneider over the edge is that Dr. Schneider bought an urgent care.

Dr. Schneider stated that he started it up from scratch. In addition to working twelve hours a day at the urgent care, which he was doing for three years, he had to worry about the payroll, the taxes and everything. When he went home from work he wasn't done. He'd be there from 8:00 a.m. until 8:00 to 9:00 p.m. and he still had all those things on his mind. Working in the emergency room, he puts in his time, gets in his car and goes home. He's done. He has no further responsibility. Dr. Schneider stated that his brother, a cardiologist in Cincinnati, was instrumental in making sure that he got rid of the urgent care, because he was reluctant to do that at first. Dr. Schneider added that Mr. Albert did warn him about the added responsibility of running a business in addition to practicing medicine.

**DR. STEINBERGH MOVED TO APPROVE: DR. SCHNEIDER'S PRACTICE PLAN TO WORK IN THE EMERGENCY DEPARTMENT AT BELLEVUE HOSPITAL LESS THAN 50 HOURS PER WEEK; RICHARD L. KENDALL, M.D., TO SERVE AS DR. SCHNEIDER'S MONITORING PHYSICIAN, WITH TEN CHARTS PER MONTH REVIEWED; MARK S. FETTMAN, M.D., TO SERVE AS DR. SCHNEIDER'S TREATING PSYCHIATRIST; LARRY CARL VON KUSTER, M.D., TO SERVE AS DR. SCHNEIDER'S SUPERVISING PHYSICIAN; AND TO CONTINUE DR. SCHNEIDER UNDER THE TERMS OF HIS AUGUST 10, 2005 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. BUCHAN SECONDED THE MOTION. A vote was taken:**

October 12, 2005

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Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

Dr. Egner stated that the Board sees physicians in Dr. Schneider's position so many times, and they swear to the Board that they've got it together now. They have the picture and know where they went wrong. Dr. Egner stated that the Board wants that for Dr. Schneider, but she expressed concern about his work hours. She agreed that a 24-hour shift isn't hard if it's a slow period, but it might not always be slow. She cautioned Dr. Schneider to not ignore signs that it may be too hard for him.

Dr. Schneider stated that overconfidence is one of the biggest steps towards relapse. All he can say is that he has it together today. One thing that's helped him out with practice is that he was taught by one of the people in continuing care at Parkside that taking care of patients is not about him. It does no good to get angry with a patient who comes in at 4:30 a.m. with athlete's foot. Dr. Schneider stated that he has to realize that this is the most important thing in that patient's day, and that he is just there to take care of that patient. Dr. Schneider stated that, as long as he remembers that it's not about him, that's helpful.

Dr. Steinbergh stated that 24 hours on is stressful for anybody, and the decision making process can be impaired by fatigue, regardless of other chemical dependency issues. She expressed concern that these kinds of things put him at risk for bad decision making and so forth. Dr. Steinbergh stated that she doesn't think that anybody should be working in a medical facility 24 hours a day, making medical decisions. If at 4:00 a.m. the physician gets the worst case of his life, he must still be prepared to handle it.

Dr. Schneider stated that he appreciates Dr. Steinbergh's concern. He added that he practiced emergency medicine for 15 years and the sick people are simple to take care of. The difficult patients are the ones who want to be sick and have an ambiguous diagnosis. Dr. Schneider stated that customer satisfaction is a very big part of emergency medicine. Dr. Schneider stated that another physician has agreed to split shifts on Saturdays and Sundays, when it's busiest.

ROBERT JOHN VAN KIRK, JR., M.D.

Dr. Van Kirk made his initial appearance before the Board, pursuant to the terms of his July 13, 2005 Consent Agreement.

October 12, 2005

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In response to Dr. Kumar's questions, Dr. Van Kirk stated that he's a fourth year pathology resident at University Hospitals of Cleveland. This will be his last year of residency.

Concerning his failure to include on his application for licensure the fact that, while serving in the U.S. Navy, he had been convicted by special court martial, Dr. Van Kirk stated that at the time he was answering the questions on the application, it didn't occur to him. Dr. Van Kirk stated that the question didn't say anything about the military. In retrospect he can see now. In the military, every rule is, by definition, a law. Clearly the answer "yes," belonged to that question. But when he read that question he had numerous other things to report: Things that happened when he 18 or 20 years old. He had a number of violations for which he was unsure about the details; there were too many. He actually had to go to the courtrooms and do research and find out the details of those cases.

Dr. Kumar asked whether Dr. Van Kirk reported those on his application.

