

December 10, 2008

MINUTES

THE STATE MEDICAL BOARD OF OHIO

December 10, 2008

Nandlal Varyani, M.D., President, called the meeting to order at 1:00 p.m., in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes State Office Tower, 30 E. Broad St., Columbus, Ohio 43215, with the following members present: Dalsukh Madia, M.D., Vice-President; Raymond J. Albert, Supervising Member; Carol L. Egner, M.D.; Marchelle L. Suppan, D.P.M.; W. Frank Hairston; Jack C. Amato, M.D.; Susan E. Stephens, M.D.; Darshan Mahajan, M.D., and Anita M. Steinbergh, D.O. The following joined the meeting at a later time: Lance A. Talmage, M.D., Secretary. The following did not attend the meeting: Jeffrey M. Jacobson.¹

Also present were: Richard A. Whitehouse, Executive Director; Diann K. Thompson, Assistant Executive Director; Kimberly C. Anderson, Assistant Executive Director; Sallie J. Debolt, General Counsel; William J. Schmidt, Senior Counsel, Enforcement, Enforcement, Compliance & Investigations; Rebecca J. Marshall, Chief Enforcement Attorney; Mark R. Blackmer, David P. Katko, Angela S. McNair, Karen H. Mortland, Marcie P. Pastrick, Cheryl D. Pokorny, Sheldon Safko and Daniel S. Zinsmaster, Enforcement Attorneys; Barbara J. Pfeiffer, Karen A. Unver, and Kyle C. Wilcox, Assistant Attorneys General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Executive Staff Coordinator; Michael K. Miller, Public Policy & Government Affairs Officer; Karry Thacker, Executive Staff Assistant; Danielle Bickers, Compliance Supervisor; Jean Gillman, Compliance Officer; Barbara Jacobs, Public Services Administrator; and Jacqueline A. Moore, Disciplinary Information Assistant.

MINUTES REVIEW

MR. ALBERT MOVED TO APPROVE THE MINUTES OF NOVEMBER 12, 2008. DR. SUPPAN SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Suppan	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

¹ Although Mr. Jacobson's term on the Board began on December 8, a public announcement of his appointment was not made until December 11, 2008.

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The motion carried.

Dr. Madia left the room at this time.

EXECUTIVE SESSION

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

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye

The motion carried.

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

Dr. Talmage and Dr. Madia joined the meeting during the executive session.

The following joined the meeting after the executive session: Patricia A. Davidson, Chief Hearing Examiner; R. Gregory Porter and Gretchen Petrucci, Hearing Examiners.

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Varyani announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the findings of fact, conclusions and proposed orders; and any objections filed in the matters of: Larry John Little, M.D.; Donald E. Higgs, M.D.; Erica L. Berry; Sara C. Gorbett; Patricia Ann Hale; Leonid Macheret, M.D.; Ruba W. Nijmeh, M.D.; and Paul H. Volkman, M.D. A roll call was taken:

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

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Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

Dr. Varyani 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. They may, however, participate in the matters of Dr. Higgs and Dr. Nijmeh, as those cases are not disciplinary in nature and concern only the doctors' qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

The original Proposed Findings and Proposed Orders shall be maintained in the exhibits section of this Journal.

LARRY JOHN LITTLE, M.D.

Dr. Varyani directed the Board's attention to the matter of Larry John Little, M.D. He advised that objections were filed to Hearing Examiner Porter's Report and Recommendation and were previously distributed to Board members.

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

Dr. Little was accompanied by his attorney, Eric J. Plinke. Mr. Plinke stated that this case has been a long

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time pending, the hearing was held some time ago. He stated that he filed written objections, which he's sure that the Board has reviewed.

Mr. Plinke stated that there are cases that occasionally come before the Board where objections in pen and paper are not sufficient to demonstrate and identify the concerns expressed in those objections. Mr. Plinke stated that he thinks that this is one of those cases. He asked the Board to visualize how this case began. The Medical Board, internally, gets a written report from Marlene Willen, M.D., based on her review of the patient records. She writes that report, signs the report, sends it to the Board, and it's internally reviewed. The Secretary and Supervising Member formulate charges, the charges are issued, the hearing request is made, and the defense of the case is begun. When it comes to the actual hearing, and Dr. Willen testifies, it turns out that she's wrong. She contradicts her own report. Mr. Plinke stated that this is really extraordinary. It's not great lawyering, it's not anything other than a witness who, when she prepares her report containing her opinions, is wrong. Mr. Plinke stated that he knows it's wrong because when she came to the hearing and testified, she contradicted what she put in her report. Mr. Plinke stated that that is what the record contains; yet, that witness is deemed more credible than Jennifer M. Ridge, M.D., who testified, or Dr. Little, who testified.

Mr. Plinke stated that, based on that determination of Dr. Willen being more credible, this Board is poised to permanently revoke Dr. Little's license. Mr. Plinke stated that he thinks that it's a relatively rare occurrence for this Board to have an expert, who writes a report, that by their later own testimony is incorrect, and not in immaterial ways. He stated that these were substantive standard of care issues that are just flat-out wrong, in Dr. Willen's own report. Mr. Plinke stated that he thinks that that raises serious legal questions about the reliability of this witness. What was she thinking when she wrote the report? Did she actually know what the standard of care was when she wrote this report? Did she know what the standard of care was when she testified contrary to the report? Yet, this is the witness who was credible, according to the Report and Recommendation.

Mr. Plinke stated that the other issue he would like to bring to the Board's attention is that a number of Dr. Little's patients, unsolicited, have come here today. He stated that if the Board is uncomfortable with the state of the evidence, if it is uncertain whether the Board members can sit there and say, "yes, we should permanently revoke Dr. Little's license, based on Dr. Willen's testimony," he would encourage the Board to remand the case. Mr. Plinke stated that he feels that, based on this record, it's almost guesswork to actually discipline Dr. Little, based on Dr. Willen's credibility issues.

Dr. Little read the following statement into the record:

I respectively (sic) sit before the State Medical Board twenty months after the hearing involving charges made against me was concluded. My treatment of patients is reflected in my charts and testimony. I take full responsibility for my treatment choices. I do, however, have problems with the way in which this case was prepared. This case was developed by the State's expert, pursued by the Attorney General's office, and reviewed by the Hearing Examiner with only the aid of paper, black and white patient charts. The case was developed without a definition of the minimal standard of care for dermatology by the State's expert, any microscopic slides, tissue or pathology material being

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examined by the State's expert or the Hearing Examiner, or any color coded diagrams related to Mohs surgery and tissue orientation being examined by the State's attorneys, Hearing Examiner, or the State's expert. This type of diagram is impossible to interpret without coloring in place. This resulted in many conjectures, guesses and false conclusions being made by the State's expert. Even when presented with clear-cut evidence to the contrary, the expert held to her conclusions. In other words, she contradicted her own report. Despite these basic errors, she was said to be more credible than me or my expert, Dr. Ridge.

Dermatology is a unique specialty in that, by its nature, it is almost purely a visual diagnostic specialty. To make assumptions in dermatology without examining the patient is misguided at best and arrogant at worst. One can armchair quarterback clinical decisions if one wishes, but you simply cannot imagine the precise nature and location of lesions years later on the ever-changing canvas that is the skin.

It is, and it has been, my usual and customary practice to examine all patients' lesions and faces under seven-power magnification with good lighting. I am very forward and I am very skilled in that regard. It is now my usual and customary practice to digitally photograph all suspicious skin lesions to document their location and their appearance accurately. This was not feasible even five years ago with the technology available at that time.

The state's expert stated during her deposition that she believed that peer review journals were not helpful to her in determining treatment modalities for patients. I disagree. I believe that they are a very helpful format for dissemination of knowledge. The State's expert presented only one article in support of her testimony. I presented numerous articles and references, which supported my treatment choices. Coincidentally, I presented the same article as the State's expert in support of my decisions. The document is the *American Academy of Dermatology Guidelines of Care for Mohs Micrographic Surgery*, which was prepared in 1995. To quote from these guidelines:

These guidelines are intended to assist those outside of our profession to understand the complexities and scope of care provided by dermatologists. Mohs Micrographic Surgery is not indicated for the treatment of all skin cancers. Skin cancer may be effectively treated by various modalities. Successful treatment of each individual lesion and patient is dependent on many factors, including the clinician's skill and familiarity with treatment, availability of treatment modalities, as well as tumor type and patient selection. The risk/benefit ratio must be considered on an individual basis. In some instances, the patient's general health would indicate palliation or observation only. Frequency and duration of patient follow-up is dependent on the individual case. The list of treatments may include agents that are not currently approved by the United States Food and Drug Administration. Further, these guidelines

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should not be deemed inclusive of all proper methods of care, or exclusive of other methods of care reasonably directed at achieving the same result. The ultimate judgment regarding any specific procedure must be made by the physician in light of all other circumstances presented by the individual patient.

I have and continue to follow these established guidelines. In treating skin cancer, the State's expert noted that she utilized Mohs micrographic surgery as her only treatment choice. I disagree with this cookie cutter approach. At no point in the deposition or written report by the State's expert was consideration given to alternate skin cancer treatment modalities outside of her first preference.

Dr. Varyani advised that he has given Dr. Little the benefit of nine minutes, rather than five. He advised Dr. Little that he has one minute to conclude his statement.

