

November 10, 2004

MINUTES**THE STATE MEDICAL BOARD OF OHIO****November 10, 2004**

Anquetette Sloan, President, called the meeting to order at 1:00 p.m., at the Vern Riffe Center for Government and the Arts, 77 S. High St., Columbus, Ohio 43215, Room #1932, with the following members present: Patricia J. Davidson, M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Carol L. Egner, M.D.; Anant R. Bhati, M.D.; David S. Buchan, D.P.M.; Deepak Kumar, M.D.; R. Gregory Browning, Ph.D.; Andrew F. Robbins, Jr., M.D.; Anand G. Garg, M.D.; and Anita M. Steinbergh, D.O.

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

EXECUTIVE SESSION

DR. EGNER MOVED THAT THE BOARD DECLARE EXECUTIVE SESSION TO CONSIDER THE EMPLOYMENT OF A PUBLIC EMPLOYEE. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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

The motion carried.

November 10, 2004

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

Dr. Talmage and Mr. Albert left the meeting following the executive session.

The following joined the meeting after the executive session: Sharon W. Murphy and Siobhan R. Clovis, Hearing Examiners.

MINUTES REVIEW

DR. EGNER MOVED TO APPROVE THE MINUTES OF OCTOBER 13, 2004. DR. ROBBINS SECONDED THE MOTION. A vote was taken

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

The motion carried.

REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Fred Andrew Brindle, M.D.; William W. Hunter, Jr., M.D.; Alberto Leon, M.D.; Jack E. Slingluff, D.O.; Peter Steven Stanos, D.O.; and Hsiang Lee Tseng, M.D. A roll call was taken:

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

November 10, 2004

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

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

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

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

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

FRED ANDREW BRINDLE, M.D.

Ms. Sloan directed the Board's attention to the matter of Fred Andrew Brindle, M.D. She advised that objections to Hearing Examiner Murphy's Report and Recommendation were filed by both the State and Dr. Brindle, and were previously distributed to Board members. Ms. Sloan noted that Dr. Garg served as Secretary in this case.

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

Dr. Brindle was accompanied by his attorney, Eric J. Plinke.

Mr. Plinke stated that the case before the Board in regard to Dr. Brindle is one that requires, as reflected in the record, an examination of the relationship between Dr. Brindle and the Board during his consent agreement. The allegations made by the Board were that Dr. Brindle had missed some urine screens and signed some declarations of compliance that were false. When Dr. Brindle testified at the hearing, he gave free and full disclosure as to what had transpired relating to those urine screens that occurred while he was on vacation and the circumstances under which the declarations of compliance were signed.

November 10, 2004

Mr. Plinke stated that, in addition to that, Dr. Brindle provided testimony relative to his request for reinstatement of his certificate. He commented that the whole purpose of the Step I Consent Agreement was to provide for monitoring and terms of conditions for reinstatement. As Dr. Brindle testified, and as the evidence he presented showed, Dr. Brindle had met those requirements prior to any of these alleged violations. In light of that, and in light of the testimony provided, and despite their objections, they agree with the Hearing Examiner's conclusion. They think that the common sense solution to this situation is to go back and examine the material submitted by Dr. Brindle, and determine if he met the requirements for reinstatement. Mr. Plinke stated that he submits to the Board that Dr. Brindle plainly did meet the requirements. For reasons that were testified to in the record, and that still do not clearly make sense to him, he was not given that opportunity.

Mr. Plinke stated that he thinks that the Hearing Examiner's response is a fair one. He added that he would say that it is unusual, but it also reflects that Dr. Brindle has had a longstanding pending request to have his license reinstated. It's nothing new to the Board that he would come before it and ask to be reinstated. That's what he's been requesting for years. He added that Dr. Brindle would give the Board some further insight into what had transpired.

Dr. Brindle thanked the Board for giving him the opportunity to address the Board. He stated that he does agree with the findings and recommendations of the Hearing Examiner. In 2001 he signed a consent agreement. By sometime in 2002 he had completed all the things required for reinstatement. He requested reinstatement several times. His attorney sent letters to the Board requesting reinstatement, but for some reason no one ever got back to him. Dr. Brindle stated that he continued to comply with the conditions of the agreement for quite some time. His level of frustration mounted as his requests were ignored. He submitted weekly random urine samples for two and a half years, and all of those screens were negative. Dr. Brindle stated that, when his lawyers asked for a reduction from weekly to monthly sampling, he was censored. He had missed a few screens while he was on vacation. Dr. Brindle stated that the record shows that those were few in number.

Dr. Brindle stated that there came a time when it was clear to him that the Board was not going to reinstate him no matter what he did. He's tried to be a good doctor all of his life. He's maintained the highest standards. He was first in his class in medical school. He's a board-certified neurosurgeon. There have never been any allegations of substandard medical care or inappropriate behavior at the hospital or his office. He practiced medicine for 33 years without a malpractice judgment.

Dr. Brindle stated that he wants his license back just so that he can end his career with dignity. He doesn't plan on taking care of any patients. If, as indicated in the Hearing Examiner's recommendations, he did want to practice clinical medicine, he would have to submit a practice plan to the Board. The Board would have to approve that plan. He would then be subject to monitoring and compulsory meeting attendance and certain other conditions.

Dr. Brindle asked that the Board reinstate his license. He asked that the Board accept the findings and the recommendations of the Hearing Examiner.

November 10, 2004

Ms. Sloan advised that Ms. Albers may now address the Board.

Ms. Albers stated that this whole matter before the Board has become somewhat murky, and she feels that it is imperative to stress that the only issue before the Board is whether or not Dr. Brindle violated his consent agreement. She believes that the evidence at the hearing was very clear that he did. He missed urine screens. Even after he was called in and told how he could make arrangements to be on vacation and miss screens, he continued to do that over the last few months of 2003.

Ms. Albers commented that she stated in her objections to the Board her feeling that there was one wrong Finding of Fact and Conclusion of Law in the Hearing Examiner's Report, in that, while the Board had set out background information relating to an August declaration of compliance, Dr. Brindle was not charged with a violation for signing that August declaration of compliance. He was, however, charged with falsely signing a declaration of compliance saying that he was in compliance, dropping his screens, in October, when he was not.

Ms. Albers noted that Dr. Brindle's counsel cited in his objections many arguments that deal with contract law, and his counsel stated to the Board today is that the purpose of the Step I Consent Agreement was to monitor Dr. Brindle and to get him back into practice. Ms. Albers stated that she doesn't believe that that is the purpose of the Step I Consent Agreement. She believes that the first purpose of the Step I Agreement is to take an impaired physician out of practice. Monitoring then comes along, and then at such time as the physician has met the terms of the Consent Agreement and has followed along with the monitoring and the required screens, he can be reinstated. She added that the Board has only the self-serving statements of Dr. Brindle at the hearing that he had met all the requirements for reinstatement. Ms. Albers stated that she called Ms. Jacobs as a witness in an attempt at some sort of rebuttal when this hearing became a hearing on the reinstatement. She noted that the notice of opportunity for hearing clearly stated that the issue was whether or not Dr. Brindle filed false declarations of compliance and whether or not he violated his Consent Agreement.

Ms. Albers stated that she doesn't believe that the issue of reinstatement is before the Board. If the Board does feel that reinstatement is before it, she asked that the matter be remanded to the Hearing Examiner so that the State can present evidence as to whether or not Dr. Brindle has actually met the conditions for reinstatement.

DR. EGNER MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF FRED ANDREW BRINDLE, M.D. DR. STEINBERGH SECONDED THE MOTION.

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

Dr. Steinbergh stated that she's not comfortable with the Report and Recommendation in this case. She stated that she feels it is very unorthodox. It does not satisfy her that the Board has fulfilled its mission of public protection.

Dr. Steinbergh stated that one of the pertinent lines that got to her was contained in the Conclusions of Law

November 10, 2004

and the five star comments of the Hearing Examiner. It states, “(a)dditionally, there is no evidence that Dr. Brindle is not still in recovery.” Dr. Steinbergh stated that the Board doesn’t have any evidence that he is in recovery. Dr. Brindle has clearly violated the conditions of his Step I Consent Agreement, and he’s not been offered a Step II because he did not meet all the stipulations. The Board has no evidence that Dr. Brindle has fulfilled his consent agreement. Dr. Steinbergh stated that, with that in mind, there are some changes that she would propose.