Dr. Van Kirk stated that he did. He added that it didn't occur to him to include the military event. It should have. Dr. Van Kirk added that the military action he got in trouble for was "unauthorized absence." There's really no civilian equivalent for that. It wouldn't be a law for a civilian to not go to work, like he did. Dr. Van Kirk stated that that's why, in his mind, he felt more like he was quitting a job rather than breaking a law. He understands now that he needed to answer that, and that he has to be more careful about answering questions. He takes them very seriously now.

In response to Dr. Davidson's questions, Dr. Van Kirk stated that he believes that he understands the consent agreement.

Dr. Steinbergh noted that Dr. Van Kirk was convicted by a court martial.

Dr. Van Kirk stated that it's more like an administrative action.

Several Board members disagreed.

Dr. Talmage advised that the Uniform Code of Military Justice is a law.

Dr. Van Kirk stated that he understands that, and added that he feels stupid for the oversight.

**DR. KUMAR MOVED TO CONTINUE DR. VAN KIRK UNDER THE TERMS OF HIS JULY 13, 2005 CONSENT AGREEMENT, WITH HIS NEXT APPEARANCE BEFORE THE BOARD UPON REQUEST FOR RELEASE FROM PROBATION. DR. BUCHAN SECONDED THE MOTION. A**  
vote was taken:

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

October 12, 2005

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Dr. Kumar	- aye
Ms. Sloan	- aye
Dr. Saxena	- aye
Dr. Steinbergh	- aye
Dr. Davidson	- aye

The motion carried.

Mr. Albert asked Dr. Van Kirk how long he was on unauthorized leave.

Dr. Van Kirk stated that he was gone 45 days.

GARY W. WALTZ, M.D.

Dr. Waltz made his initial appearance before the Board, pursuant to the terms of his July 13, 2005 Consent Agreement. Dr. Waltz is also requesting approval of a treating psychiatrist.

In response to Dr. Kumar's questions, Dr. Waltz stated that he does understand his consent agreement, and has no questions. Dr. Waltz stated that currently he is living with his father in Cleveland. Dr. Waltz' advised that he's been helping his father, who plans to sell his house within a year, get the house ready for sale. Dr. Waltz commented that the house needs a lot of work. In the process he has rediscovered what has become a very close relationship with his father. They get along very well.

Dr. Kumar asked what medications Dr. Waltz is taking.

Dr. Waltz responded that he takes Antabuse and hydrochlorothiazide for borderline high blood pressure. He's not taking anything for his chronic depression. Both Dr. Collins at the Cleveland Clinic and Dr. Dowling feel that he's doing well without antidepressant medications.

Dr. Buchan asked whether Dr. Waltz has ever taken Antabuse before, and whether it's working.

Dr. Waltz stated that he hasn't taken it before. He's not sure it's effective. He takes it in the morning, and then he doesn't think about it the rest of the day. He really hasn't had cravings. It's not like he has a craving and then thinks that he'd better not do anything because he took his Antabuse. He doesn't have that experience, but he continues to take it.

Dr. Saxena asked how long Dr. Waltz has been sober.

Dr. Waltz stated that he's been sober about four months.

Dr. Steinbergh left the room during the previous discussion.

**DR. KUMAR MOVED TO APPROVE A. SCOTT DOWLING, JR., M.D., TO SERVE AS DR. WALTZ' TREATING PSYCHIATRIST. DR. KUMAR FURTHER MOVED TO CONTINUE DR. WALTZ UNDER THE TERMS OF HIS JULY 13, 2005 CONSENT AGREEMENT, WITH**

October 12, 2005

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**FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. BUCHAN SECONDED THE MOTION.** A vote was taken:

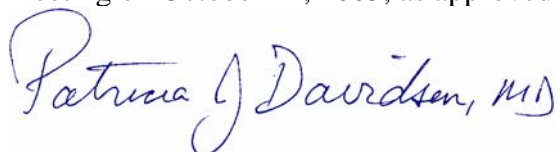
Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Davidson	- aye

The motion carried.

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

Thereupon at 5:00 p.m. the October 12, 2005 session of the State Medical Board of Ohio was duly adjourned.

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



Patricia J. Davidson, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)



October 13, 2005

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## MINUTES

### THE STATE MEDICAL BOARD OF OHIO

October 13, 2005

Patricia J. Davidson, M.D., President, called the meeting to order at 8:09 a.m., at the Vern Riffe Center for Government and the Arts, 77 S. High St., Columbus, Ohio 43215, Room #1932, with the following members present: 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.; Anquetette Sloan; and Kamala Saxena, M.D. The following did not attend the meeting: Andrew F. Robbins, Jr., M.D., Vice-President; R. Gregory Browning, Ph.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, Enforcement Attorney; Kyle C. Wilcox, Assistant Attorney General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Chief, Executive Staff; Danielle Bickers, Compliance Officer; and Barbara Jacobs, Public Services Administrator.