Dr. Little continued as follows:

In the course of a day, I see at least eight patients with new skin cancers. My staff or crew have undertaken a quality assurance study over the past four years of my previous surgical patients who have returned from Mohs surgery performed as far as eighteen years in the past. The number is presently 760 lesions with five histologic recurrences. I hold that number, including any patients among the twelve submitted up to comparison from any quarter. This is well within the standard. However, good care does not necessarily ensure that all patients have successful outcomes. Medicine is a life science, not an exact science. There is no more one way to do things than there is one type of patient. I've strived to do my best, knowing that I do a good job for my patients. Fortunately, I have been blessed with a wonderful staff of patients and exceptional staff. I love new developments in dermatology, and to suggest otherwise is untrue. This case involves differences of opinion in dermatology. I am not infallible and freely admit so. I welcome intellectual curiosity in medicine, I'm open to other opinions and have always viewed medicine as an area where there can be different views on professional judgments. I have and continue to learn, and I have learned from this process. I think that Dr. Ridge shares the view of a broad range of professional judgment and that there is spectrum of the standard of care. This case deals with those differences in clinical opinion and judgments that are made daily in clinical practice. Thank you.

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

Ms. Pfeiffer advised that she does. Ms. Pfeiffer stated that there were three physicians who testified as experts in this matter: Dr. Willen, who testified as a witness on behalf of the Board; Dr. Ridge, who was retained by Dr. Little as an expert witness; and Dr. Little, himself. Ms. Pfeiffer stated that she wants to focus on the allegations, primarily related to the inappropriate treatment of the recurrent basal cell carcinomas (BCC) and squamous cell carcinomas (SCC), by using either topical medications or electrodesiccation and curettage (ED&C) versus the Mohs surgical procedure.

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Ms. Pfeiffer stated that before she does that, she would like to briefly tell the Board about Dr. Willen, to refresh their recollection. When Dr. Willen testified, she was Chairperson of Dermatology at MetroHealth Medical Center, and the Director of Dermatology. She oversaw fourteen dermatologists and 21 residents in the combined program with University Hospital. She was also Director of Dermatologic Surgery and Oncology at MetroHealth. Ms. Pfeiffer stated that the Board's expert is not only board-certified in dermatology, she is a fellow in the American College of Mohs Micrographic Surgery. She achieved membership in that fellowship by successfully completing a two-year Mohs Micrographic Fellowship at the Cleveland Clinic. Ms. Pfeiffer stated that this is a highly credentialed expert witness, which speaks to her competence and her ability to testify as an expert, particularly as to the adequacy of the surgical procedure of Mohs surgery.

Ms. Pfeiffer stated that Dr. Willen opined, repeatedly, on the deviation from the standard of care by Dr. Little in treating recurrent BCCs and SCCs with procedures other than Mohs. Ms. Pfeiffer stressed that she is referring to recurrent cancers. Ms. Pfeiffer commented that what really stands out to her is that Dr. Ridge, Dr. Little's expert, on numerous occasions in her report also opined repeatedly that Dr. Little deviated from the standard of care in his treatment of these recurrent cancers. Ms. Pfeiffer referred to Respondent's Exhibit A-A, Dr. Ridge's report, which was admitted into evidence by Dr. Little. She noted that Dr. Ridge responded by patient, and the allegations related to each patient.

Concerning allegations made by the Board relating to Patient #5, Ms. Pfeiffer noted that Dr. Ridge responded as follows:

- Dr. Little inappropriately treated Patient 5's recurrent BCC with ED&C;

Response: I agree with this allegation.

- Dr. Little inappropriately treated recurrent BCC with Aldara;

Response: I agree again that after so many recurrences, Aldara should have been used for a less aggressive case.

- Dr. Little inappropriately informed the patient that no further treatment was necessary.

Response: I agree.

Concerning allegations made by the Board relating to Patient #6, Ms. Pfeiffer noted that Dr. Ridge responded as follows:

- Dr. Little inappropriately treated Patient 6's recurrent BCC with ED&C;

Response: Agree.

- Dr. Little inappropriately treated recurrent BCC with inadequate therapies

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Response: Agree.

Ms. Pfeiffer stated that there are similar allegations and responses as to Patients 7, 8 and 11. She advised that, concerning Patient 7, one of the allegations was that Dr. Little inappropriately treated Patient 7's recurrent SCC with cryosurgery and ED&C. Ms. Pfeiffer stated that Dr. Ridge's response was, "I agree. After an excessive number of reoccurrences, a work up would be in order." In response to the allegation that Dr. Little provided inadequate treatment of Patient 7's SCC leading to the patient's comorbidity, Dr. Ridge stated, "I agree."

Ms. Pfeiffer stated that in her testimony at hearing, Dr. Ridge, in her response regarding Patient 7, went on to say, "I would like to go on record in this case and say that Patient No. 7 had an excessive number of many, many malignancies in the same general area. I would find it hard to believe that there were not recurrences in this." Ms. Pfeiffer stated that Dr. Ridge is finding recurrent carcinomas that are being treated inappropriately.

Ms. Pfeiffer advised that, ultimately, Dr. Ridge concluded her report. She stated:

Where I do agree with several of the allegations, is in the repeated use of electrodesiccation and curettage in what I felt were the same general areas of tumor involvement. I felt that several of the patients would have benefited from a much earlier use of Mohs' on their recurrent tumors. In these cases, I didn't understand why Dr. Little, who knew the Mohs' technique, chose electrodesiccation and curettage.

Ms. Pfeiffer referred to Patient # 9. She noted that the allegation was that Dr. Little's inappropriate performance or conduct of the Mohs procedure led to that patient's death. This was supported by Dr. Willen, the Board's expert, who obtained a fellowship in Mohs micrographic surgery. She knows the proper way to do Mohs.

Ms. Pfeiffer also reminded the Board that this is not the first time that Dr. Little has been before the Board. The Board suspended Dr. Little's license for a six-month period in 2004 for prescribing issues. She stated that it is appropriate for the Board to take that into consideration.

Ms. Pfeiffer noted the comments by Respondent's Counsel about the credibility issues of the State's expert witness. She stated that there were some inconsistencies in Dr. Willen's report and testimony, and she believes that the Hearing Examiner appropriately addressed those. In certain instances, the hearing Examiner made a finding of an insufficient evidence as to certain allegations. Ms. Pfeiffer stated, however, that when you combine the rest of it, especially with Dr. Little's own expert's testimony, she thinks that the Board can find that the balance of the allegations have been proven as demonstrated or reflected in the Hearing Examiner's Report and Recommendation.

Ms. Pfeiffer asked the Board to take into consideration the State's objections regarding Patient 7; that, in fact, there should have been a finding that Dr. Little's treatment led to the patient's comorbidity. There was no issue on that particular allegation amongst the experts.

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DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF LARRY JOHN LITTLE, M.D. DR. MADIA SECONDED THE MOTION.

Dr. Varyani stated that he would now entertain discussion in the above matter.

Dr. Egner stated that she would like to thank Mr. Porter, stating that she thinks that he did an excellent job in writing the Report and Recommendation. She noted that it is a very technical Report and Recommendation and one that certainly is not her specialty. She found it to be both informative and easy to follow.

Dr. Egner stated that one of the things that has helped her to form her conclusions is the first part in the Report and Recommendation that talks about the incidents of skin cancers with which dermatologists deal. She noted that the Report and Recommendation indicates that, of all the skin cancers that occur, 75% are BCCs, 24% are SCCs and the remaining 1% includes all other forms of skin cancer. Dr. Egner stated that, as she reads this entire case, and patient after patient, of the cancerous conditions that a dermatologist sees, and they see a lot, this is their bread and butter. Dr. Egner stated that it would kind of be akin to her not knowing how to appropriately handle an abnormal pap smear. It's her life and what she does, and skin cancer is a dermatologist's life and what he or she does. Dr. Egner stated that she does see a pattern of poor evaluation and poor treatment of these recurring cancers.

Dr. Egner stated that she agrees with the Assistant Attorney General's assessment of the expert witnesses. She did not find Dr. Willen's testimony to be egregiously contradictory. There were some things that she changed when she came to hearing. Dr. Egner commented that she thinks that that shows an honest presentation of her testimony. Dr. Little's own expert, Dr. Ridge, on numerous occasions found that the care had been below minimal standards. The Board has seen that on other cases. Those are experts doing their jobs, and that's what this Board wants.

Dr. Egner stated that she does think that this case rises to the level of a failure to practice by minimal standards. She added that she agrees with Mr. Porter's assessment that it appears unlikely that Dr. Little will be amenable to further education, and that his continued practice presents a danger to the public. She added that that's not to say that she doesn't take into account the number of patients who have taken time to come here. She commented that that is pretty remarkable. However, the Board's job is to protect the public and she agrees with the Report and Recommendation.

Dr. Steinbergh stated that she found this Report and Recommendation very technical and tedious to get through. She stated that she would disagree with Mr. Plinke's argument about Dr. Willen. Dr. Steinbergh stated that when she reads a case, she appreciates the expertise of both experts. She would agree with Dr. Egner that Dr. Willen did change her mind sometimes, which is not an inappropriate thing. Dr. Ridge also testified that there were times when Dr. Little did not meet the standard of care.