DR. STEINBERGH MOVED THAT THE CONCLUSIONS OF LAW IN THE MATTER OF FRED ANDREW BRINDLE, M.D., BE AMENDED AS FOLLOWS:

- 1) BY DELETING THE LETTER “b” FOLLOWING THE NUMBER “3” IN CONCLUSION #1.**
- 2) BY DELETING CONCLUSION #3 IN ITS ENTIRETY.**
- 3) BY SUBSTITUTING THE FOLLOWING FOR THE LANGUAGE THAT APPEARS FOLLOWING THE FIVE ASTERISKS ON PAGE 17 OF THE REPORT AND RECOMMENDATION:**

At hearing, the State argued that the sole basis for this proceeding was Dr. Brindle’s non-compliance with the interim monitoring terms of his Consent Agreement. Dr. Brindle did not contest the State’s allegations; rather, he attempted to defend his overt violations by arguing that his non-compliance was justified because the Board had failed to fulfill its obligation under the consent agreement to consider reinstatement of his license in a timely manner. Dr. Brindle’s defensive maneuver succeeded in taking the hearing off course, resulting in the issuance of a Proposed Order that would, if adopted, excuse Dr. Brindle’s non-compliance and, via rhetorical gymnastics, reinstate his “color of license” but not his ability to practice.

The defense Dr. Brindle has offered to the Board raises several questions under contract law. First, would the Board’s failure to consider a reinstatement application that Dr. Brindle perceived to be complete constitute a material breach by the Board of its obligations under the consent agreement “contract?” If so, what would be the legal impact of that material breach? Would it, as Dr. Brindle suggests, render the consent agreement “contract” null and void, permitting him to cease complying with its monitoring terms and stripping the Board of its authority to protect the public by confirming Dr. Brindle’s on-going sobriety?

Public policy argues against Dr. Brindle’s exercise of self-help when the contract in question serves to keep health care consumers safe. Reasonableness argues against self-help as well. If, as Dr. Brindle contends, the Board failed to timely take up a reinstatement application that was ripe for consideration, it would have been more reasonable—and seemingly proper legally—for him to notify the Board of his belief that a material breach had occurred, give the Board an opportunity to cure the

November 10, 2004

alleged breach, and, if the Board refused, demand the hearing authorized by the consent agreement or ask a court to issue a mandamus order compelling the Board to act on his application. Dr. Brindle, however, did none of those things. He simply stopped complying.

Dr. Brindle would have the Board believe that, prior to taking matters into his own hands, he made a good faith effort to comply with the terms of his Step I agreement. Yet, his statements at hearing show that compliance was not a matter that Dr. Brindle took very seriously. At page 26 of the transcript, for example, Dr. Brindle explains why he signed Declarations of Compliance that he knew to be inaccurate: "I signed them because I was told to sign them.... It was just another piece of paper to me." Further, at page 21 of the transcript, Dr. Brindle discusses missed urine screens: "...I think I had missed some screens. I don't deny that. But I want you to realize how terribly inconvenient it is to carry a beeper and a cell phone and be on call to have to urinate within four hours. And it seemed to me that two years or two-and-a-half years of negative screens was sufficient to demonstrate that I was not using drugs or alcohol." Dr. Brindle's testimony and his admitted violations support disciplinary action against him based on Sections 4731.22(B)(15) and (B)(5), O.R.C.

With respect to testimony involving Dr. Brindle's failure to provide documentation of his compliance with an aftercare contract, that issue would properly be addressed in a hearing following issuance of a proposal to deny reinstatement, should such notice be issued. However, it is not relevant to the matter before the Board at this time.

DR. BHATI SECONDED THE MOTION.

Dr. Steinbergh stated that her comments go to contract law. She noted that none of the Board members are experts on contract law, but she has real concerns that, in terms of contract law, it can apply to certain things if someone is selling something or if it's anything but a Medical Board, but by no means should the Board be concerned with the question of contract law at this particular time. Dr. Brindle certainly had the right to come to another hearing, or he certainly has legal rights to take it to the courts if he feels that the Medical Board has not fulfilled its obligation. Dr. Steinbergh stated that, as far as she knows, the Board has never been notified that it has not fulfilled its part of the contract. On the other hand, in terms of his consent agreement, Dr. Brindle continued to disregard it and, basically, went to the model of self-help. The Consent Agreement wasn't meeting his needs, he didn't like it and he just wasn't going to do it. Dr. Steinbergh expressed concern that, with that type of approach with all of the Board's chemically dependent probationers, there would be chaos.

Dr. Egner agreed with Dr. Steinbergh, stating that the amended conclusions are correct. Dr. Brindle had a Step I Consent Agreement. He did not comply with the terms of the Agreement. Dr. Egner stated that this Board has disciplined many physicians for being non-compliant with their Consent Agreements. This is not at all unusual for the Board. Concerning Dr. Brindle's testimony that he had everything ready to be

November 10, 2004

reinstated, Dr. Egner stated that she still doesn't know the answer to that question today. Dr. Brindle can comply with the Step I and then the Board will know whether he's ready for reinstatement, just like everybody else does.

Dr. Bhati stated that, after listening to Dr. Brindle, it becomes obvious that the issue in his mind is a little bit unfocused in comparison to what the real problem is. Dr. Brindle is thinking that he's board-certified, the first in his class, his quality's great and all that. Dr. Bhati stated that that's not the issue here. Here the Board is talking about Dr. Brindle not fulfilling his part of the Consent Agreement that he signed. That's why he's being sanctioned. Dr. Bhati stated that Dr. Brindle is lucky to be getting away with this, adding that it could be more severe than this. He should be happy that he's getting some chance in the future.

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

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

The motion carried.

DR. EGNER MOVED THAT THE PROPOSED ORDER IN THE MATTER OF FRED ANDREW BRINDLE, M.D., BE AMENDED BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Fred Andrew Brindle, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 90 days.
- B. **INTERIM MONITORING:** During the period that Dr. Brindle's certificate to practice medicine and surgery in Ohio is suspended, Dr. Brindle shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Dr. Brindle shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. Brindle shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances

November 10, 2004

must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Quarterly Declarations**: Dr. Brindle shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs**: Dr. Brindle shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him/her by another so authorized by law who has full knowledge of Dr. Brindle's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Brindle shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Dr. Brindle shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Brindle shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Brindle shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Brindle shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Brindle. Dr. Brindle and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Brindle shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Order, whether all urine screens have been negative, and whether the supervising physician

November 10, 2004

remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Brindle must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Brindle shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Brindle's quarterly declaration. It is Dr. Brindle's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request**: Dr. Brindle shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Brindle's expense.
8. **Rehabilitation Program**: Dr. Brindle shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Brindle shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. Brindle's quarterly declarations.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Brindle's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration**: Dr. Brindle shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions**: Dr. Brindle shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Demonstration of Ability to Resume Practice**: Dr. Brindle shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:

November 10, 2004

- a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Brindle has successfully completed any required inpatient treatment.
- b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract entered into no later than thirty days following the effective date of this Order. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
- c. Evidence of continuing full compliance with this Order.
- d. Two written reports indicating that Dr. Brindle's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care.

One report shall be made by a provider approved by the Board under Section 4731.25, O.R.C., for making such assessments. Prior to the assessment, Dr. Brindle shall provide the evaluator with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Order. The report from the evaluator shall include all recommendations for treatment, monitoring, and supervision of Dr. Brindle, and all conditions, restrictions and limitations that should be imposed on Dr. Brindle's practice. The report shall also describe the basis for the evaluator's determinations.

One report shall be made by a psychiatrist, approved in advance by the Board, who shall conduct a psychiatric examination of Dr. Brindle. Prior to the examination, Dr. Brindle shall provide the psychiatrist with copies of patient records from any evaluations and/or treatment that he has received, and a copy of this Order. The report from the evaluating psychiatrist shall include the psychiatrist's diagnoses and conclusions; all recommendations for care, counseling, and treatment for the psychiatric diagnoses; all conditions, restrictions, or limitations that should be imposed on Dr. Brindle's practice; and the basis for the psychiatrist's determinations.

The reports required under this section shall not be made by the same individual. The evaluations shall have been performed within ninety days prior to Dr. Brindle's reinstatement or restoration.

For purposes of this paragraph, the Board may consider, upon specific written request from Dr. Brindle, documentation previously submitted to

November 10, 2004

the Board by Dr. Brindle for the purpose of meeting the reinstatement requirements established by his August 8, 2001 Step I consent agreement, provided that all required assessments and evaluations have been properly updated.