Dr. Davidson announced that the Board will host a holiday dinner for the staff and their significant others on Wednesday, December 14, 2005. She expressed gratitude to Dr. Kumar and Dr. Saxena for their efforts in this regard.

#### LICENSURE, PROBATION AND REINSTATEMENT 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 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.

**MR. ALBERT MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES ON AUGUST 8 AND 9, 2005 WITH: L. JEAN COOPER, M.D.; STEVEN W. CRAWFORD, M.D.; LESLIE R. (WOLF) DYE, M.D.; DAVID C. ERNST, M.D.; MARY JO FOOTE, P.A.; STEVEN F. GREER, M.D.; GEORGE V. HASSINK, M.D.; MARK S. HOPKIN, M.D.; KANDHASAMY KANNAPIRAN, M.D.; LOUISE DELYTE MORRIS, P.A.; JOANNE POJE, M.D.; DALE PRATT-HARRINGTON, D.O.; AKI S. PURYEAR, M.D.; JULIA RUFFIN, D.P.M.; JOSEPH S. SCHEIDLER, D.O.; TOM R. STARR, M.D.; JORDAN B. STERNS, M.D.; TOBY JAMES TIPPIE, P.A.; JOHN R. TRUMBO, M.D.; MICHAEL CRAIG WARREN, D.O.; GREGORY S. ZINNI, M.D.; MR. ALBERT FURTHER MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES AND THE SECRETARY AND SUPERVISING MEMBER'S RECOMMENDATIONS AS FOLLOWS:**

October 13, 2005

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- **TO GRANT PAULA CLARK ADKINS, M.D.’S REQUEST TO APPROVE ALDREMA HUNT, M.D., TO SERVE AS DR. ADKINS’ SUPERVISING PHYSICIAN AND MARY T. MANDELL, M.D., TO SERVE AS HER TREATING PSYCHIATRIST;**
- **TO APPROVE THE ETHICS COURSE TAILORED BY JOY D. SKEEL, M.Div FOR ASHFAQ TAJ AHMED, M.D.;**
- **TO GRANT VICTOR BYKOV, M.D.’S REQUEST FOR APPROVAL OF CHRISTOPHER L. ADELMAN, M.D., TO SERVE AS HIS MONITORING PHYSICIAN;**
- **TO APPROVE STEVEN AUBEL, M.D., TO SERVE AS PATRICK BRIAN CESTONE, JR., M.D.’S MONITORING PHYSICIAN WITH TEN FILMS REVIEWED PER MONTH;**
- **TO APPROVE MICHAEL SHANE GAINEY, M.D.’S REQUEST FOR A REDUCTION IN HIS APPEARANCE SCHEDULE TO EVERY SIX MONTHS;**
- **TO APPROVE WALTER L. GEORGE, JR., M.D.’S REQUESTS TO ELIMINATE HIS COUNSELING AND WORK HOUR RESTRICTION REQUIREMENTS;**
- **TO APPROVE W. ANDREW HIGHBERGER, M.D.’S REQUEST TO ELIMINATE HIS CHART MONITORING REQUIREMENT;**
- **TO APPROVE JORDAN E. HOPKINS, M.D.’S REQUEST TO CHANGE HIS SUPERVISING “PHYSICIAN” FROM THE OHIO PHYSICIANS HEALTH PROGRAM (OPHP) TO THE FLORIDA PROFESSIONALS RESOURCE NETWORK (FLORIDA PRN);**
- **TO APPROVE THE PERSONAL ETHICS COURSE TAILORED FOR STEPHEN BARRY LEVITT, M.D., BY IDA C. SCHICK, Ph.D.;**
- **TO APPROVE AMITA R. PATEL, M.D., TO SERVE AS MAHENDRA K. MAHAJAN, M.D.’S MONITORING PHYSICIAN, WITH TEN CHARTS REVIEWED PER WEEK FOR THE FIRST YEAR, REDUCED TO TEN PER MONTH THEREAFTER;**
- **TO APPROVE THE PERSONAL ETHICS COURSE TAILORED FOR THOMAS GEORGE OLSEN, M.D., BY IDA C. SCHICK, Ph.D.;**
- **TO GRANT ERDULFO PAZ PAAT, M.D.’S REQUEST FOR A REDUCTION IN HIS APPEARANCE SCHEDULE FROM EVERY THREE MONTHS TO ANNUALLY; AND**
- **TO GRANT JAMES M. ROSSELIT, D.O.’S REQUEST TO ADD DAYTON HEART HOSPITAL AND THE PLASTIC SURGERY INSTITUTE OF DAYTON TO HIS PRACTICE PLAN.**