Dr. Steinbergh stated that she would also like to comment on Dr. Little's objections when it comes to the concept of standards of care. What is the definition? Dr. Willen, during her testimony, asked whether the

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questioner could be more specific about how the questioner wants her to define standards of care. Dr. Steinbergh stated that those who are physicians understand “minimal standard of care.” They know it when they see it. If it doesn’t feel right, you see red flags, you know that it’s just not right, that you wouldn’t practice this way and most of your colleagues wouldn’t practice this way. So, when it comes to the point of minimal standards of care, it can be defined in very specific cases. She stated that if someone says to her, “well, the person came to me and she had acute tonsillitis, she had a very red throat, she had pus on her tonsils, and I sent her out with nothing and said to call me back in two or three weeks if it persists,” that would be below the standard of care for what Dr. Steinbergh does as a primary care physician. She needs to assess those tonsils, she needs to culture those tonsils or do a rapid strep test. She needs to do something if the patient that has a syndrome with a fever and swelling glands and a sore throat. She needs to be certain that that person doesn’t have streptococcal infection because if that person walks away and isn’t treated, we know that after a certain period of time, that person is at risk for streptococcal disease of the kidneys and other parts of the body. Dr. Steinbergh stated that, as a physician trained in primary care, she knows what to do with that strep throat. If she persistently or continuously does not appreciate why a patient presented to her, and if she lets the patient go and doesn’t do what she has been trained to do, that would be below the minimal standards of care.

Dr. Steinbergh stated that there is a definition of what the minimal standard of care is, but you have to take a look at each individual case. You have to define the case, what’s acceptable, what’s not acceptable, and you have to understand what happens in the long run if you don’t treat that patient correctly.

Dr. Steinbergh stated that all physicians know that there are times when they can let it go for a while and watch, you have a reliable patient, the patient is going to come back for follow-up, you explain to the patient the importance of the follow-up, and the patient comes back and you’re able to follow up. There are cases when you don’t explain and you don’t monitor closely, and you know you can get in trouble because of the danger of the disease.

Dr. Steinbergh stated that it’s true that she’s not a dermatologist. She added, however, that, as a primary physician, she knows enough about dermatology because she sees these patients. She sends patients to dermatologists. If she does a biopsy and she gets a biopsy report back that is inconsistent with what she’s looking at, she will send it to a Mohs surgeon. She will insist the patient takes the slide, the slide is sent to the surgeon, now we have a dermatopathologist who’s read it, now we have a Mohs surgeon who’s looking at it, and her expectation as a primary care physician is that that doctor better be reliable. Sometimes she must act as a quarterback. The specialist had better be good, because, not only is the patient at risk, but everything that Dr. Steinbergh does relies on how that person down the field catches the ball and whether he or she takes it into the end zone, so to speak. Dr. Steinbergh stated that she relies heavily on the dermatologist to do that and to be accurate.

Dr. Steinbergh stated that she’s not going to get into the technicality of all those things, except she does agree with Dr. Egner about the bread and butter of dermatologists and dermatologic surgeons who see this every single day, along with a variety of other dermatoses. These are the important ones that you cannot let go.

Dr. Steinbergh stated that she does agree with the State’s objections, concerning Patient 7. It has been suggested, and she agrees with the suggestion, that the Board modify the language of Finding of Fact

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2(g)(iii), which reads:

No evidence was presented concerning the cause of Patient 7's death. Therefore, the evidence is insufficient to support a finding that Dr. Little's treatment of Patient 7's squamous cell carcinoma led to the patient's comorbidity.

Dr. Steinbergh stated that the Assistant Attorney General speaks appropriately about this that, perhaps, there was a misunderstanding about mortality and comorbidity. In fact, there was evidence that was presented regarding Patient 7's comorbidity. Dr. Steinbergh explained that "comorbidity" means more than one disease going on at the same time. Based upon the testimony from Dr. Little's expert witness, Dr. Ridge, as well as the Board's expert's report regarding Dr. Little's treatment of patient 7's SCC, the evidence is sufficient to support a finding that Dr. Little's treatment of Patient 7's SCC led to the patient's comorbidity, versus mortality.

DR. STEINBERGH MOVED TO AMEND FINDING OF FACT 2(G)(III) TO STATE AS FOLLOWS:

2(g)(iii) The evidence is sufficient to support a finding that Dr. Little's inappropriate treatment of Patient 7's squamous cell carcinoma led to the patient's comorbidity.

DR. STEINBERGH FURTHER MOVED TO AMEND CONCLUSIONS OF LAW 1 TO READ AS FOLLOWS:

1. The conduct of Larry John Little, M.D., as set forth in Finding of Fact 2, 2(a), 2(c) (except 2[c][i]), 2(e) through 2(i) (except 2[g][i], 2[g][ii] and 2[i][i]), 2(k) (except 2[k][i]), and 2(l) (except 2[l][i]), above, constitutes "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Dr. Steinbergh stated that she would focus her last statements on Patient 9. She stated that her concern for this particular patient is that this patient had ultimately succumbed to metastatic disease from the SCC. As Dr. Little worked up this patient, removed the lesion and subsequently gave direction to the patient, it is her opinion that Dr. Little did not appropriately monitor this patient. She stated that Dr. Little did ultimately refer this patient to radiation oncology and treatment was ongoing, but no one looked any further into the disease process. Dr. Steinbergh stated that dermatologists in today's health care system want to be primary care doctors of the skin, so that you have the right, as a patient, to go directly to the dermatologist for care of your skin. So, when a dermatologist requests that, and we agree that they have a specialty that we don't have, they are to continue with that patient, as a primary care physician would, for any of the other disease entities that we treat as primary care doctors. The doctor takes on the patient, monitors the patient, and manages the disease. In this case, Dr. Little did not manage the disease. He assumed that at some point the radiation oncologist, who's treating a very specific piece of the cancer, was going to go on to do a metastatic workup. Dr. Steinbergh stated that she believes that it was Dr. Little's responsibility to do that

metastatic workup. He knows the disease process of SCC, like she knows the possibility of what will happen to that patient if she does not treat that strep throat or any other disease that can be serious. It's Dr. Little's responsibility to monitor the patient, make certain the patient is following up with him, make certain that the disease process is going on, when there are problems, whether it is facial numbness in this case and other things that indicated to this doctor that, possibly, this was a piece of radiation – there's no question that it could have been part of radiation therapy – but the doctor has to have the suspicion of the ongoing disease process. He or she has to understand that there are other things that it can be and there has to be an appropriate workup. Dr. Steinbergh stated that the appropriate workup in the case of Patient 9 was not done. It was neglectful, in her mind.

Dr. Steinbergh stated that she is going to agree with the Report and Recommendation.

Dr. Amato stated that he agrees with some of what has been said, but he disagrees with other aspects of what Dr. Egner and Dr. Steinbergh said. Dr. Amato stated that in his reading of the materials provided, there is certainly a situation where some diagnoses were inappropriately managed. There were other instances, from his reading, where there were differences of opinion on proper management. Dr. Amato stated that he has a problem with the Proposed Order. It leaves no chance for redemption of a practitioner who obviously sees a large number of patients and, by vast numbers, takes good care of his patients or he wouldn't be seeing them. Dr. Amato stated again that his big problem is with a permanent revocation with no chance of redemption. He would prefer to see a permanent revocation, stayed, perhaps a recertification examination, then probation in order to allow this physician the opportunity to polish his skills and to return to productive practice.

Dr. Stephens agreed with Dr. Amato. She stated that she doesn't think that this has risen to the level of permanent revocation. Looking at it from a mathematical standpoint, she thinks that every specialty has complications and bad outcomes. Part of this seems subjective to her. If Dr. Little has done over 800 biopsies and he has ten complications, or whatever the number is, that seems like a 90% success rate. Dr. Stephens stated that she would agree with Dr. Amato that maybe recertification or something like that is appropriate, but she does not agree with permanent revocation.

Dr. Suppan stated that she supports the viewpoints of Dr. Stephens and Dr. Amato. She also does not think that this rises to the level of a permanent revocation. Dr. Suppan stated that there was an important point that was raised, that, basically, the information that was provided was a subset of the patient's history or the patient's chart. Dr. Suppan stated that she does not have enough information, based on the record that the Board members have that have swayed her in either direction with this. Dr. Suppan stated that she was not able to fully endorse either expert witness. What the Board doesn't have, nor does it ever have, is the patient in front of it to really know the full extent of the situations.

Dr. Suppan stated that, although it sounds like it's a great thing to have Dr. Willens as an expert in Mohs chemosurgery, there's kind of an old common sense thing that when you have a hammer, everything looks like a nail. Throughout the course of her 25 years of practice, she finds that people who are experts in certain areas tend to see that modality as the answer to every single question. Dr. Suppan noted that dermatology is not her specialty, but added that when she reviewed this information, she was not convinced that there were not other ways to treat these patients. The Board doesn't know whether Dr. Little had

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discussions with these patients and said, “we have treatments a, b and c,” and the patient may have in some cases opted or elected to go with something that was less disfiguring. Perhaps the patients, because of their health, their ages or even sometimes their finances will participate in making decisions. Dr. Suppan stated that she’s not convinced that alternatives weren’t answered. All the Board knows is what was actually done. Dr. Suppan stated that, for that reason, she doesn’t feel that she can support permanent revocation. She would recommend a modified order that would include re-education. Dr. Suppan stated that, because she’s a relatively new Board member, she would ask her colleagues to help her with what’s available in that regard. She would not want to recommend a certain type of re-education. She would like to see something along the lines of a mini-residency.

Dr. Egner stated that if the Board members feel that more education is necessary, she wouldn’t be in favor of just a recertification examination. Dr. Egner stated that she doesn’t think that a written exam really evaluates a physician’s clinical judgment very well. Maybe CPEP should be written into this Report and Recommendation, if the Board is going to go in that direction. Dr. Egner stated that the Board should discuss this a little bit and then table the matter because it will be a very different Report and Recommendation from what is in front of the Board members. Then, the Board will rely on CPEP’s evaluation to know where the Board should go from there. It won’t be a definitive plan until the Board sees what CPEP’s evaluation is.