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

C. **PROBATIONARY CONDITIONS:** Upon reinstatement or restoration, Dr. Brindle's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Obey Laws in Ohio:** Dr. Brindle shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
2. **Terms, Conditions and Limitations Continued from Paragraph B:** Dr. Brindle shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
3. **Psychiatric Treatment:** Dr. Brindle shall undertake and maintain psychiatric treatment, with a psychiatrist approved in advance by the Board, at such intervals as are deemed appropriate by the treating psychiatrist, but not less than once per month unless otherwise determined by the Board. The sessions shall be in person and may not be conducted by telephone or other electronic means.

Dr. Brindle shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating psychiatrist. Dr. Brindle shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the Board on a quarterly basis, or as otherwise directed by the Board. It is Dr. Brindle's responsibility to ensure that the quarterly reports are received in the Board's offices no later than the due date for Dr. Brindle's quarterly declaration.

4. **Practice Plan:** Within thirty days of the effective date of Dr. Brindle's reinstatement or restoration, or as otherwise determined by the Board, Dr. Brindle shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Brindle's activities will be directly supervised and overseen by a monitoring physician approved

November 10, 2004

by the Board. Dr. Brindle shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Brindle submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Brindle and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Brindle and his medical practice, and shall review Dr. Brindle's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Brindle and his/her medical practice, and on the review of Dr. Brindle's patient charts. Dr. Brindle shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Brindle's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Brindle must immediately so notify the Board in writing. In addition, Dr. Brindle shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Brindle shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

5. **Absence from Ohio:** In the event that Dr. Brindle should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Brindle must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
6. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Brindle is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.

November 10, 2004

- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Brindle's certificate will be fully restored.
- E. **RELEASES:** Dr. Brindle shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Brindle's psychiatric, chemical dependency, and/or related conditions, to the Board, to treating and monitoring physicians, and to others involved in the monitoring process. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.
- F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Brindle shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Brindle shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. Further, Dr. Brindle shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- G. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Brindle shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Brindle shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Brindle shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- H. **VIOLATION OF BOARD ORDER; DISCRETIONARY SANCTION IMPOSED:** If Dr. Brindle violates this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- I. **SUPERSEDE PREVIOUS CONSENT AGREEMENT:** This Order shall supersede the terms and conditions set forth in the August 8, 2001, Step I Consent

November 10, 2004

Agreement between Dr. Brindle and the Board.

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

DR. BHATI SECONDED THE MOTION.

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

Dr. Kumar referred to paragraph C.3., noting that it contains standard language that seems to cover everything; however, Dr. Brindle is a neurosurgeon and he has demonstrated that he has developed tremors, due to medication. Dr. Kumar stated that he's not sure whether the Board needs to put any additional language that would prohibit Dr. Brindle from performing surgery should he come back for reinstatement.

Dr. Egner commented that that is not something the Board needs to consider today.

Dr. Steinbergh agreed. She noted that the proposed amended order requires him to submit a practice plan for Board approval. She remarked that Dr. Brindle does know his limitations, and when it comes to neurosurgery, she feels that any credentialing body would put a stop to that.

Dr. Kumar stated that he just wants it on the record that when Dr. Brindle does apply for reinstatement, the Board will have to keep that condition in mind.

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

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

The motion carried.

DR. BHATI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF FRED ANDREW BRINDLE, M.D. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

Vote:	Dr. Egner	- aye
	Dr. Bhati	- aye

November 10, 2004

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

The motion carried.

WILLIAM W. HUNTER, JR., M.D.

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

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

At this time Dr. Hunter indicated that he is unable to speak, and he asked for permission for someone else to read his prepared statement. Ms. Sloan advised that Dr. Hunter could have the person accompanying him read the statement.

Nick Houston, D.D.S., read a statement from Dr. Hunter indicating the following: Dr. Hunter apologizes for the taking the Board's time, noting that the Medical Board has important and complex issues before it, and is a significant participant in the bringing of quality of care to citizens. His professional career has been dedicated to being a contributing member to that task.

Dr. Houston stated that a debilitating illness which frequently cycles in six-month increments impaired Dr. Hunter's ability to respond to a C.M.E. audit in a timely manner. Dr. Hunter indicated that he absolutely certifies that he honestly believes that he fulfilled the C.M.E. requirements as stated for the period, 2000-2002. Circumstantial evidence of his teaching and research activities as a tenured associate professor in the OSU College of Medicine and its continuing CME events substantiates that claim. When investigated, as requested, pertinent computer records and CME documentation slips were found to be lost by the Department of Medicine. These records form the basis of the entire professional CME program and were not entrusted to responsible parties until this year.

Dr. Houston stated that Dr. Hunter will answer any questions about this. The only evidence Dr. Hunter has of his C.M.E. compliance is in his testimony because the other evidence does not exist in a competent form.

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

Mr. Perry stated that this is obviously a tough case, but the facts are relatively undisputed. Dr. Hunter did testify that it was his belief that he had completed the necessary CME requirements. It may seem like a

November 10, 2004

harsh result, but the Board's staff members, especially Debbie Jones, did everything that they could to help Dr. Hunter. Mr. Perry commented that if he had a CLE situation with the Supreme Court, he would feel very fortunate to have someone like Debbie Jones to work with, who would be so accommodating. Unfortunately, under the Board's standards, Dr. Hunter's own uncorroborated testimony just doesn't suffice in terms of evidence. Mr. Perry stated that had there been any alternative they could have pursued in this case, they would have done it. They looked for one, but, unfortunately, this is all they have.

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

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

Dr. Steinbergh stated that she does agree with the Proposed Order. She stated that it is unfortunate, but Dr. Hunter was not able to substantiate the CME he advised that he had earned. Even with the staff's efforts, documentation could not be found. Dr. Steinbergh stated that the Proposed Order is consistent with other cases in which physicians audited are found to not have sufficient evidence of CME.

Dr. Kumar agreed with Dr. Steinbergh, but added that he has some concern with the wording of paragraph 4.c., which requires Dr. Hunter to provide documentation acceptable to the Board of his satisfactory completion of 100 hours of CME for the July 2, 2000 through July 1, 2002 period. Dr. Kumar stated that this is the same time frame for which Dr. Hunter was unable to supply documentation. He asked how the Board could expect him to comply with this in the future. Dr. Kumar stated that this is placing a condition on Dr. Hunter's license that would be very difficult for him to meet.

Dr. Steinbergh stated that it is her understanding that, in past cases, the physicians have completed CME to be applied to that time period.

Mr. Dilling agreed with Dr. Steinbergh, stating that the language of that paragraph states that he must provide documentation acceptable to the Board. Staff will work with Dr. Hunter to help him comply with that paragraph. He explained that Dr. Hunter could earn credits now, which he could then apply to the July 2, 2000 through July 1, 2002 period.

Dr. Steinbergh asked to change her motion.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF WILLIAM W. HUNTER, JR., M.D. DR. STEINBERGH FURTHER MOVED TO CLARIFY PARAGRAPH 4 C OF THE PROPOSED ORDER TO MEAN THAT DR. HUNTER SHALL EARN C.M.E. CREDIT HOURS TO BE APPLIED, RETROACTIVELY, TO THE JULY 2, 2000 THROUGH JULY 1, 2002 PERIOD. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Dr. Egner	- aye
	Dr. Bhati	- aye

November 10, 2004

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

The motion carried.

ALBERTO LEON, M.D.

Ms. Sloan directed the Board's attention to the matter of Alberto Leon, M.D. She advised that objections were filed to Hearing Examiner Porter's Report and Recommendation and were previously distributed to Board members.

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

Dr. Leon was accompanied by his attorney, Eric J. Plinke.

Mr. Plinke stated that the Order before the Board recommends permanent revocation. His objections obviously are directed to the severity of that punishment. At the hearing, Mr. Perry and he had well-argued closing arguments. Mr. Plinke commented that he thought his closing argument was better, but, obviously, the Hearing Examiner disagreed. Mr. Plinke stated that Mr. Perry will sit before the Board in a few minutes and ask that the Board permanently revoke Dr. Leon's license. Mr. Perry will lay out the reasons why he believes the license should be revoked. Mr. Plinke stated that he will try to do the same in just a few moments and then hand over the remainder of his time to Dr. Leon.