**MR. ALBERT FURTHER MOVED TO APPROVE FOR LICENSURE, CONTINGENT UPON**

October 13, 2005

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**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”, THE ACUPUNCTURISTS LISTED IN EXHIBIT “C”, AND THE P.A. UTILIZATION PLANS SUBMITTED BY THE FOLLOWING: ABC PEDIATRICS OF OHIO; AMHERST ORTHOPAEDIC SURGEONS; SAMIA BORCHERS, M.D.; STEPHEN D’ABREAU, M.D.; GRANDVIEW FAMILY PRACTICE; HURON HOSPITAL; THOMAS MANDAT, M.D.; PAIN CONTROL CONSULTANTS; VIPUL PATEL, M.D.; TRI STATE PULMONARY; AND BRADLEY WILSON, M.D. MS. SLOAN SECONDED THE MOTION. A vote was taken:**

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

Dr. Kumar asked that the record reflect that he abstained regarding the probationary request of Dr. Mahajan.

#### REVISIONS TO PRE-CITATION SETTLEMENT AGREEMENTS POLICY

Dr. Davidson referred the Board to the latest revised draft of the above-captioned policy statement, a copy of which shall be maintained in the exhibits section of this journal.

Ms. Wehrle stated that the draft has been revised to clearly define settlement agreements and to reflect current staff titles of those involved in the procedure. She explained that this paper came up for review following Ms. Lubow’s departure. She at this time reviewed the editorial changes made to the document.

Dr. Buchan asked about the reason for changing the name of the document by using the term, “settlement agreement” in place of “consent agreement.”

Ms. Gilbert explained that the term “settlement agreements” is used to encompass other agreements into which the Board enters, including consent agreements, voluntary surrenders, and application withdrawals.

Dr. Kumar suggested that there might be a way for a physician entering into a consent agreement to make a personal appearance before the Board prior to the Board’s ratifying the agreement. He added that another thing that concerns him is that many times he finds that the standard probationary terms aren’t particularly

October 13, 2005

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applicable in particular cases. He suggested that those negotiating the consent agreements give more serious thought to what the violations are and how the standard paragraphs will help or not help the situation.

Ms. Gilbert explained that consent agreements are investigatory and, therefore, confidential until there is a public document. When the Board is getting them, they don't even have the licensee's name because it's not a public matter at that point. That's one concern with relation to any type of appearance before a full Board. Ms. Gilbert continued that a lot of times what's motivating people to enter into agreement negotiations is that they have some control over what becomes a matter of public record. They get to participate in the negotiation of the facts. If the licensee enters into a consent agreement prior to going to cite, the physician has participated in the whole process. If the matter goes to hearing, the licensee has less participation in what appears on the record. That is somewhat of a motivator for people participating in the consent agreement process. As to the terms in the agreements, Ms. Gilbert assured the Board that a great deal of thought goes into each and every one of the agreements that the Board gets. She stated that, if what the Board is getting isn't what it wants, the Board needs to give the staff some guidance. She added that the impression the Enforcement staff received the day before was that the Board is unhappy with the number of consent agreements it was seeing each month.

Dr. Egner advised that the Board's concerns weren't about the number of consent agreements, but the fact that they dealt with some very serious problems. Some Board members felt that some of them seemed like "hearing" kind of problems.

At this time a discussion was held concerning the steps taken in negotiating consent agreements.

Dr. Talmage advised that when he and Mr. Albert look at cases being presented for possible negotiation of a consent agreement, they consider the Board's past actions in similar cases. He added that if the Board doesn't want them to settle certain types of cases, it must let them know.

Dr. Buchan indicated that he doesn't think the Board is against settling these cases. He just wanted to note that there has been a change in the number and complexity of consent agreements being put before the Board.

Dr. Varyani stated that he is happy that things are moving so quickly.

**DR. EGNER MOVED TO APPROVE THE REVISED PRE-CITATION SETTLEMENT AGREEMENT POLICY. MS. SLOAN SECONDED THE MOTION.** A vote was taken:

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

October 13, 2005

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Dr. Saxena - aye  
Dr. Davidson - aye

The motion carried.

#### REVISIONS TO POST-CITATION SETTLEMENT AGREEMENTS POLICY

Ms. Wehrle at this time reviewed editorial changes made to the Board's Post-Citation Settlement Agreements policy, a copy of which shall be maintained in the exhibits section of this journal.