Dr. Steinbergh stated that she agrees with tabling this to develop an alternative. She stated that she thinks that it would be in the form of a permanent revocation, with a stay of the revocation, a significant suspension, where Dr. Little could then be evaluated by CPEP and then abide by the recommendations of that group, and then he would go into a monitoring probationary phase. She stated that before she makes the motion, she would like to know whether the Board members agree to the amendments she previously discussed.

Dr. Suppan stated that she is still troubled by the stayed permanent revocation language, because she doesn’t think that this case rises to that level.

Dr. Steinbergh suggested tabling to develop language.

Dr. Mahajan stated that he went through the records and he understands that Dr. Little has a large practice and has treated many patients, but some of the follow up, workups and treatments were bothersome. Dr. Mahajan stated that he doesn’t feel that it is bad enough to permanently revoke the license.

Mr. Hairston stated that he agrees.

DR. STEINBERGH MOVED TO TABLE THE MATTER OF LARRY JOHN LITTLE, M.D., TO DEVELOP ALTERNATIVE LANGUAGE. DR. MAHAJAN SECONDED THE MOTION. All members voted aye. The motion carried.

When the matter was removed from the table, later in the meeting, Dr. Stephens was absent.

DR. AMATO MOVED:

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TO AMEND FINDING OF FACT 2(g)(iii) TO STATE AS FOLLOWS:

- 2(g)(iii) The evidence is sufficient to support a finding that Dr. Little's inappropriate treatment of Patient 7's squamous cell carcinoma led to the patient's comorbidity.

TO AMEND CONCLUSION OF LAW 1 TO STATE AS FOLLOWS:

1. The conduct of Larry John Little, M.D., as set forth in Finding of Fact 2, 2(a), 2(c) (except 2[c][i]), 2(e) through 2(i) (except 2[g][i], 2[g][ii] and 2[i][i]), 2(k) (except 2[k][i]), and 2(l) (except 2[l][i]), above, constitutes "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

TO AMEND CONCLUSION OF LAW 2 TO STATE AS FOLLOWS:

2. The evidence is insufficient to support a conclusion that Dr. Little's conduct as set forth in Findings of Fact 2(b), 2(c)(i), 2(d), 2(g)(i), 2(g)(ii), 2(i)(i), 2(j), 2(k)(i), and 2(l)(i), above, constitutes "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code. Nevertheless, it is apparent that the Board based each of those allegations on the report of its expert, and those allegations are deemed not proven based upon all the evidence presented during hearing. Accordingly, the Board was substantially justified in making those allegations.

TO DELETE THE PARAGRAPH FOLLOWING THE FIVE STARS.

DR. AMATO FURTHER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF LARRY JOHN LITTLE, M.D., BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Larry John Little, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Little's certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Little's certificate to practice

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medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration**: Dr. Little shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Post-Licensure Assessment Program**: At the time he submits his application for reinstatement, Dr. Little shall submit a Learning Plan developed for Dr. Little by the Post-Licensure Assessment System [PLAS] sponsored by the Federation of State Medical Boards and the National Board of Medical Examiners. The Learning Plan shall have been developed subsequent to the issuance of a written Assessment Report, based on an assessment and evaluation of Dr. Little by the PLAS.
 - a. Prior to the initial assessment by the PLAS, Dr. Little shall furnish the PLAS copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions of Law, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that assessment.
 - b. Should the PLAS request patient records maintained by Dr. Little, Dr. Little shall include in that submission copies of the patient records at issue in this matter. Furthermore, Dr. Little shall ensure that the PLAS maintains patient confidentiality in accordance with Section 4731.22(F)(5), Ohio Revised Code.
 - c. Dr. Little shall assure that, within ten days of its completion, the written Assessment Report compiled by the PLAS is submitted to the Board. Moreover, Dr. Little shall ensure that the written Assessment Report includes the following:
 - A detailed plan of recommended practice limitations, if any;
 - Any recommended education;
 - Any recommended mentorship or preceptorship;
 - Any reports upon which the recommendation is based, including reports of physical examination and psychological or other testing.
 - d. Dr. Little shall successfully complete the educational activities as recommended in the Learning Plan, including any final assessment or evaluation.

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Upon successful completion of the educational activities, including any assessment or evaluation recommended by PLAS, Dr. Little shall provide the Board with satisfactory documentation from PLAS indicating that Dr. Little has successfully completed the recommended educational activities.

- e. Dr. Little's participation in the PLAS shall be at his own expense.
3. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Little 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. **PROBATION:** Upon reinstatement or restoration, Dr. Little's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Obey the Law:** Dr. Little shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Declarations of Compliance:** Dr. Little shall submit quarterly declarations under penalty of Board disciplinary action 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 Dr. Little's certificate is reinstated or restored. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Personal Appearances:** Dr. Little shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Little's certificate is reinstated or restored, or as otherwise directed by the Board. Subsequent personal appearances must occur every six 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.
 4. **Post-Licensure Assessment Program:** Dr. Little shall practice in accordance with the Learning Plan developed by the PLAS, unless otherwise determined by the Board. Dr. Little shall cause to be submitted to the Board quarterly declarations from the PLAS documenting Dr. Little's continued

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compliance with the Learning Plan.

Dr. Little shall obtain the Board's prior approval for any deviation from the Learning Plan.

If, without permission from the Board, Dr. Little fails to comply with the Learning Plan, Dr. Little shall cease practicing medicine and surgery beginning the day following Dr. Little's receiving notice from the Board of such violation and shall refrain from practicing until the PLAS provides written notification to the Board that Dr. Little has reestablished compliance with the Learning Plan. Practice during the period of noncompliance shall be considered unlicensed practice in violation of Section 4731.41, Ohio Revised Code.

5. **Monitoring Physician:** Within thirty days of the date of Dr. Little's reinstatement or restoration and prior to Dr. Little's commencement of practice in Ohio, or as otherwise determined by the Board, he shall 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 and Supervising Member will give preference to a physician who practices in the same locale as Dr. Little and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Little and his medical practice, and shall review Dr. Little'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. Little and his medical practice, and on the review of Dr. Little's patient charts. Dr. Little 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. Little's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Little must immediately so notify the Board in writing. In addition, Dr. Little 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. Little 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 therefor.

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6. **Absence from Ohio:** In the event that Dr. Little should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Little 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 the probationary period under this Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
 7. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Little 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 under this Order.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Little's certificate will be fully restored.
- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Little violates the terms of 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.
- F. **REQUIRED REPORTING AND DOCUMENTATION OF REPORTING:**
1. **Required Reporting to Employers and Hospitals:** Within 30 days of the effective date of this Board Order, Dr. Little shall provide a copy of this Board Order to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Little shall promptly provide a copy of this Board 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. In the event that Dr. Little provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within 30 days of the effective date of this Board Order, Dr. Little shall provide a copy of this Board Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Dr. Little receives from the Board written notification of his successful completion of probation as set forth in

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paragraph 4, above.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Board Order, Dr. Little shall provide a copy of this Board Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Little further agrees to provide a copy of this Board Order at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license.

This requirement shall continue until Dr. Little receives from the Board written notification of his successful completion of probation as set forth in paragraph 4, above.

3. **Documentation that the Required Reporting Has Been Performed:** Dr. Little shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each notification required above: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

This Order shall become effective thirty days from the date of mailing of the notification of approval by the Board. In the thirty-day interim, Dr. Little shall not undertake the care of any patient not already under his care.

DR. MAHAJAN SECONDED THE MOTION.

Dr. Egner spoke against the amended Order. She referred the Board to the Conclusions of Law, noting that this is a dermatologist whose cases involve the very thing he does on a daily basis. She stated that she feels that Dr. Little says that he can Mohs surgery when he can't. She also noted that Dr. Little reads his own slides, and she feels that that is a terrible practice. She added that there is a conclusion of law that says that Dr. Little's care led to a patient's death. She stated that she does not understand why the Board isn't permanently revoking this license. She stated that she thinks that this was a very well written, well thought-out case. It is a true minimal standards case. Dr. Egner asked whether the Board thinks that Dr. Little can be retrained to diagnose and treat something that should come to him like that [Dr. Egner

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snapped her fingers]. She stated that she thinks that the answer is, “no.” She also noted that Dr. Little doesn’t think that he needs to be retrained at all. Dr. Egner stated that she will vote against the amended Order.

Dr. Mahajan stated that he thinks that a reasonable amount of guidelines and a safety net have been built into this. Dr. Little will be monitored, and he will be out of practice for a year for him to learn.

Dr. Varyani stated that the amendment is for a stayed permanent revocation. Dr. Varyani stated that he agrees with Dr. Egner that Dr. Little should not read his own slides. He would prefer that the slides be read by a dermatopathologist, who is not associated in business with Little, and then he might be all right with it. Dr. Varyani commented that he won’t be practicing for a year anyway.

Dr. Amato stated that that will be covered by PLAS.

Dr. Steinbergh advised that if PLAS doesn’t address that piece in its recommendation, the Board won’t have the opportunity to require it, unless it does so in the amended Order. Dr. Steinbergh stated that Dr. Little should also have a practice plan approved by the Board prior to his returning to practice and in addition to having his practice monitored. Dr. Steinbergh stated that the Board needs to be able to say to this doctor that it feels confident that he can return to practice.

Dr. Amato stated that he doesn’t disagree with that proposal, and asked Dr. Steinbergh where the requirement should be added.

Dr. Steinbergh stated that it should be placed after the PLAS requirement. She stated that the Board could require the practice plan as a reinstatement requirement. She added that the Board could also add the restriction that Dr. Little not read his own slides, and that the interpretation of any pathology specimens will be done by a licensed dermatopathologist.

Dr. Amato asked where that language should be placed.