Mr. Plinke stated that Dr. Leon's conduct in this case is serious, there's no disputing that, and it warrants serious discipline. Mr. Plinke questioned whether it warrants the most serious discipline. He stated that this is an impairment case that factually might be different from cases the Board has seen before. When you apply those facts to the law, there really is no difference. Dr. Leon is a physician who, up until 1997, when he sustained a horrible and horrific motorcycle accident, was a physician the Board would never have expected to see. Like many physicians who become impaired, Dr. Leon suffered a physical injury, self-medicated his treatment, and ended up coming before the Board because of the conduct in which he engaged to self-medicate. Dr. Leon has been through treatment, is under an aftercare program and an OPEP contract. Dr. Leon is complying with all those things.

Mr. Plinke stated that the unusual circumstance here is that Dr. Leon also was evidently evaluated at Shepherd Hill, and they didn't believe that he was impaired. So there is a conflict here. You have a conflict between Shepherd Hill's opinion and Parkside's opinion.

November 10, 2004

Mr. Plinke stated that he believes that this Board has an outstanding record in dealing with impaired physicians. The Board's approach has always been, "when the physician first comes before us, we will suspend the license." In some cases, depending upon the circumstances, the Board suspends for a short period of time. In other cases that are more aggravated, the Board suspends for a longer period of time. The Board provides for reinstatement terms. The Board's approach reflects the medical-model approach to physician impairment.

Mr. Plinke stated that, if you look at the motivation for Dr. Leon's conduct, it was not for pecuniary gain or to harm people. His motivation is the same motivation that any impaired physician has. He was suffering, and in his wrong belief that the medication was necessary to treat his pain, he became an opiate abuser.

Mr. Plinke stated that if the Board adopts the recommended Order, in some manner it undermines the Board's approach to impaired physicians. A permanent revocation order in this case is more of a reflection of a moral-model approach than a medical-model approach.

Dr. Leon stated that he is here speaking for his medical life, commenting that defending his career requires some eloquence. Dr. Leon stated that he is not a public speaker; he is an emergency room (ER) physician, and he has been for a long time. Until not long ago he had a long, uneventful and rewarding career. He's always given his patients his best effort.

Dr. Leon stated that he could speak a long time about regrets and remorse and sleepless nights and self-torment, disappointing many and hurting some he loves very deeply, but he won't take that time. Dr. Leon stated that he was involved in an accident in 1997. He was care-flighted and underwent numerous surgeries since that time to repair his leg. He did get into the habit of medicating himself to get through the days. He went back to work far sooner than he should have, and he worked far more hours than was advisable.

Dr. Leon stated that this past year he has undergone a 28-day program at Parkside. He went through their outpatient program. He is in their continuing care program, and he does drug screens every week for OPEP. He is compliant with all of that.

Dr. Leon stated that he is sorry that he has to be here, and he apologized to the Board members. He stated that, if the Board decides that he should be excluded from medicine forever, it leaves only for him to leave here with whatever little dignity and respect he may have left. Dr. Leon stated that he still has a lot to do in medicine, and he still has many years that he can work. He enjoyed his work. Dr. Leon asked the Board for a second opportunity. He assured the Board that he would never be here looking for a third opportunity.

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

Mr. Perry stated that he couldn't say it any better than Mr. Porter did in his Report and Recommendation, but there are a couple facts he wants to emphasize for the Board. Mr. Plinke mentioned that Dr. Leon had obtained treatment, and that ties in with the intervention in lieu case from Butler County. He reminded the Board that a few months ago it had a discussion about the criminal justice system handling this program,

November 10, 2004

which he believes is a great program for the people for whom it was truly designed, but sometimes it can result in a legal fiction. In this case, Dr. Leon was charged by a bill of information with just four counts of deception. There were 80 plus acts constituting felonies in the Board's complaint. For some reason Butler County charged Dr. Leon with four counts. The Board's most serious charges were, essentially, drug trafficking. Dr. Leon wasn't charged with that in Butler County.

Mr. Perry stated that since 1984 the Supreme Court of Ohio has held that, if you prescribe controlled substances outside the scope of a bona fide physician/patient relationship, that's tantamount to drug trafficking. Dr. Leon wasn't charged with that. Had he been charged with that, he wouldn't have even been eligible for this program. Mr. Perry stated that the treatment that Dr. Leon completed was completed prior to his even stepping into the courtroom, so that when the Court ordered it, he could say that he had already done it. Dr. Leon even admitted that that was done at the insistence of his criminal defense attorney.

Mr. Perry stated that the Report and Recommendation also comments on Dr. Leon's being less than honest in his explanations to the Board. He stated that there are a couple examples he wants to point out. When Mr. Perry was questioning Dr. Leon about his prescribing to Patient 1, and this pattern of prescription sharing, where Dr. Leon would write two prescriptions on the same dates, one of which Patient 1 would bring back, initially Dr. Leon denied that that was a pre-arranged plan. Mr. Perry stated that when he pointed out that there were several dates where Dr. Leon wrote two prescriptions on the same day, if it wasn't a pre-arranged plan, why would Dr. Leon possibly do that. Then Dr. Leon said, "well, maybe a few times it was pre-arranged." Only when it was called to his attention that the State had evidence that didn't match up with his explanation, Dr. Leon would change his explanation.

Mr. Perry continued that Dr. Leon indicated that this all started because he had had this traumatic injury. Mr. Perry stated that he doesn't mean to discount that at all, but Dr. Leon didn't want to be perceived in the medical community as a drug seeker. When Mr. Perry pointed out to Dr. Leon that his accident was in July 1997 and the first prescription written for the person who subsequently became his spouse, was July 23, 1997. That would have been within a week or two of Dr. Leon's release from the hospital. Mr. Perry stated that when he asked Dr. Leon, "when you were doing this right out of the gate upon being released from the hospital, how could you possibly have had a chance of even being perceived as a drug seeker," Dr. Leon's response was basically, "well, I have no explanation for that, Mr. Perry." Mr. Perry stated that Dr. Leon's explanation doesn't add up to the known facts.

Mr. Perry stated that another example would be Dr. Binski's prescriptions in the Spring of 2000. The Report and Recommendation points out that there were at least 15 prescriptions from Dr. Binski during the time period when Dr. Leon claimed that he was writing for himself, self-medicating because he didn't want to bother Dr. Binski, or because Dr. Binski was on vacation.

Mr. Perry stated that, when you boil it all down, what you end up with is 80 plus times where Dr. Leon prescribed controlled substances when, by his own admission, there were no physical exams, no diagnoses, no medical records. A substantial number of these were not for his own drug use. The drugs prescribed for Patients 3, 4 and 5, were not delivered to Dr. Leon. There is no evidence of drug dependence. Parkside said that there is definite opiate abuse because, after all, Dr. Leon was obtaining controlled substances

November 10, 2004

through illicit means. That's abuse. But there was no finding of dependency. Even Dr. Leon admitted that when he engaged in this pattern of behavior he was stone-cold sober, he had complete control of his mental faculties, and he was fully aware of the Board's rules. Unexplainably, he went ahead and did it. This is not only serious, it's almost unbelievably shocking that a physician would engage in this kind of behavior. So, when you look at his pattern of conduct, it is so far over the line, there's only one appropriate outcome, and that is permanent revocation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ALBERTO LEON, M.D. DR. BHATI SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Dr. Egner stated that she doesn't agree with either Mr. Plinke or Mr. Perry. She stated that her take on this as she read through the Report and Recommendation, and the testimony Dr. Leon gave at hearing, is that Dr. Leon is a chronic benign pain sufferer. She thinks that he is impaired because of his chronic benign pain. Dr. Egner stated that she doesn't think that Dr. Leon ever received adequate treatment, partly due to his own fault. She doesn't believe that it was the fault of Dr. Leon's physician. Dr. Leon went back to work too early. She doesn't think that he followed the instructions as he should have. She also doesn't think that he looked into alternative methods of pain relief that he certainly knew were available. Dr. Egner stated that she still looks at this as an impairment case – not impaired to the drug, but impaired because of his pain.

Dr. Egner stated that she looks at the behaviors that this Board accepts because of drug impairment, and the Board tries to help those physicians. The Board has accepted some behaviors that are far more egregious than this. Dr. Egner stated that she's not saying that the Board should let Dr. Leon go out and say that all is well. Dr. Egner stated that the Board has to really monitor Dr. Leon. But she added that she doesn't think that Dr. Leon should permanently lose his license. She thinks that the Board has to put faith in the evaluators who say that he's not impaired by drugs. The Board puts faith in them when they say that physicians are impaired, so why would the Board not believe them now?