**DR. BUCHAN MOVED TO APPROVE THE REVISED POST-CITATION SETTLEMENT AGREEMENT POLICY. MS. SLOAN SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

#### EXECUTIVE DIRECTOR'S REPORT

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

Dr. Davidson reported on the meeting she, Mr. Whitehouse and Ms. Wehrle attended with the John Brose, D.O., Dean of Ohio University's College of Osteopathic Medicine to discuss how the medical schools and the Board could work together to educate young physicians in appropriate medical practice, with the goal of their avoiding problems that will bring them before the Board later in life.

Dr. Davidson also stated that the Board has received a call for resolutions and a call for nominations from the Federation of State Medical Boards. She asked Board members to start thinking about these matters.

October 13, 2005

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REPORTS BY ASSIGNED COMMITTEESLICENSURE COMMITTEE

Dr. Davidson stated that the Committee reviewed a number of applications.

Caesar Augustus Deleo, M.D.

Dr. Deleo's application for endorsement licensure was considered by the Committee because Dr. Deleo indicated on his application that he hasn't been engaged in the active practice of medicine since August 1996. Dr. Davidson stated that the Committee recommends approval, subject to Dr. Deleo passing the SPEX

**DR. DAVIDSON MOVED TO APPROVE DR. DELEO'S APPLICATION FOR ENDORSEMENT LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS, AND SUBJECT TO HIS PASSING THE SPEX OR THE RECERTIFICATION EXAMINATION OF THE AMERICAN BOARD OF INTERNAL MEDICINE. DR. BUCHAN SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Davidson	- aye

The motion carried.

Lauren E. Flanagan, M.T. Applicant

Dr. Davidson advised that Ms. Flanagan's request for special accommodations for the December 2005 massage therapy examination was considered by the Committee. Ms. Flanagan has been diagnosed with learning disabilities, attention deficit disorder and bipolar disorder.

**DR. DAVIDSON MOVED TO APPROVE MS. FLANAGAN'S REQUEST FOR A TAPED EXAM, EXTENDED TESTING TIME OF TIME AND A HALF, AND A SEPARATE TESTING AREA. DR. EGNER SECONDED THE MOTION.** A vote was taken:

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

October 13, 2005

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Dr. Talmage	- aye
Dr. Varyani	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Ms. Sloan	- aye
Dr. Saxena	- aye
Dr. Davidson	- aye

The motion carried.

Richard C. Gause, M.D.

Dr. Davidson advised that Dr. Gause is seeking restoration of his license to practice medicine and surgery. She noted that he has not been engaged in the active practice of medicine since May 2000. Dr. Davidson stated that the Committee recommends approval, subject to passing the SPEX or specialty recertification exam.

**DR. KUMAR MOVED TO APPROVE DR. GAUSE'S REQUEST FOR OHIO LICENSURE, SUBJECT TO SUCCESSFUL COMPLETION OF THE SPEX OR RECERTIFICATION EXAM OF THE AMERICAN BOARD OF INTERNAL MEDICINE. DR. BUCHAN SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Davidson	- aye

The motion carried.

Rahul Mahendra Jindal, M.D.

Dr. Davidson advised that Dr. Jindal's request for endorsement licensure was presented to the Committee for consideration. Dr. Jindal is a graduate of B. J. Medical College in Ahmedabad, Gujarat, India. He has completed a total of 22 months of approved graduate medical education in the United States. Dr. Jindal asks that the Board consider his previous training and experience as being equivalent to the remaining two months. Dr. Davidson noted that Dr. Jindal is a member of the Royal College and holds licenses to practice in three other states. He is a full profession at the University of South Dakota.

**DR. DAVIDSON MOVED TO FIND THAT DR. JINDAL'S TRAINING AND EXPERIENCE ARE**

October 13, 2005

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**EQUIVALENT TO 24 MONTHS OF GRADUATE MEDICAL EDUCATION THROUGH THE SECOND YEAR LEVEL, AND TO APPROVE DR. JINDAL'S REQUEST FOR ENDORSEMENT LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. KUMAR SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Davidson	- aye

The motion carried.

Brenda L. McElroy, M.T. Applicant

Dr. Davidson advised that the Committee reviewed Ms. McElroy's request for special accommodations for the December 2005 massage therapy examination. Ms. McElroy has been diagnosed with a learning disability, i.e., dyslexia. The Committee recommends granting the accommodation.