Dr. Steinbergh stated that it should be placed in the same area as the requirement for a practice plan.

Ms. Thompson suggested that the practice plan requirement would work better as part of the probationary terms, as long as it says that it has to be approved prior his to commencing practice. She asked whether the Board wanted the requirement that a dermatopathologist read his slides to be only during probation, or as a permanent restriction.

Board members indicated that it should be a permanent restriction.

Dr. Mahajan asked whether the PLAS ever says that a doctor is not retrainable and shouldn’t practice.

Ms. Thompson stated that PLAS did say, in reference to one physician this Board referred, that he needed to go all the way back to the beginning of his training.

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

ROLL CALL: Mr. Albert - abstain
 Dr. Egner - nay
 Dr. Talmage - abstain
 Dr. Suppan - aye
 Dr. Madia- aye
 Mr. Hairston - aye
 Dr. Amato - aye
 Dr. Mahajan - aye
 Dr. Steinbergh - aye
 Dr. Varyani - aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF LARRY JOHN LITTLE, M.D. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

ROLL CALL: Mr. Albert - abstain
 Dr. Egner - nay
 Dr. Talmage - abstain
 Dr. Suppan - aye
 Dr. Madia- aye
 Mr. Hairston - aye
 Dr. Amato - aye
 Dr. Mahajan - aye
 Dr. Steinbergh - aye
 Dr. Varyani - aye

The motion carried.

DONALD E. HIGGS, M.D., PH.D.

Dr. Varyani directed the Board's attention to the matter of Donald E. Higgs, M.D., Ph.D. He advised that this matter was initially considered by the Board at its November 2008 meeting. At that time, the Board approved an amended order. Later in the meeting, the Board passed a motion for reconsideration of its earlier action. Objections to the motion for reconsideration was received from Dr. Higgs' attorney. Subsequently, the Assistant Attorney General in this matter filed his response to the objections.

Dr. Varyani continued that a request to address the Board has been timely filed on behalf of Dr. Higgs. He noted that Dr. Higgs addressed the Board in this matter at the November meeting. Dr. Varyani asked whether the Board wishes to allow Dr. Higgs to address it at this time.

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DR. EGNER MOVED TO ALLOW DR. HIGGS TO ADDRESS THE BOARD. MR. HAIRSTON SECONDED THE MOTION. All members voted aye. The motion carried.

Dr. Higgs was accompanied by his attorney, Terri-Lynne B. Smiles. Ms. Smiles thanked the Board for allowing them to speak to the Board again as it reconsiders this matter. She stated that the Board does have before it their written objections to the reconsideration. She stated that she believes that she has set forth in those objections the reason why they object to the reconsideration, as well as the issues regarding the constitutionality of the rule that is the issue in this case.

Ms. Smiles stated that she would like to address one other issue, because she suspects that this may be the issue that is probably most troubling for Board members. She stated that that issue is whether or not, as the Board deals with this USMLE rule and the ten-year deadline for the M.D./Ph.D., and the issue that it can't be extended if there's a single failure, it can waive that rule. Ms. Smiles stated that waiving these types of rules happen all the time. It's not an absolute prohibition on the Board. She noted that the Board has a rule regarding how to terminate a physician/patient relationship. In that rule, if a physician is leaving the practice, it requires the physician to do a number of things, including sending a mailing to all of his patients of the last three years and to post a sign at the practice. Ms. Smiles stated that she thinks that everyone knows that what often happens is that the practice will not allow the departing physicians to do those things. It will not give them access to the mailing list to mail the patients, will not permit a sign to be put up. The Board waives that rule all the time. It does not go forward and discipline those physicians for failing to meet this rule.

Ms. Smiles stated that the same sort situation exists in this case. The Board has the discretion to grant a license, just as it would have the discretion to discipline someone for violating a rule. The Board has a rule and, in this particular instance, it doesn't make sense to deny Dr. Higgs a license on the basis of that rule. The Board has the ability to waive its own rule.

Ms. Smiles stated that she agrees that the Board shouldn't waive one of its rules lightly. She stated that this is not the normal case of someone coming in and asking the Board to disregard its rule. Dr. Higgs was only two months over the ten-year time limit, and that two months was due to the extraordinary circumstances of having his second child born on the day he took Step 2, causing him to fail Step 2 by a couple of points. That was following the fetal demise of his first child at full term. These were extraordinary circumstances. This is not your everyday situation where he just happened to be a little bit late due to any number of factors.

Ms. Smiles stated that Dr. Higgs was ecstatic, very pleased, when the Board granted him a license at the last meeting. He was looking forward to the opportunity to continue to serve Ohio's citizens, if he has a chance, if his fellowship turns out and he has a position. He was looking forward to remaining in Ohio. Ms. Smiles stated that Dr. Higgs is an incredibly well qualified physician, an M.D., Ph.D., doing a pathology fellowship in Ohio. She stated that they ask that the Board waive the terms of its rules and, in its reconsideration, once again agree that it should grant Dr. Higgs a license.

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

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Mr. Wilcox stated that he doesn't believe, as has just been urged, that the Board has the ability to waive its rules in regard to licensure. The rules are in the Ohio Administrative Code. He commented that rules are rules, and it's not the Ohio Administrative Code of Suggestions. In this case, the Board has at its disposal an excellently written Report and Recommendation. That Report and Recommendation goes through all the legal issues in this case and lays out the precise arguments. Mr. Wilcox stated that he concurs exactly with the conclusions reached by the Hearing Examiner.

Mr. Wilcox stated that Dr. Higgs simply does not qualify for the extension beyond ten years under the licensure rules. Specifically, he does not meet the provisions of Rule OAC 4731-6-14. As such, the Board must deny his application for licensure. Mr. Wilcox stated that the rules are not suggestions. They are rules set up to govern the Board's decisions in licensure matters.

Mr. Wilcox stated that Dr. Higgs is not without remedy here. He took Steps 2 and 3 and passed them in 2005. If he takes Step 1 on the next occasion and passes it, he becomes licensed in Ohio. He does have a remedy, and the remedy is not to ignore the Board's rules. If the Board does that, it opens up a whole other can of worms. Mr. Wilcox stated that he does not recommend that the Board do that.

Dr. Varyani thanked Ms. Smiles and Mr. Wilcox for their statements. He stated that the Board does feel for Dr. Higgs. The action that was taken and then reconsidered was taken because the Board feels for him. However, the rules are made by the Board. He stated that there are some exceptions to the rules, but Dr. Higgs does not fit any of the exceptions. Dr. Varyani stated that he agrees with the Assistant Attorney General, even though it hurts him. Dr. Varyani stated that he doesn't believe that the Board has the right to disobey its own rules. He apologized for that, but the rules are the rules. He added that if Dr. Higgs takes and passes Step 1, he will be free to apply for a license and practice.

Dr. Madia agreed with Dr. Varyani. He stated that Dr. Higgs is an excellent physician, and Ohio needs physicians like Dr. Higgs; however, the Board has a rule and he feels that the Board should go by its rules. The Board cannot just take it lightly.

Dr. Amato stated that he agrees that rules are rules and laws are laws. He commented that he thinks that one of the biggest problems in America today is that it worships at the altar of the law instead of right and wrong. As a member, he will not vote for this Report and Recommendation because he will obey the rule of common sense. Common sense says to him that this person should have a license.

Dr. Varyani stated that he would disagree with Dr. Amato. He stated that the reason that the United States is great is because it created the laws and the rules that followed that. In this great country, you can always go back and change the laws, rather than break the laws. That's what's great about this country. The country fixes laws rather than breaking them. Dr. Varyani stated that he feels that he erred last month in his vote. He stated that Board members may vote however they choose, but this is a rule that this Board created. He stated that he was carried away emotionally the previous month and he voted in a certain way. He stated that he is apologetic that he did vote in that way.

Dr. Egner stated that she really understands the emotional aspect of this case, and in that regard, it has a

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bad feel. She stated that she especially thinks that the Board owes Dr. Higgs an apology for having him walk out of here a month ago thinking that he had a license, to only be told that the Board is reconsidering. She stated that that was poor form on the Board's part.

Dr. Egner continued that this is not a poor rule. It is not a non-thought-out rule. To tell someone that you have ten years to meet the criteria that the Board deems essential to be a physician in Ohio has a lot of basis and a lot of merit to it. The Board does need these rules, and it needs rules that are clear and can be followed. Dr. Egner again stated that this is not a bad rule. This rule to allow physicians ten years on an M.D./Ph.D. program is a lot of time. You actually can get this done much quicker. It doesn't really take ten years to go through this process. The Board allows more time for that as a bonus for having the Ph.D. with it.

Dr. Egner stated Dr. Higgs knew of this rule, he was not ignorant of the rule. She noted that Dr. Higgs said in his testimony that he did know it. He let a year go by after failing Step 2, knowing that he was on the bubble of time. There might be lots of reasons for that, but that is a fact. Dr. Higgs does have an alternative. His alternative is to take Step 1 again. Dr. Egner stated that she thinks that, of all the people who may have to retake Step 1, the M.D./Ph.D. candidates have the absolute best chances of passing Step 1 without it being a horrendous burden.

Dr. Egner again stated that she is in favor of the Report and Recommendation, she understands all of the emotional part of it, but she thinks that it is the right way for the Board to go.

Dr. Steinbergh noted that Dr. Higgs' Ph.D. is in medicinal chemistry. She stated that it doesn't get any closer to Step 1 than that. Dr. Steinbergh wished Dr. Higgs well, but added that she will vote for the Report and Recommendation.