Dr. Egner stated that she doesn't think that Dr. Leon can have a standard drug impairment Report and Recommendation, but he should have something similar to it. Dr. Egner stated that Dr. Leon should be

taken out of practice. He did prescribe drugs to five people, all kind of in a circle of people he knew. He used incredibly poor judgment, but she believes she understands some of this.

DR. EGNER MOVED TO AMEND THE PROPOSED ORDER BY SUBSTITUTING AN ORDER THAT WOULD SUSPEND DR. LEON'S LICENSE FOR A MINIMUM OF ONE (1) YEAR, AND PLACE THE FOLLOWING REQUIREMENTS FOR REINSTATEMENT OF HIS LICENSE: HE SHOULD COMPLETE A PAIN MANAGEMENT EVALUATION AND PROGRAM; HE SHOULD PRESENT THE BOARD WITH A PRACTICE PLAN FOR BOARD APPROVAL WHEN HE'S MET THE CRITERIA THE BOARD WILL SET; AND HE SHOULD GO THROUGH THE PRESCRIBING AND MEDICAL RECORDKEEPING COURSES AT CASE WESTERN RESERVE. UPON REINSTATEMENT HE WILL BE ON PROBATION FOR FIVE (5) YEARS, AND ONE OF THE CONDITIONS WOULD BE MAINTAINING A LOG OF ALL DRUGS PRESCRIBED, DISPENSED AND ORDERED.

Dr. Egner stated that she does think that the Proposed Order is too harsh. It's really unusual, and maybe Dr. Leon has her fooled, but when she read this, the whole time she read it she just couldn't help but think that if he had ever allowed himself to be treated as a patient should be treated, she doesn't think he would have gotten into all this trouble.

Dr. Steinbergh stated that, after she finished reading this case, she asked herself whether this was a minimal standards case, an impairment case, or a combination of the two? She stated that she agrees with Dr. Egner in principle that there is no question that Dr. Leon suffered from chronic benign pain. She then tried to imagine why he made such poor judgments in prescribing, and, literally, trafficked in drugs. He prescribed all these controlled substances to people who were not even patients. This was very flagrant prescribing. He prescribed to one person he didn't even know or hadn't even met. Some of the other people were more controlled – people who worked in the emergency room. His injury was substantial. He made a very bad choice about how he would manage his pain.

Dr. Steinbergh continued that Dr. Leon's concept of not wanting to be known as a drug seeker was a legitimate one. Emergency room physicians deal with people who come in and request pain medication. The unfortunate part is that they do see people repeatedly, and she would imagine that that taints a doctor's view. Dr. Steinbergh stated that she thinks that doctors come across certain situations in their practices that will begin to affect them. They know about the rules for controlled substance prescribing. Dr. Steinbergh stated that she imagines that that went through Dr. Leon's mind, but she agrees with Dr. Egner that Dr. Leon never gave himself an appropriate chance to be controlled for pain. That was extremely bad judgment and not very smart for a physician.

Dr. Steinbergh stated that, for her, this was a very strong minimal standards case. She didn't like all this prescribing and drug trafficking. She had a great deal of trouble with this. Dr. Steinbergh added that the Board had no evidence that Dr. Leon is chemically dependent, but it has every evidence that he abused the medicine. Dr. Leon has been assessed. Dr. Steinbergh commented that the fact that Dr. Leon has already been through a 28-day program is really not too impressive to her. She believes that he did that for the legal ramifications.

November 10, 2004

Dr. Steinbergh stated that she doesn't know whether permanent revocation is appropriate in this case, but she does agree that he needs to be out for a long time. There needs to be a substantial suspension. She added that she agrees with Dr. Egner about the types of stipulations that would be developed if the Board were to agree.

Dr. Egner asked for a second to her motion.

DR. STEINBERGH SECONDED THE MOTION.

Dr. Kumar stated that he had a different take on this case. He stated that he recognizes what Dr. Egner is saying, but one of the things that bothered him quite a bit is that if Dr. Leon was really impaired and really needed the pain medication, when he would take those medications, which were the duplicate prescriptions, he wouldn't use them all. He would throw some of them away. That didn't make sense to him. If it was someone who was really impaired and needed narcotics and pain medication on a constant basis, why, when he had the pills in his hand and he needed those things, would he throw them away and write a duplicate prescription the second time around to get them?.

Dr. Steinbergh asked whether Dr. Kumar believes that he really threw the pills away.

Dr. Kumar stated that Dr. Leon said that himself.

Dr. Steinbergh acknowledged that, but asked whether Dr. Kumar really believed him.

Dr. Egner stated that he may have, but she doesn't think that he's impaired by the pain medication or the drugs.

Dr. Kumar stated that if he's not impaired in that way, then this is an issue of minimal standards. He really did not take care of how he was prescribing the medications. A one-year suspension is too little for this. Dr. Kumar stated that he doesn't think that Dr. Leon cared how he was prescribing, and he's not sure it wasn't essentially for his own use. Dr. Kumar added that there is no question that Dr. Leon needs to be evaluated by pain management people, but he would speak against a one-year suspension.

DR. EGNER STATED THAT SHE WOULD AGREE TO A TWO-YEAR SUSPENSION AND ASKED TO AMEND HER MOTION ACCORDINGLY. DR. STEINBERGH, AS SECOND, AGREED.

Dr. Egner stated that she's not minimalizing what Dr. Leon did. He did some terrible things. But she believes that Dr. Leon's judgment was impaired because of the inadequate treatment of his chronic benign pain. The Board has not had this discussion in terms of disciplinary actions, but it has spent the last five years discussing chronic benign pain and pain management, and the difficulties for both the physicians and the patients in regard to this subject. Dr. Egner stated that she agrees with Dr. Steinbergh completely that, especially when you are an ER physician, and you are faced on a fairly regular basis with drug seekers wanting pain medicine in your ER, and you know the attitude that they are met with by that ER staff and by many people you are surrounded by day in and day out. She thinks that Dr. Leon saw himself in an

November 10, 2004

awkward position. Did he make the wrong choices? Of course he did. Should he pay a price for that and be punished for it? Absolutely he should. Dr. Leon does have a significant price to pay, even with the amended Order. Dr. Egner stated that she believes that her proposal shows an openness on the Board's part to recognize this disease process.

Dr. Buchan stated that his take was harsh in this case. Dr. Buchan stated that he felt like this was reckless behavior, reckless prescribing, just horrific. He added that it was conduct that constitutes a felony in this state. Dr. Buchan stated that 99 times out of 100, felony issues mean license revocation. Dr. Buchan added, however, that, on the strength of his colleagues' review of this case, he would be persuaded to go with a longer suspension with terms, but it was not what he came here thinking. Dr. Buchan stated that this kind of reckless behavior is worrisome to him.

Mr. Browning concurred with Dr. Buchan. He added that, if the Board goes in this direction, it's taking a big leap of faith.

Dr. Steinbergh agreed with Dr. Buchan and Mr. Browning that it is a big leap of faith. She added that in no way does she think that Dr. Leon was justified in his thought process, she doesn't believe he was. The only reason she said that she could imagine his thought process as an ER doctor who sees a lot of drug seeking behavior. She stated that she's been on this Board for 11 years and during the process she had a significant injury. She was suffering as Dr. Leon did. She was on crutches for a year but did her job and never missed work. But she had to make the choice that she could not use controlled substances. She made that decision because of her experiences with the Medical Board. She went through every step she could possibly take to exhaust evaluation, exhaust treatment, therapy, and ultimately surgery. The bottom line was that, because of her experience with the Medical Board, she knew that it was unacceptable for her to use controlled substances and expect to practice, which Dr. Leon did. That bothers her. Dr. Steinbergh continued that, on the issue of chronic benign pain, there is no question that he would be in pain. So when she says that she has some degree of understanding, she says that in faith. She doesn't think that any Board member may believe the whole record all the time, and she leans toward being somewhat lenient, although she does believe that there was absolutely reckless prescribing. She can't get that out of her mind. He prescribed this way in order to get some pills to control his own pain. That kind of decision making as a physician is so inappropriate.

Dr. Kumar stated that many times Dr. Leon prescribed medicines, not just to get some back. He prescribed to Patient 3 after she simply asked for the drug. He didn't perform any examination or anything.