**DR. DAVIDSON MOVED TO APPROVE MS. MCELROY'S REQUEST FOR THE FOLLOWING ACCOMMODATIONS FOR THE DECEMBER 2005 MASSAGE THERAPY EXAMINATION: A TAPED EXAMINATION, EXTENDED TESTING TIME OF TIME AND A HALF AND A SEPARATE TESTING AREA. DR. TALMAGE SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Davidson	- aye

The motion carried.

Kraig Mitchell Russell, M.D.

Dr. Davidson advised that Dr. Russell's request for endorsement licensure was presented to the Committee

October 13, 2005

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because Dr. Russell has requested waiver of the U.S.M.L.E. seven-year rule. Dr. Russell is over the seven-year time limit by seven months. Dr. Davidson noted that during the seven-year period following medical school, Dr. Russell underwent cancer treatment.

**DR. TALMAGE MOVED TO APPROVE DR. RUSSELL'S REQUEST FOR A WAIVER OF THE U.S.M.L.E. SEVEN-YEAR RULE, AND FOR ENDORSEMENT LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. BUCHAN SECONDED THE MOTION.**

A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Davidson	- aye

The motion carried.

Terry Olandese, M.T. Applicant

Dr. Davidson advised that Mr. Olandese's request for special accommodations for the December 2005 M.T. examination was considered by the Committee. Mr. Olandese is blind. The Committee recommends approval of the request.

**DR. KUMAR MOVED TO GRANT MR. OLANDESE'S REQUEST FOR THE FOLLOWING SPECIAL ACCOMMODATIONS: A TAPED EXAM, EXTENDED TESTING TIME OF TIME AND A HALF, A SEPARATE TESTING AREA AND PROCTOR ASSISTANCE. DR. VARYANI SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Davidson	- aye

The motion carried.

October 13, 2005

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Rafay Atiq, M.D.

Dr. Davidson advised that Dr. Atiq has requested a waiver of the U.S.M.L.E. seven-year rule. He is over the seven-year limit by twelve months. He took Step 1 in October 1996 and Step 2 in March 1998 and passed both steps on his first attempt. Dr. Atiq explained that when he came to the United States it was already six and a half years since he passed Step 1. He also advised that he was unaware of the seven-year rule. Dr. Davidson advised that the Committee recommends granting Dr. Atiq a waiver.

Dr. Egner asked what the Committee was basing its approval on. She noted that the rule allows an exception if a physician shows good cause.

Dr. Davidson stated that it was brought up that Dr. Atiq plans to go to an underserved area of Ohio to practice.

Dr. Kumar stated that he wouldn't be in favor of granting this request unless the Board can get a real reason for why he did not complete the sequence, such as disability or hardship of some kind. He added that Dr. Atiq should be able to pass Steps 1 and 2.

Ms. Thompson advised that the Board rule only requires that the physician show good cause for not having completed the sequence in the seven years. Ms. Thompson stated that the rule says that "(g)ood cause requires a showing that the applicant is current in his or her medical knowledge at the time of application. Good cause includes, but is not limited to, participating in graduate medical education as defined in Ohio Revised Code section 4731.091 for a period of time greater than that required by statute for initial licensure in Ohio." Ms. Thompson noted that Dr. Atiq is currently in a residency program, so that would indicate that his medical knowledge is current. Dr. Atiq also meets the requirement that he participated in graduate medical education for a period of time greater than that required for initial licensure. He currently has three years of graduate medical education through the second year level, and he's only required to have two. Dr. Atiq delayed taking Step 3 for one year, which matches to his third year of residency. Ms. Thompson stated that she thinks that Dr. Atiq fits this exception. She added that she doesn't know how to draft a denial saying that Dr. Atiq doesn't fit the exception.

Dr. Kumar stated that he could have taken the exam in his second year of residency in the United States.

Ms. Thompson agreed, but added that he hadn't been aware of the seven-year rule. Also, he might not have thought that he was ready to take it. The real difficulty for this guy was that he took his first step while he was still in medical school in Pakistan. She stated that, if Dr. Atiq didn't have training above and beyond that required by statute for licensure, it would be another matter. The rule itself states that "good cause" includes taking additional training, and Dr. Atiq did that.

**DR. BUCHAN MOVED TO APPROVE DR. ATIQ'S REQUEST FOR A LIMITED EXCEPTION OF THE SEVEN-YEAR RULE, AS OUTLINED IN RULE 4731-6-14(3), OHIO ADMINISTRATIVE CODE, TO ACCEPT THE EXAMINATION SEQUENCE COMPLETED BY DR. ATIQ AND TO GRANT HIM A LICENSE TO PRACTICE MEDICINE AND SURGERY.**

October 13, 2005

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

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Davidson	- aye

The motion carried.