Dr. Suppan stated that she has been thinking about this since last month, and she's been thinking about what is the right thing to do. She went back, fundamentally, to the oath that she took, and one part of it was to uphold the laws of the State of Ohio, and a rule is a law. But the other part of the oath would be to do her best to protect the citizens of Ohio. That's where it gets sticky with this. She stated that she thinks that the Board has a very fine candidate, and she thinks that, in the long run, it is the best thing for the citizens of Ohio. Based upon that logic, she will vote against the reconsideration. She added that she's basing her vote on the Peterman case applying to Rule 4731-6-14(C)(3).

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF DONALD E. HIGGS, M.D., PH.D. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- nay
	Dr. Madia	- aye
	Mr. Hairston	- aye

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Dr. Amato	- nay
Dr. Stephens	- nay
Dr. Mahajan	- nay
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

ERICA L. BERRY

Dr. Varyani directed the Board's attention to the matter of Erica L. Berry. He advised that no objections were filed to Hearing Examiner Paul Stehura's Report and Recommendation.

Dr. Varyani stated that he would now entertain discussion in the above matter.

DR. SUPPAN MOVED TO APPROVE AND CONFIRM MR. STEHURA'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF ERICA L. BERRY. DR. MADIA SECONDED THE MOTION.

Dr. Steinbergh stated that this is a case of a massage therapy applicant whom the Board has proposed to permanently deny a certificate. She noted that Ms. Berry has a series of convictions, as noted in the Report and Recommendation, and even though she's moving forward with her life and wants to improve her life and that of her daughter, for which Dr. Steinbergh commended her, even as late as 2005 she was convicted of a first degree misdemeanor: driving while her license was suspended. She has a series of convictions for driving while her license was suspended, plus other issues.

Dr. Steinbergh stated that this ongoing bad decision making and disregard for the law continued, even as she was in school, studying to become a massage therapist, knowing that she would need to apply for a license from the State Medical Board. Dr. Steinbergh commented that the profession of massage therapy wants to be very reputable, and the Board agrees with that. The citizens of this state have every right to expect that an individual licensed by this Board is not only academically appropriate for a license or certificate, but morally and ethically fit to assume the responsibility to care for them. Dr. Steinbergh stated that she does not feel that Ms. Berry fits into this description, as she has broken State law over and over during the past 25 years, and as late as 2005. Dr. Steinbergh stated that she agrees with the Hearing Examiner's Proposed Order of permanent denial of her massage therapy certificate.

Dr. Egner stated that she's not sure that she agrees with Dr. Steinbergh. She stated that she agrees that massage therapists, when they came under the jurisdiction of the Medical Board, wanted that legitimacy and designation. On the other hand, the Board has seen time and time again that the lives that they have lived are sometimes very different from those who have had the advantages of going to college and medical school and residency and had discipline in life. Dr. Egner stated that she would say that the Board should cut them some slack.

Dr. Egner added that the thing that is the most bothersome, obviously, is this felony conviction of the

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armed robbery. She added, however, that if you listen to Ms. Berry's testimony, you do get the sense that she has made a huge turnaround in her life. She stated that she doesn't know what to make of all of the driving with suspensions except that she needs to drive.

Dr. Egner stated that she's having a difficult time with this case. She's not saying that she thinks it's wonderful that Ms. Berry should have a massage therapy license in Ohio, and that she should go out and practice on her own and the Board isn't going to look at her. She stated that she doesn't feel that way at all, but questions telling her that she will never get a license.

Dr. Egner stated that her other problem with this is that these schools take these students, and they come to the school with their pasts, and she thinks that it is dishonest on the school's part to not give them fair warning that they could go through the program and pay all of this money, but that the likelihood that they will get a license from the Ohio Medical Board is slim to none when you have so many misdemeanor and felony convictions.

Dr. Egner stated that if the Board does go with a permanent denial, she would really like to file a complaint against the school.

Dr. Varyani stated that the Board could take that up with Mr. Hairston's Committee. He stated that he tried very recently to get the schools to file applications soon enough for the Board to do the criminal background checks beforehand. The system is such that the Board can't get that; it only has 90 days to get the applications before the examination.

Dr. Varyani stated that he does agree with Dr. Egner to an extent. He expressed concern that Ms. Berry's record is going to continue as it has. It's not going to stop here. He would cut some slack for someone who has had a tough life, and he believes that a couple of months ago the Board did cut some slack on a case. He added that this case is really egregious in his mind. He added that it's not so much the driving without a license, but her breaking into someone's house and stealing money.

Dr. Steinbergh stated that Group 2 is attempting to do something about the schools, to communicate with them so that they do understand. She added that she agrees that the schools do take their students' money and educate them without telling them or making it understood that they are going to apply for a license or certificate.

Dr. Steinbergh stated that she wants to review the convictions on Ms. Berry's record so that everyone understands.

- In 1992 Ms. Berry pled guilty and was convicted of theft, she was ordered to pay \$100 in court costs, to stay out of all Mark stores because she stole food items;
- In 1990 Ms. Berry was convicted for driving without a license, she was fined and ordered to pay court costs;
- In 1996 Ms. Berry was convicted for driving without a license, she was fined and ordered to obey all

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laws for two years;

- In 1997 Ms. Berry was convicted for driving without a license, she was fined and ordered to obey all laws again;
- In 1998 she threatened to kill a person and was convicted of one count of aggravated menacing, a first degree misdemeanor. She was given a 30-day suspended jail sentence and ordered to pay a fine of \$250 and court costs.
- In 1998 she again drove with a suspended license. This time she was sentenced to 20 days' house arrest.
- In 2000 Ms. Berry was again convicted for driving without a license;
- In 2005 She was again convicted for driving without a license;

Dr. Steinbergh stated that if Ms. Berry stopped there, she might be with Dr. Egner. She added that, truly, this woman has a moral and ethical flaw. In 2005, while she was studying for her massage therapy exam, she again did the same thing and drove on a suspended driver's license and was ordered to pay a fine.

Dr. Steinbergh stated that the Board is responsible to the citizens of Ohio, and when it says that someone has a certificate to practice massage therapy, it is saying that, not only does she know how to do it, but she's ethically and morally sound and the Board believes that she's okay for treating the public.

Dr. Steinbergh stated that there's no way that this person is appropriate. She commented that she's very please that Ms. Berry has moved forward and is trying to improve herself, but she'll need to find another way, from her perspective.

Dr. Talmage, Dr. Amato and Dr. Stephens left the meeting during the previous discussion.

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Mr. Albert commented that the Board needs a rule or something addressing this situation. He expressed

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concern that individuals are paying \$15,000 to \$20,000 to get an education and then they find out that the Board won't give them a license, yet they're going to have to pay some bank or something every month for an education that the Board's not allowing them to use.

Dr. Suppan stated that she agrees with Mr. Albert, but the problem is that the schools will just close down entry to anyone that's ever had any issue. The Board would like to have some discretion for people who have changed their lives and have turned their lives around. She stated that she doesn't know what the vehicle would be, but the Board needs to bear in mind the discretion piece, if it starts making rules. She commented that the nursing profession is facing the same problem. Nursing schools are advising students of the possibility that they won't be licensed from the very start. She stated that there may be an admissions board at the school that evaluates the circumstances and determines whether there's merit for that person. She suggested that the massage therapy schools need to follow that example.

Dr. Varyani stated that he and Mr. Hairston are in the same committee group, and he thinks that they're going to push the envelope a little, but be friendly first, and go with a letter to the schools. If the letter doesn't suffice, then the Board will need to take a little further action.

Mr. Hairston agreed with Dr. Varyani.

SARA C. GORBETT

Dr. Varyani directed the Board's attention to the matter of Sara C. Gorbett. He advised that no objections were filed to Hearing Examiner Petrucci's Report and Recommendation.

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

Ms. Gorbett's attorney, John P. Kennedy, Esq., advised that Ms. Gorbett apologizes for not being present, but she lives in South Carolina and missed her flight and could not be here today. He advised that her father is present on her behalf. Mr. Kennedy stated that he appreciates that the Board has read the Hearing Examiner's report. He feels that Ms. Petrucci caught the essence of Ms. Gorbett, who made a mistake but who has worked hard to correct her errors and has learned her lesson. He asked that the Board adopt the Hearing Examiner's Proposed Order.

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

Ms. Pfeiffer stated that she does not.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF SARA C. GORBETT. DR. MADIA SECONDED THE MOTION.

Dr. Varyani stated that he would now entertain discussion in the above matter.

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Dr. Steinbergh stated that she has written some comments about this case. She noted that this is a massage therapist applying for a massage therapy certificate. The Proposed Order is to grant her request and to put her under probationary terms for at least two years. During the time that she was studying to become a massage therapist, she was offered a job to use a laser to promote weight loss and cessation of smoking. She was offered the job by someone who hoped that once she was educated she would be able to rent space from him and develop her practice in that way.

Dr. Steinbergh advised that the record indicated that she asked appropriate questions of her employer regarding the use of lasers and if she needed further training. He reassured her that a certificate from a two-day course would suffice. Dr. Steinbergh stated that she thinks that Ms. Gorbett was naïve and unknowledgeable of the law, and she made the decision to go forward. She applied for a massage therapy certificate and was very honest and cooperative with the Board, as the Board investigated her request. She answered all of the questions correctly on her application and substantiated her responses.

Dr. Steinbergh agrees with the Hearing Examiner that Ms. Gorbett should be granted a massage therapy certificate, and that she should be monitored during a probationary period, not just as a means of public protection, but to also allow her some support from the Board as she moves into her career as to what she may do and what she should not do, as she is faced with other professional decision making.

Dr. Suppan stated that she supports the Report and Recommendation also.