Dr. Steinbergh acknowledged that he had no physician/patient relationship whatsoever with any of these people.

Dr. Kumar stated that those prescriptions were not written for him to get some back for personal use. They were totally written without regard for any prescribing guidelines. Dr. Kumar stated that he has a significant problem because of that. He added that he's sure that Dr. Leon had some discomfort and needed some help.

Dr. Egner stated that that's what she is saying is his impairment. As Dr. Leon was impaired by his own

November 10, 2004

pain, getting drugs as he should not have done, it impaired his judgment in treating others' pain. It was the same sort of thought process. They have back pain and need pain medicine; he had leg pain, he needed pain medicine. Dr. Egner stated that she thinks Dr. Leon's prescribing to those patients, although very wrong, was actually rather consistent with his impaired judgment in treating pain, whether it be his or that of one of these people in that circle. She noted that he didn't prescribe to 50 different people. He prescribed to a small circle of people within that framework. That's how she comes to that conclusion.

Dr. Kumar stated that the Board only knows of five people.

Dr. Bhati asked to focus the issue. The Board knows that he should not have prescribed as he prescribed. Minimal standards of care is an established fact; he hopes that there's no question in anyone's mind about it. The question comes as to whether or not Dr. Leon had problems with the drugs. That is another issue that is being questioned. Normally in a situation like this, the Board would treat this as a permanent loss of his license. He is lucky that even the thought of a two-year suspension is being considered for this physician.

Dr. Robbins agreed that Dr. Leon is lucky that a two-year suspension is being considered. He stated that he came here, wrestling with this case, leaning toward revocation. He added that he's still wrestling, and he finds that if he's wrestling, he'll lean toward a lenient sentence. He doesn't like the death penalty when he's wrestling. Dr. Robbins spoke in favor of Dr. Egner's amendment.

Dr. Steinbergh suggested tabling this matter to draw up an amended order consistent with Dr. Egner's motion. She stated that another thing she would like to address in the motion is that when the Board evaluates the practice plan, the Board would restrict his prescribing practices.

Dr. Egner stated that she doesn't like restricting physicians' prescribing practices for two reasons: First, that's the purpose of requiring the maintenance of a log. Secondly, she's going to assume that he will continue as an ER physician, and the Board would be saying that it doesn't want him to practice adequately by restricting the prescribing habits. The Board either trusts that, after all the stipulations put into place, Dr. Leon is going to be able to prescribe. Dr. Egner stated that she's not speaking just of Dr. Leon. She doesn't like restricting physicians' prescribing habits under any circumstances, because if you're prescribing appropriately, whether it be scheduled drugs, antibiotics, you're prescribing appropriately. The Board would never say that it's appropriate to never use scheduled drugs in the practice of medicine.

Dr. Steinbergh stated that the practice plan would include a supervising physician and chart review.

Dr. Egner agreed.

DR. KUMAR MOVED TO TABLE THIS MATTER FOR DEVELOPMENT OF AN ALTERNATIVE ORDER. DR. EGNER SECONDED THE MOTION. A vote was taken:

Vote:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye

November 10, 2004

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

The motion carried.

JACK E. SLINGLUFF, D.O.

Ms. Sloan directed the Board's attention to the matter of Jack E. Slingsluff, D.O. She advised that no objections were filed to Hearing Examiner Clovis' Report and Recommendation. Ms. Sloan noted that both Dr. Garg and Dr. Talmage served as Secretary in this matter.

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

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

Ms. Collis advised that no objections were filed in this case; she and Dr. Slingsluff fully support the Report and Recommendation. Ms. Collis stated that she believes that the Report and Recommendation accurately outlined that this is a case where Dr. Slingsluff is no threat to his patients or the citizens of Ohio. This case results because Dr. Slingsluff administered Laetrile to patients. He was charged and pled guilty to one misdemeanor count of introduction or delivery for introduction into interstate commerce of an unapproved drug, which was Laetrile. This was not a result of a patient complaint. Patient 1 in this case, who is the patient who purchased the Laetrile and brought it to Dr. Slingsluff's office, did not complain. This was a result of an FBI investigation that took place in Dr. Slingsluff's office. It was found that Dr. Slingsluff had Laetrile in his office.

Ms. Collis stated that the Board had investigated Dr. Slingsluff over 20 years ago. At that investigation, the Board questioned, and testimony was presented at the investigation stage, regarding his administering Laetrile to patients. This Board took no disciplinary action against Dr. Slingsluff at that time. In fact, the Board did not issue a cease or desist order or any type of letter saying that the Board does not condone his administering Laetrile to patients. This was a very small part of Dr. Slingsluff's practice. As he testified at hearing, it was much less than one percent of his practice. Ms. Collis stated that Dr. Slingsluff is not the type of physician who is a renegade or who would have gone against the recommendations of this Board. As Dr. Slingsluff testified at the hearing 20 years ago, if the Board had told him that it wasn't comfortable with him administering Laetrile, he would have stopped then. Certainly now that the criminal conviction has taken place, he has stopped.

Ms. Collis asked that the Board note that the criminal conviction in this case was extremely minor. It is a misdemeanor, it was in federal court. He received no jail time, one year probation and a \$25.00 fine. No

November 10, 2004

patients have been harmed in this case, and all that they ask is that the Board allow Dr. Slingluff to be able to continue to practice. He's at the end of his practice right now and he would like to be able to continue to practice for his last few years so he can continue to do the work talked about at the hearing that he's been doing with NIH.

Dr. Slingluff thanked the Board for listening to them. He stated that in the 40 years that he's been practicing medicine, he's consistently attempted to follow all the rules and regulations. The incident with the FDA was by accident because of a change that occurred in the use of Laetrile, which was, until a few years ago, legal if it was accompanied by an affidavit, under a decision by a federal judge in New Mexico. Patients coming to his office had gone to Mexico. They returned to the United States and brought the Laetrile under that provision. The State of Ohio never told him that he couldn't use this or continue the treatment that they had received. Dr. Slingluff stated that he's never told anybody that this is a cure because he doesn't feel that that's the case; however, he has had patients who used this conjunctively with conventional treatment and had very good results, they feel.

Dr. Slingluff stated that, at the time he was here 20 years ago, the Board was interested in chelation therapy, which he has been doing since that time. Chelation therapy is not illegal in the State of Ohio, nor in the United States, that he knows of. Dr. Slingluff stated that he is presently an onsite investigator for the FDA in a research project called Trial to Assess Chelation Therapy (TACT). This is a seven-year program that has been going on for about a year and a half. Patients there are subject to a double-blind study. This is all under the control of the FDA and is financed by the NIH. Dr. Slingluff stated that he would like to continue that, along with the family practice he has, which includes care of patients with a multitude of different problems, such as diabetes, heart disease, high cholesterol, and all the usual things seen in a family practice.

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

Mr. Wilcox stated that this case boils down to a public protection issue. Dr. Slingluff was dealing with a very vulnerable patient population, i.e., cancer patients, injecting them with a substance he knows has been banned and not approved by the FDA. Mr. Wilcox asked what kind of physician would inject unapproved medication. There are good reasons why the FDA bans drugs, and, obviously, public safety is certainly a prime consideration.

Mr. Wilcox stated that, regardless of his motives, Dr. Slingluff was knowingly flouting the law. He was telling patients how to import this drug from out of state. He was giving these patients injections of Laetrile. How would he know if the Laetrile is safe? There are no labels; there are no guarantees, no approval process, no way to know if what he is injecting is, indeed, a pure substance. This is equivalent to a patient coming into a physician's office and saying, "Doctor, I just got this stuff while I was in Tijuana, Mexico. It's supposed to be great. Would you inject it into me?" Mr. Wilcox asked what physician would say, "Sure! I'll go ahead and do that." Mr. Wilcox stated that he doesn't think any physician would because there's no way of knowing what's in the drug or in the Laetrile.

Mr. Wilcox stated that Dr. Slingluff's judgment as a physician is what this Board needs to consider today. Regardless of his motivation, his judgment was extremely bad in this case. He doesn't seem to think that

November 10, 2004

he's done anything wrong, and this lack of judgment is dangerous to the public. The Board needs to focus on this and bring forth a penalty that is more in line with what has occurred in this case.

DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JACK E. SLINGLUFF, D.O. DR. BHATI SECONDED THE MOTION.