#### PRESCRIBING COMMITTEE

Dr. Varyani stated that a couple of months ago he and Mr. Schmidt had a meeting with hospice medical directors. He advised that the situation is that there are too many patients in hospice and too few medical directors. Dr. Varyani stated that this meeting resulted from Mr. Schmidt attending a conference where he was made aware that hospice medical directors were prescribing narcotics without seeing the patients. At this most recent meeting it was learned that there is a shortage of medical directors. On weekends, especially, when the primary care physician is either unavailable or unwilling to take care of the problem of patients in extreme pain, nurses or some other entity at the hospice would interact with the hospice medical director. The medical director would then be put in the position of prescribing something for pain. Dr. Varyani stated that this is a very humane kind of issue. In hospices patients have a lot of pain and need to be given stronger and higher doses of narcotics. Dr. Varyani stated that the basic point is that, in the real world, hospice medical directors are prescribing, or being forced to prescribe, narcotics without seeing the patients personally.

Dr. Varyani stated that Dr. Talmage was also at the meeting and informed those present that the Board has never taken action against any hospice medical director, as long as the prescribing is appropriate. However, because of the internet prescription rules, this has become an issue and the Board must tackle it now.

Dr. Varyani stated that the Committee had a long discussion the previous day and he feels that, when primary care physicians refer patients to hospice, pain should be co managed by the primary care physician and the hospice medical director.

Dr. Talmage stated that the other question he asked at the meeting, and he was very satisfied with the answer, was that the attending physician signs off on the hospice plan. This, to him, allows hospice to assume certain portions of that patient's care. If that physician is not available to write the prescription, and the hospice director acts in that physician's stead, it seems to satisfy the Board rule. Dr Talmage stated that he thinks that Mr. Schmidt had some concern about that.

October 13, 2005

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Dr. Davidson asked whether Dr. Talmage is saying that the attending is still responsible, but the hospice medical director is writing the prescription.

Dr. Talmage stated that the attending is giving hospice the ability to care for the patient over and above what he or she is already doing for the patient. Dr. Talmage stated that he believes that that implies that they are able to prescribe adequate pain relief without seeing the patient. Dr. Talmage stated that he, Dr. Varyani and Mr. Schmidt were told that the medical directors have reviewed the chart, they have reviewed the care plan.

Dr. Varyani stated that, according to what they were told, hospice medical directors review each and every patient within seven days of admission to the hospice. They may or may not see the patient physically, but they've reviewed the records.

Dr. Davidson expressed concern that a whole lot of narcotics may have been written in those seven days.

Dr. Varyani acknowledged her comment. Dr. Varyani added that these patients are in extreme pain, and he doesn't care who gives them the medication, as long as they get it.

Dr. Talmage asked Dr. Davidson whether she has seen abuses of this system.

Dr. Davidson stated that she thinks that it's abusive that doctors can't do pain care. She commented that maybe they should just turn prescribing over to nurses.

Dr. Varyani stated that there aren't enough doctors.

Dr. Buchan stated that he's having a difficult time separating a standard of care that's different for hospice patients from any other patient the Board sees. The issuance of narcotics is a physician-directed process, regardless of who receives the medication or what time it is. Dr. Buchan stated that he understands the shortage issue, but he still questions developing a different standard. Dr. Buchan commented that this is a dangerous conversation.

Dr. Talmage stated that, if the alternative is that the hospice director has to see every patient before they can prescribe, that's one way to handle it, but it's almost impossible to accomplish that. The other way would be that the primary care physician, after admitting the patient to hospice and approving that hospice is going to take over the patient, is then called to prescribe narcotics. If that physician is reluctant to do so, the alternative would be to force them to go ahead and prescribe the narcotics. He asked whether that is fair to the primary care physician. Dr. Talmage stated that he doesn't see the smoking gun. Who's been hurt by this, and is it the humane thing to do? Dr. Talmage stated that, in his mind, it is the humane thing to do.

Dr. Buchan asked what happened to the standard of a verbal order and within 24 hours signing off on that verbal order.

Dr. Talmage asked who would sign off on it.

October 13, 2005

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Dr. Buchan stated that the hospice medical director.

Dr. Talmage stated that they can sign off on it, but they still haven't seen the patient.

Dr. Buchan stated that, currently, the rule is that the verbal order is taken, the patient is admitted, and then within 24 hours you have to tend to that order. Is that too cumbersome a barrier or hurdle to request?