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

PATRICIA ANN HALE

Dr. Varyani directed the Board's attention to the matter of Patricia Ann Hale. He advised that no objections were filed to Hearing Examiner Siobhan Clovis' Report and Recommendation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF PATRICIA ANN HALE. MR. HAIRSTON SECONDED THE MOTION.

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Dr. Varyani stated that he would now entertain discussion in the above matter.

Dr. Madia stated that he agrees with the Report and Recommendation, noting that Ms. Hale answered question 11 incorrectly, while she was convicted for robbery and firearm use. He stated that he thinks that she should be permanently denied a license.

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Dr. Steinbergh commented that Ms. Hale was also very dishonest in her work as a dispatcher for the Yellow Cab Co.

LEONID MACHERET, M.D.

Dr. Varyani directed the Board's attention to the matter of Leonid Macheret, M.D., and noted that an Errata to the Report and Recommendation has been filed by Hearing Examiner Porter. He advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

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

Dr. Macheret was accompanied by his attorney, Elizabeth Y. Collis. Ms. Collis stated her comments have been outlined in her objections, and she won't make any additional comments at this time.

Dr. Macheret thanked the Board for an opportunity to appear before it. He stated that he is here today because of an error in judgment that he made over eight years ago. He never made such a mistake before or since that time. Dr. Macheret stated that he would like to explain how this one-time lack of judgment came about and to request that the Board permit him to practice medicine.

Dr. Macheret stated that the year 2000 was not only a very difficult time for him and for his family, but he felt that he was starting his life all over again. In the span of a few short years, he lost not only his wife to cancer, but also his mother-in-law and his great aunt. Additionally, his mother, stepfather and father were not doing well. His entire family support had fallen apart, and he was left to care for his young children and to manage his medical practice.

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Dr. Macheret stated that, looking back, he realizes that grief and exhaustion from not sleeping sufficiently for more than six months and being by his wife's hospital bed had made him emotionally vulnerable.

Dr. Macheret stated that he was faced with more family responsibilities than he had ever had to manage by himself before. He was overwhelmed physically and emotionally. Dr. Macheret stated that this was a very difficult time for his children, after losing not only their mother, but also other family members who had been an integral part of their lives.

Dr. Macheret continued that in 2000, he was seeing Patient 1 in his medical practice. She was aware, as were many of his patients, that he had been recently widowed and that his children were having a difficult time coping with the situation. Dr. Macheret stated that he has always been a friendly and gregarious physician by training. He hugs his patients in a non-sexual way, and he asks them questions about their lives and their emotional wellbeing. He knows his patients as people in order to better help them. He has been fortunate enough over the years to build a large medical practice of more than 2,000 active patients. These patients could trust and rely on him for their care.

Dr. Macheret stated that in 2000, Patient 1 was very kind to his children. On one occasion, she came to his home and gave his kids a game. He stated that his daughter still remembers that. She also invited them to play golf with her and her children, and on one occasion he and his children did play golf with her.

Dr. Macheret advised that over time, Patient 1 expressed to him that she was developing personal feelings for him and that she wanted to have a personal relationship with him. He stated that he thought at the time that it was inappropriate, and he was terminating the doctor/patient relationship. She agreed and she said that she would look for another doctor immediately. At that time he asked his administrative assistant to send Patient 1 a termination letter. Dr. Macheret stated that he knows that his office sent Patient 1 not one but two termination letters. The second letter was sent in response to Patient 1's multiple requests to make appointments.

Dr. Macheret stated that, as he testified at hearing, he has never denied that he had sexual relations with Patient 1 on one occasion, in the summer of 2000, at his home. However, he did not believe that she was his patient at that time. Dr. Macheret stated that, on the contrary, he had verbally told her several times that he was not her physician anymore, and she was not his patient anymore. He could not treat her anymore. He believed that his office had already sent her a termination letter. He also received verbal confirmation from Patient 1 as to what he said. Therefore, at the time of their encounter, he did not consider this person to be a patient in his practice.

Dr. Macheret stated that at the hearing, his former employee testified that the termination letter was not sent until September 2000. He stated that this was not his recollection of what had happened. It was his understanding that the first termination letter was ordered to be sent around July 4, weeks before the encounter. He also admitted at the hearing that he had continued to provide treatment to Patient 1 two or three times after the sexual encounter. It was then, and is still, his understanding that, even after you terminate the patient from your practice, you must continue to provide medical care to the patient on an emergency basis, until they find another doctor. At the time of her termination as his patient, he even had called the Medical Board for advice. He was advised that he should continue to provide medical treatment to a former patient for a few weeks after termination, and to continue care if they had not found another

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physician. It was under this “good Samaritan” provision that he treated Patient 1 a few times after the personal encounter.

Dr. Macheret stated that he made an error in judgment in this case back in 2000 which he deeply regrets. He stated that he has practiced medicine in Ohio for nearly 20 years, more than six years in the military, without any type of disciplinary action taken against him, only words. Dr. Macheret indicated that he’s devastated that this one momentary lapse in judgment will ruin his medical practice, and the reputation that he’s worked so hard to build. Dr. Macheret stated that, as the Board has seen by the letters of support from his patients, he provides excellent care to his patients. They rely on him and trust him. Suspension of his medical license for a one-time error in judgment in 2000 does not serve to protect the citizens of Ohio. It only serves to punish the patients whom he is currently treating.

Dr. Macheret urged the Board, based on the evidence in this case, to not impose the sanction that has been recommended by the Hearing Examiner, but to place his license on probation and to issue a reprimand.

Dr. Varyani asked Dr. Macheret how he greets patients today.

Dr. Macheret stated that it’s the same as usual. He still hugs them, and he asks them about their life.

Dr. Varyani asked whether Dr. Macheret still kisses his patients.

Dr. Macheret stated that from time to time they exchange air kisses. It’s the Italian or Russian culture.

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

Ms. Pfeiffer stated that the evidence is clear in this case that Dr. Macheret did engage in sexual contact with Patient 1. In particular, they had sexual intercourse in late July 2000. Ms. Pfeiffer stated that this was eighteen months after Dr. Macheret’s wife died. He testified that his wife had died in January 1999, so it was roughly a year and a half later. Ms. Pfeiffer stated that she doesn’t say this to minimize Dr. Macheret’s grief, but to show the Board that there was a significant amount of time that had passed before this sexual encounter.

Ms. Pfeiffer stated that she thinks that it is pretty clear that at the time of the sexual encounter, Patient 1 was truly Dr. Macheret’s patient, based upon the patient’s own testimony at the hearing, and, in particular, her patient records as introduced into evidence. Patient 1 was clearly treated by Dr. Macheret after the sexual encounter. Ms. Pfeiffer advised that Dr. Macheret’s administrative assistant testified clearly that it had been sometime in September or October that she had sent out the termination letter.

Ms. Pfeiffer stated that what was also clear in this particular case is that Patient 1 went to Dr. Macheret for help, after not having success with more traditional forms of medicine. She was in a somewhat vulnerable state because she had been feeling poorly physically for a while, and her marriage was not particularly healthy; she shared all of this with Dr. Macheret. After she began treatment, Patient 1 began feeling better physically from the treatment she received, and she began to develop an emotional attachment to Dr. Macheret. Ms. Pfeiffer stated that Dr. Macheret allowed this emotional attachment to grow and

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blossom to the point where he had sex with her in his own home. Ms. Pfeiffer stated that, as can be seen from the testimony, Patient 1 was much further ahead, emotionally, in this relationship than Dr. Macheret. Patient 1 testified that she was to the point that she was willing to leave her husband, and she wanted to marry Dr. Macheret. She asked him whether he would marry her. Dr. Macheret said "No." He wasn't where she was, emotionally. Ms. Pfeiffer stated that that's kind of when the house of cards fell down and everything kind of blew up.

Ms. Pfeiffer stated that she would like to reiterate points of testimony that she thinks are relevant for the Board's consideration. In the testimony at hearing from Patient 1, Ms. Pfeiffer asked Patient 1 how her sexual relationship with Dr. Macheret affected her. Patient 1's answer was, "Lots of hurt, lots of pain." Ms. Pfeiffer advised that she had asked Patient 1 how revealing what took place to her husband affected her marriage. Patient 1 answered, "Well, it's been hard on it, very hard for us to go through. I think we've addressed a lot of issues that we needed to address, and made some things better."

Ms. Pfeiffer continued that Patient 1's husband testified at the hearing, and on that same topic he answered,

"Patient 1 told my daughter about it, and it was just an emotionally-charged situation. Our children saw their parents' marriage dissolving, so on and so forth, which in the last eight years, it's been a wonderful marriage. So, you know, it's behind us as far as that is concerned."

Ms. Pfeiffer stated that when she asked Dr. Macheret at hearing about the impact this had on Patient 1, he finally gave an answer to her question. She stated that she asked, "Did what happened, the sexual contact with Patient 1, affect her in a bad way?" Dr. Macheret responded,

I don't mean to be really -- I try to stay positive, but according to her husband it was a positive experience and their right now marriage is much stronger than it was before. That's what he said. And I will agree with him. I guess I will have to agree with him.

Ms. Pfeiffer stated that her point in highlighting that is that she's not sure that Dr. Macheret appreciates the harm that can come from his conduct. He sees it as an error in judgment, which she agrees that it was, but she's not sure if he understands the consequences, which she thinks were very well articulated at the hearing by the Board's expert witness, Randell Wexler, M.D. In Dr. Wexler's testimony about the impact of a sexual relationship between a doctor and a patient, Dr. Wexler testified as follows:

The patient/physician relationship is inherently one that is unequal, and the balance is tipped significantly in favor of the physician due to their position not only historically within society and the community but also with regards to the type of care that a particular individual needs during the time of stress, whether it be simple such as a sore throat or something much more traumatic, death in the family, a bad diagnosis or something like that.