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

Dr. Egner stated that she feels very differently about this case from what the Report and Recommendation says. She wants to address a couple of things. First, she'll address the most recent of what has been said today, that Dr. Slingluff is no threat to his patients, that he's no threat to the patients in the State of Ohio, and that he's not a renegade. Dr. Egner stated that Dr. Slingluff is the most blatant renegade that she thinks the Board has seen in a long time. He blatantly practices what he thinks is a form of medicine that is outlawed.

Dr. Egner stated that there was a lot of testimony in the record regarding chelation therapy, and she thinks that this was done to try to legitimize what Dr. Slingluff does. He participates in this government program on chelation and therefore he has this better practice standard than if he were just doing Laetrile. Dr. Egner stated that she thinks that that should be totally disregarded. It does not matter to her one bit that Dr. Slingluff is in a program about chelation therapy. This case is about using a substance that has been banned.

Dr. Egner stated that she wants to go back to some of the testimony that Dr. Slingluff gave in the hearing record that she thinks is inconsistent with what he has said at other times. Dr. Slingluff was asked in the hearing whether the labeling of the vials that came from Mexico was in Spanish. Dr. Slingluff's answer to that was that he didn't know because he doesn't speak Spanish. Dr. Egner stated that she doesn't speak Spanish either, but she is pretty sure that she would be able to look at a label, as she does on many things today, and see if it is the Spanish language. Dr. Egner stated that that is just one example of Dr. Slingluff's saying "I don't have to follow your system, and I found a way to stay under the radar. I had the patients bring it in." Dr. Egner noted that Dr. Slingluff's patients didn't always bring it in from Mexico. Dr. Slingluff had the undercover patient tell him that he had prostate cancer, he wanted to use Laetrile. Dr. Slingluff gave the patient some Synthroid, saying that that would help the patient, gave the patient vitamin therapy, and when the patient left, the nurse gave him two pamphlets that are very clear on how to get the Laetrile. The patient didn't have to go to Mexico and produce an affidavit. Dr. Egner stated that she doesn't believe that the patient even brought medical information with him to verify the prostate cancer. Dr. Slingluff did not say that he wouldn't treat the patient until he had all of that verification.

Dr. Egner stated that there were 30 vials of Laetrile in Dr. Slingluff's office. She added that she doesn't know why that was never addressed in the hearing record. It remained a constant problem for her. There were 30 vials in the office. The patient who was the subject of the federal conviction can account for two of those vials. Dr. Egner stated that that's very telling.

Dr. Egner stated that she finds this case to be very egregious, and she thinks that Dr. Slingluff's license

November 10, 2004

should be permanently revoked. This should have been a minimal standards case, but it doesn't really matter. There was a federal conviction of a crime for using a drug that has been banned. Dr. Egner stated that she thinks that Dr. Slingluff tried to work the system so that technically he could get away with it, but he really did know better.

DR. EGNER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF JACK E. SLINGLUFF, D.O., BY SUBSTITUTING AN ORDER OF PERMANENT REVOCATION. DR. BHATI SECONDED THE MOTION.

Dr. Kumar agreed with Dr. Egner. He stated that this case really bothered him. Dr. Slingluff is taking advantage of the most vulnerable people in society, who are afraid of cancer. Three or four things really bothered him: 1. Comments made to undercover agents were more negative when speaking of standard treatments. Dr. Slingluff didn't come out and tell patients not to get the more standard treatment, but he would make negative comments about it. When questioned about the use of Laetrile, Dr. Slingluff's comments were more positive in nature. He didn't stress that the treatment was experimental, but he did say that it would work.

Dr. Kumar stated that he's also bothered by the fact that Dr. Slingluff is giving people IV therapy three times a week with multiple vitamins and so forth. Dr. Kumar stated that he hasn't seen that as a standard of care for cancer patients. If you want to build up the patients by medications or by nutritional things, vitamins, etc., you can give them by the oral route.

Dr. Kumar stated that there were at least two colon cases here, at least one patient had surgery, but he doesn't believe the other patient had any conventional treatment. Dr. Kumar stated that he can't tell that exactly by the record, but he reads between the lines and that's how it appears to him.

Dr. Kumar stated that he thinks the proposed stayed 30-day suspension is too little. Dr. Slingluff has been trying to prescribe the medication, using the medication himself, and encouraging people to use the medication without a good reason for doing so. Dr. Kumar stated that he supports Dr. Egner's motion for permanent revocation.

Dr. Steinbergh stated that she is somewhat sympathetic to this case. She stated that she doesn't know Dr. Slingluff personally, but her assessment of the record is that she thinks that he, as well as other practitioners like him, believe in alternative choices. These are not case-based studies. It's all anecdotal. The patients had end-stage cancer of whatever, and were introduced to Laetrile. They go to Mexico and get the treatment and then bring it back to the United States and continue treatment. Anecdotally, some of these people will get better. They may very well have gotten better, in terms of lymphoma and so forth, just spontaneously. There are people who believe in options, and because there are people who believe in options, this Board has recognized that there are alternative therapies, but that the physicians who provide those alternative therapies have to meet the same standards as other physicians; that is to say, they have to examine the patients, they have to come to a conclusion, have to document and be treating in the same way as they would if the patients had a strep throat or any other serious illness.

Dr. Steinbergh stated that, from her reading of the record, she did feel that Dr. Slingluff did, in fact, notify

November 10, 2004

patients that this was not going to be a cure. She referred to the Report and Recommendation, noting that it indicates that the patients were required to sign a release form. Dr. Steinbergh stated that she was pleased to see that, because as she began reading this case, she wondered about whether he informed the patient properly. Dr. Steinbergh stated that she thinks that the informed consent form used by Dr. Slingluff was appropriate. Dr. Slingluff advised the patients that the drug is experimental and not legally recognized, that it's not a cure, and that it has been used chiefly in research. Dr. Steinbergh stated that she will admit that she doesn't know the extent of research of Laetrile. The release indicates that Dr. Slingluff cannot and does not guarantee or warrant the results in any manner.

Dr. Steinbergh stated that patients are given the options, and they make some choices for themselves. Dr. Steinbergh stated that she tries to evaluate those physicians who believe in this type of alternative care that is outside the standard of care of very traditional medicine. If physicians practice in a way that is reasonably safe for patients, and they believe in it, and the patient believes in it, she thinks it is important for people to have alternative choices.

Dr. Steinbergh stated that since she's been on the Board, the Board has not seen any serious cases involving alternative medicine. The Board has never significantly dealt with chelation and Laetrile cases. She stated that she only offers this as a thought. She's not saying that she would disagree with other Board members.

Dr. Egner stated that she thinks that what the Board is looking at here is not alternative medicine. She stated that she would recognize acupuncture, and some herbs, as alternative medicine. But what Dr. Slingluff did is illegal. When Dr. Slingluff's consent form says that this drug is not legally recognized, it is another way of saying that it is illegal to prescribe this drug. It is illegal for Dr. Slingluff to obtain that drug. That is the crux of the matter. Dr. Egner stated that she is not against alternative medicine, nor does she think that patients should not have an option; however, should they have options that are legally allowed? Absolutely. This is not. This is a banned drug, and that's the crux of the matter.

Dr. Kumar stated that he agrees with Dr. Steinbergh in that he also believes in alternative medicine in many aspects, but in this case, as Dr. Egner pointed out, it's not just a matter of an alternative way of treating cancer. The basic thing that bothered him is the fact that Dr. Slingluff will downplay regular medical treatments in some negative fashion in his discussions, regardless of what's written on the consent form. He will more positively talk about Laetrile treatment and more negatively talk about conventional treatment, regardless of how effective the alternative treatment is. Dr. Kumar stated that he thinks that Dr. Slingluff is indirectly promoting the Laetrile treatments.

Dr. Buchan spoke against revocation, stating that this medicine has certainly been controversial over the last 30 years. Plus, there has been testimony across the land as to its merits or demerits. As such, there is created a sense of doubt or controversy as to whether it's effective or not. Dr. Slingluff has used it. Dr. Buchan stated that he thought Dr. Slingluff's consent form and conversations with his patients have been reasonable. He noted that the fact remains that Dr. Slingluff was using a banned or illegal substance. However, when he evaluates patient harm and gross negligence, he just didn't see it in this case. Is it wrong? Absolutely, and he would stand on that and think a sanction is necessary; but permanent revocation seems too severe when he evaluates this medicine and its controversial status over the years.

November 10, 2004

Dr. Buchan stated that he's not espousing that the medicine is good. It's illegal and Dr. Slingluff should be sanctioned, but he doesn't think this case rises to the level of revocation. Dr. Buchan stated that he was actually leaning toward the Report and Recommendation, as written.