Dr. Davidson stated that, apparently, they say it is. The primary care physician won't deal with the patient, and the hospice says he'll deal with it, but he can't see the patient. The nurse will see the patient.

Dr. Davidson stated that the Board can be created about this. There are other ways to deal with this other than saying that primary care doctors cannot write narcotics and that hospice can't see them.

Mr. Schmidt suggested that the Board might do better to look at the federal guidelines and the Ohio rules. He explained that, when the rule was drafted and offered to the Board, the whole point was to deal with an identified issue: Internet prescribing. In the process it also deals with the problem of physicians who are giving medications to their neighbors and to the staff with whom there is no physician/patient relationship. The rule was narrowly drafted to carve out exceptions to permit appropriate medical care. The Board didn't deal with hospice in the rules at the time because it didn't come up. No one raised the issue. Looking solely at the Board's rule, rather than the broader issue, his thought was to look at the fact that hospice is a regulated industry. You have Health Department rules, Ohio statutes as well as federal guidelines. Could hospice fit under that and be an exception to the rule? Mr. Schmidt stated that he thinks the Board would benefit by looking at what the structure is that is in place. Both Dr. Talmage and Dr. Varyani are correct; hospice medical directors are required to do an initial review within three days or seven days. They're not required to see the patient. They are then required to meet with the treatment team to discuss cases every two weeks.

Mr. Schmidt continued that a big part of the problem is that most of these patients are now in their homes; they can't come to see the doctors. They're not in the hospital and they're not coming to anybody's office. The doctors can't get out to the homes and the nurses are more or less their eyes and ears. Mr. Schmidt stated that the Board might feel more comfortable with making a decision after looking at the other rules and seeing how the system really does work. Mr. Schmidt added that he would like to have Jeff Lycan from the Hospice Association talk to the Board.

Dr. Talmage stated that, as he recalls, there was another exception, which is the group physician on call. This means that if someone, covering for a partner, gets a call from a patient, and the partner has been prescribing and treating that individual, that physician, even though he has never personally seen or cared for that patient, can prescribe. If the Board interprets that more loosely, could the hospice director act as a consultant and partner or a "covering physician" for the primary care physician who is not available.

Mr. Schmidt stated that he'd like to be able to do that, but the problem is that when the on-call cross coverage was developed, the whole point was that the primary physician was going to be available to supervise the overall treatment plan and the patient's use of the drug. This is a situation where, in many instances, the primary care physicians are washing their hands of the cases. In many instances, they don't

October 13, 2005

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want to have the patient at all anymore. They feel that the case has gone beyond them and they no longer have a physician/patient relationship. In the majority of instances, even those that are remaining involved in the patients' care, don't want to have anything to do with the provision of narcotics because they don't know what they're doing.

Dr. Kumar questioned how many primary care physicians don't want to take care of these people because they are concerned about writing for all this pain medication.

Dr. Varyani stated that the hospice people have indicated that it's about 30% to 40%.

Dr. Kumar suggested that they might be washing their hands of these patients because they are afraid of the Board's rules. He stated that that is something the Board must look at.

Ms. Sloan stated that her family did not see the primary care physician for her sister-in-law once she was put into hospice care. The primary care physician was not available to them. They worked with the hospice staff.

Dr. Kumar suggested that the Board get the word out to primary care physicians that when they are prescribing pain medications in the hospice environment, the rules will be a little bit different when it comes to enforcement.

Dr. Davidson stated that she agrees with Mr. Schmidt, that the Board needs to look at the hospice and Health Department rules are. She expressed concern that there are physicians not in compliance with the Boards' rules, and the Board needs to do something about it.

#### QUALITY ASSURANCE COMMITTEE

Dr. Egner stated that the Committee reviewed priority codes D and E cases that were closed by the Secretary and Supervising Member.

Dr. Davidson noted that the processing timeline goes anywhere from eight to 343 days to close these cases.

#### SCOPE OF PRACTICE COMMITTEE

Dr. Buchan stated that the Committee once again discussed the *Joint Regulatory Statement Regarding The Provision Of Esthetic, Cosmetology And Related Services*, continuing to tweak the language. The Committee hopes to bring it to the full Board for approval in November.

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

Thereupon at 9:45 a.m. on October 13, 2005, the October 12-13, 2005 meeting of the State Medical Board of Ohio was duly adjourned.

October 13, 2005

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We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on October 13-14, 2005, as approved on November 9, 2005.

*Patricia J. Davidson, M.D.*

Patricia J. Davidson, M.D., President

*Lance A. Talmage, M.D.*

Lance A. Talmage, M.D., Secretary

(SEAL)