Dr. Bhati stated that he's a little bit horrified. This is a drug not approved by the FDA, it's considered illegal, and he's sitting here talking about alternative medicine to one of the most vulnerable patients you'll ever see. He's encouraging those patients to take this medication over and above recommending conventional medications. Dr. Bhati stated that, if this is not the most horrifying case, he doesn't know what else it would be. You have a patient sitting here and instead of giving conventional treatment you're encouraging the patient to take medications that are illegal, not approved by the FDA. How can you call that "alternative medicine?" It is not.

Dr. Steinbergh stated that her comments about alternative choices were such that Dr. Slingluff never disagreed with conventional therapy, although there was evidence that when an undercover person was sent in, as she recalls, Dr. Slingluff may have dissuaded that patient with prostatic cancer from conventional therapy, and that did bother her. Dr. Steinbergh added that she has the sense from Dr. Slingluff's testimony and from the record itself that Dr. Slingluff did not necessarily dissuade people but used it in conjunction with, at a stage where other physicians say that there is no further treatment for you. Dr. Steinbergh stated that she thinks that over all these years, when listening to reports in the news and so forth, most of these patients will tell you that their doctors had given up on them and that they went to Mexico and there was some hope with Laetrile. Doctors began using it after conventional therapy had been given up. It was with that kind of thing in mind that she approached this case. Dr. Slingluff was offering something that, although there isn't any real good documentation other than anecdotal evidence, people have done okay with. The treatments weren't causing deaths.

Dr. Egner stated that most of Dr. Slingluff's patients didn't say anything. If you look at the letters written in support of this that are part of the hearing record, most of them refer to patients who have died. The letters are written by the relatives. These patients weren't cured by Laetrile. They died.

Dr. Steinbergh stated that he was giving them some type of hope. She thinks that that's the philosophy of those physicians who do this.

Dr. Egner stated that your minister can give you hope. This is the Medical Board, and that's where her problem is. The court system was very lenient with Dr. Slingluff, but she doesn't think that the court system is responsible for the way medicine is practiced and the protection of Ohio's citizens. The Board sees this in a much different light because it is the Board's role to protect the citizens of Ohio. To have those patients who are terminally ill with cancer – and maybe they're not terminally ill. That is really not established in this case. To treat those patients with a medication that is banned is criminal. Dr. Slingluff has a federal criminal conviction, and she thinks it's outrageous.

Mr. Browning had left the room at some point during the previous discussion.

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

November 10, 2004

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

The motion carried.

Dr. Robbins stated that he doesn't feel that this case rises to the level of revocation, but he also doesn't feel that it deserves a slap on the wrist, which is what the initial order is. Dr. Robbins stated that he does have trouble with revocation here, but he wouldn't have a problem with an extended suspension and probation. He added that he couldn't agree more that these patients are looking for any hope. All physicians see it in medicine; he sees it all the time with blindness. If he told the patient to do anything, the patient would do it, no matter what it is. If they're blind and he offered the patient an eye transplant in Russia, the patient would do it; but it's like witchcraft. There is no scientific evidence that this helps, but they would do it. The obligation physicians have is to help lead patients in that manner. What disturbs him in this case is that it involves a drug that is illegal, pure and simple.

Dr. Robbins stated that part of the physician's charge is to offer hope, and he doesn't like the philosophy that there's absolutely nothing that can ever be done because state of mind is such an important thing. It's probably one of the standards of alternative medicine. He indicated that if patients feel there is hope, some positiveness can come out of this. But crossing the line like this is unacceptable. Dr. Robbins again stated, however, that he doesn't feel this case rises to the level of revocation.

Dr. Bhati stated that, in a way, Dr. Robbins has made his point. These are the most vulnerable people, and physicians are supposed to help and protect them in the best way they know, not send them to Russia for an eye transplant. Laetrile is banned, and to give that medication and hope to the patient, and then the patient crashes the next day, is not the right thing to do. A physician who does that is coming very close to being a criminal.

Dr. Kumar stated that if this was only being given to people who were truly terminally ill, and everything else exhausted, he would have more compassion for Dr. Slingluff. But when he sees instances of this medicine being given as a first line to the undercover people who went to Dr. Slingluff and said they had prostate cancer, that really bothers him. It was not being offered as an absolute last resort. Dr. Slingluff many times offered it as a first resort.

Dr. Davidson stated that she had concerns about whether there is room for remediation or consideration in this case, and she didn't find any. Dr. Slingluff has had a long history of circumnavigating everybody's rules. Dr. Davidson stated that she doesn't see how the Board can do anything today other than revoke if the Board expects him to stop this illegal activity.

November 10, 2004

Dr. Buchan stated that he believes that he reads the record differently, and that's why there are 12 minds speaking today. Dr. Buchan stated that he didn't feel that Dr. Slingluff was necessarily taking advantage of this agreed vulnerable population. It appears as though, at least by the record, that this represents about one percent of his practice. It appears as though people came to him in "last resort" status, that's how he took what he read. Dr. Slingluff told the patients that it's not a cure. There's enough testimony over the last several decades that physicians don't believe that it cures people, but national testimony over the decades suggests that it might. So these people are coming, already having had traditional treatment. It's a small percentage of his practice. Dr. Slingluff does not have a factory, where he's running people in and out for huge financial appreciation. Dr. Buchan stated that Dr. Slingluff absolutely did something wrong, but he doesn't feel it rises to the level of revocation. If the Board suspends his license for a longer period of time, there might be some middle ground upon which Board members can agree.

Dr. Bhati stated that an undercover agent went to Dr. Slingluff's office, said he had prostate cancer, and the first treatment Dr. Slingluff offered was Laetrile.

DR. EGNER MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF JACK E. SLINGLUFF, D.O. DR. BHATI SECONDED THE MOTION. A vote was taken:

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

Needing six votes to pass, the motion failed.

Dr. Egner noted that Mr. Browning is out of the room and suggested tabling this matter until his return.

DR. EGNER MOVED TO TABLE THE MATTER OF DR. SLINGLUFF. DR. BUCHAN SECONDED THE MOTION.

Board members indicated that they wished discussion to continue.

DR. BUCHAN WITHDREW HIS SECOND TO DR. EGNER'S MOTION. THE MOTION DIED FOR LACK OF A SECOND.

Dr. Bhati asked whether any Board member would consider changing their vote at this point.

November 10, 2004

Dr. Steinbergh stated that she would be willing to offer an alternative amended order. She suggested a year's suspension with probationary terms.

Dr. Buchan stated that that would be his position as well. He would be interested in a more protracted suspension period, but he can't vote for revocation at this point.

Dr. Robbins agreed.

Dr. Kumar indicated that he might be amenable to a longer suspension, and a ban against Dr. Slingluff using Laetrile in his practice.

Dr. Bhati commented that the vote is pretty much split at this time. He stated that tabling to wait for Mr. Browning's return might not be a bad idea.

Dr. Steinbergh noted that Mr. Browning hasn't taken part in the discussion.

Mr. Dilling stated that Mr. Browning has indicated that he has read the record and reviewed it. At the same time, there has been significant discussion. If the Board tables it for a later vote, the Board could have this discussion with Mr. Browning present.

Dr. Robbins asked whether those members who voted for permanent revocation have any leeway in their vote.

Dr. Steinbergh stated that the Board has the ability to produce an alternative order and see if it passes.

Dr. Robbins stated that he would like to see if those voting for revocation would be willing to continue to discuss the matter.

Dr. Egner stated that if Mr. Browning votes for permanent revocation, there will be six votes and the motion will carry. If not, she would have to look at another alternative because Dr. Slingluff deserves resolution of this matter. That's why she would rather wait to see how Dr. Browning would vote.

Dr. Buchan stated that if Dr. Slingluff was running a drug clinic or heroin clinic, there would be no argument. The Board needs to understand the medicines he's administering and understand the outcome of that medicine. Dr. Buchan acknowledged that the drug is illegal.

Dr. Davidson stated that it's illegal for safety reasons. She added that it's not just unapproved. It's not an off-label use.

Dr. Buchan stated that Dr. Slingluff has been using this medicine for 30 plus years. He added that he's not suggesting that it's right. He's only suggesting that the level of severity of the Board's sanctions needs to be consistent with the crime.

Dr. Steinbergh added that the Board has charged him because of his conviction of a drug-related