As such it is not uncommon for patients to view their physician in an overly benevolent way and have feelings of personal attachment to the physician based on this inherent,

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unequal relationship. It is that portion or the lack of equality that makes such relationships inappropriate.

Ms. Pfeiffer asked whether his opinion would be affected or altered if Patient 1 had been pursuing Dr. Macheret. Dr. Wexler's reply was, "On the contrary. That would make my opinion even stronger." When asked to explain, Dr. Wexler advised,

The particular state of mind as I can best tell from these records and the difficulty and life stress this patient was under would make Patient 1's ability to actually engage not only in an equal relationship, but would make her more likely to view a physician who is helping her in this more benevolent way that we talked about and as such makes it even more difficult for her to in and of herself see clearly what is going on. And, therefore, I would argue that such behavior would actually support the contention that the interaction was inappropriate.

Ms. Pfeiffer stated that it doesn't matter if the patient's pursuing the doctor. He's the professional. He's the one who has to distance himself and not get involved, and he didn't. This is a little bit more than an error in judgment, and she doesn't think that he understands the ramifications.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF LEONID MACHERET, M.D. MR. HAIRSTON SECONDED THE MOTION.

Dr. Varyani stated that he would now entertain discussion in the above matter.

Dr. Madia stated that in reading this Report and Recommendation it was very clear to him that when Dr. Macheret had the sexual relationship with Patient 1, she was still his patient. Dr. Madia noted that Dr. Macheret's testimony is that he told her verbally that she was not his patient. Dr. Madia stated that he believes that this woman was still Dr. Macheret's patient.

Dr. Madia stated that the second thing that bothers him is that Dr. Macheret greets new patients with hugs and kisses. He stated that he doesn't feel that that is right, and it may give the wrong impression to some patients, although not to all patients. Dr. Madia stated that he does agree with the Report and Recommendation.

Dr. Suppan stated that she also agrees with what has been said so far.

Dr. Egner stated that she thinks that Dr. Macheret lies, and that he's still lying. Dr. Egner stated that Dr. Macheret knew that this woman was his patient, and he knows it today. The termination letters to which he referred can't be produced. Dr. Egner stated that she thinks that in the testimony, it was described as a boilerplate letter and that they plugged it in. Dr. Egner commented that if he has a boilerplate letter, where's the blank? Dr. Egner stated that she doesn't believe a letter was ever sent. She thinks that this is all made up after the fact.

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Dr. Egner stated that Dr. Macheret has chosen to practice a very alternative form of medicine. A special kind of person does that. One of the characteristics of someone who does that is someone who doesn't follow traditional paths. Dr. Macheret doesn't practice traditional medicine. He doesn't change his habits of how he deals with patients. He stated that he still hugs them and kisses them. Furthermore, he stated that it's a cultural thing, he's allowed to do it, and he doesn't have to abide by the Board's standards and rules.

Dr. Egner stated that she also agrees with Ms. Pfeiffer's statements about what he did to that woman and to her life. Patient 1 thought she loved him and was going to leave her husband to marry him. Dr. Egner stated that the Board sees these people pick really vulnerable people. He messed up her life terribly, and Dr. Egner has no confidence that he's not going to do this again. Dr. Egner stated that she thinks that a six-month suspension and two-year probation is an absolute gift, one he doesn't deserve.

Dr. Steinbergh agreed with Dr. Egner. She stated that she was very disappointed with this case. Dr. Steinbergh stated that over the years that she's spent here at the Board and seeing those physicians who take advantage of vulnerable patients, it's always very shocking to her. He had a sexual encounter with his patient. There was absolutely no documentation in this record that he ever severed the relationship with the patient. Dr. Steinbergh stated that the Board has talked about this before; as you go across the threshold into the room to have a sexual encounter, saying, "oh by the way, you're not my patient anymore," simply is inappropriate. The Board has rules in regard to this and he did not follow them. There's no record that he did follow them. Dr. Steinbergh stated that she feels that he was untruthful on this. He was untruthful during his interrogatories and untruthful during the hearing.

Dr. Steinbergh stated that the social thing about hugging and kissing a patient in your office is absolutely inappropriate. She stated that she doesn't want to say that there is never a time that a physician, under certain circumstances, doesn't hug his or her patient. There are times when a patient's in grief, there are times when a patient is upset, whether it be depression or whatever. There are times when a physician feels the need, after a lengthy relationship and knowing the patient very well. But there's never a question that it's a boundary issue. In this case, it's constantly a boundary issue. Dr. Steinbergh stated that there are students in the room today and the Board is teaching them to be appropriate in their relationships with patients, and she can't say that there is never a time. She added that she will say that, as a female physician, she has never hugged a male patient in her practice. She wouldn't under any circumstance do that. There have been women patients who, during grief or times they've needed some support, she's put her arm around and given a gentle hug of support.

Dr. Steinbergh stated that the other thing that disturbed her was that, even though Dr. Macheret said that he had severed this relationship as of a certain date, he continued to see her for non-emergency care, and he billed for services for which there were no medical records and no documentation. Although the Board didn't charge him for that, and her decision-making isn't based on that, he continued to see this patient.

Dr. Steinbergh agreed with Dr. Egner. She noted that the disciplinary guidelines call for a minimum of one-year suspension, and she's not going to agree to "no less than 180 days" in this type of a case. She agrees with the Proposed Order of permanent revocation with a stay, a suspension, but she disagrees with the 180 days, and feels that the Board ought to follow the minimal disciplinary guidelines for sexual

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misconduct within the practice, i.e., stayed permanent revocation, minimum one year suspension, conditions for reinstatement and probation. She added that Dr. Macheret will also be required to take a course in professional ethics, as well as personal ethics, and the usual stipulations that the Board has.

Dr. Amato returned during Dr. Steinbergh's comments.

Dr. Mahajan stated that physicians can sense when the patient is desperate and needs comfort, and they have to protect themselves and the patient. Most physicians, when they have these feelings, would have someone with them when they see the patient, and leave aside inviting the patient to the house.

Dr. Mahajan stated that he thinks that those things were way beyond the limit of what anyone should have done.

Dr. Varyani asked Dr. Mahajan whether he agrees with the Proposed Order.

Dr. Mahajan stated that he does.

Dr. Suppan stated that she would like to add one thing.

Dr. Varyani asked whether he can get back to Dr. Suppan. He stated that he knows that this is a subject everybody has a feeling about. He noted that Dr. Amato was not here at the beginning of the discussion, and advised him that this is a case of sexual boundaries. He asked whether Dr. Amato has a comment to make.

Dr. Amato stated that he agrees with Dr. Steinbergh.

Mr. Hairston stated that, as a consumer, he's very concerned about this. Hearing Dr. Macheret talk about the time that he had problems in his own family, and then the time that he allowed Patient 1 to come to his home, Mr. Hairston thinks that Dr. Macheret had time to go out and get the help that he needed for healing. Mr. Hairston stated that he doesn't think that Dr. Macheret took the appropriate steps. He added that Dr. Macheret was wrong and Patient 1 was wrong, but he also thinks that Dr. Macheret led the patient on. He does agree with the amendment.

Dr. Suppan stated that she thinks that if Dr. Macheret is going to return to practice, it's important that he be evaluated for grief issues and/or depression, and that that should be written in, too. He has to have education as to how to get the support he needs. Dr. Suppan stated that so many times physicians believe that they have to treat themselves and manage their own emotional issues.

Dr. Varyani stated that he feels very strongly about this issue. He stated that his initial involvement with organized medicine was that he started with an ethics committee in the 1980s. Dr. Varyani stated that he asked Dr. Macheret the question about how he greets his patients today, and Dr. Macheret replied that he gives hugs and kisses. Dr. Varyani stated that he doesn't know how this Board can make it more clear. He stated that he is surprised that Dr. Macheret would be one of the few physicians who did not read the updated 2007 Sexual Misconduct Rules. Dr. Varyani stated that he knows that every physician reads the Board's quarterly report, just to see who got cited and what the rule changes are; but in 2007 this was a big

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Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF LEONID MACHERET, M.D. DR. EGNER SECONDED THE MOTION.

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

RUBA W. NIJMEH, M.D.

Dr. Varyani directed the Board's attention to the matter of Ruba W. Nijmeh, M.D. He advised that objections have been filed but were not previously distributed to Board members. He stated that they are now in the pocket of the agenda binders. Dr. Varyani allowed time for Board members to read those objections.

Dr. Varyani stated that a request to address the Board has been timely filed on behalf of Dr. Nijmeh. Five minutes would be allowed for that address.

Dr. Nijmeh was accompanied by her attorney, Terri-Lynne B. Smiles. Ms. Smiles advised that Dr. Nijmeh is requesting a waiver of the seven-year rule for good cause. She stated that Dr. Nijmeh always intended to come to the United States, but was unable to leave Jordan due to family obligations. She took and passed Steps 2 and Step 3 as soon as she could. She passed all three steps on the first attempts. Ms. Smiles stated that, in general, the Board has granted a license to all applicants when they have passed all three steps on

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the first attempt.

Dr. Nijmeh thanked the Board for allowing her to speak. She stated that she did not pass all of her steps within seven years, but she still completed them within ten years. Dr. Nijmeh stated that she feels she had good cause. She explained that her father passed away. She added that their family is very small; it's only she, her sister and her mother, and she could not just leave her sister who was then still in high school and fly thousands of miles away to come to the United States. She was obligated to stay in Jordan. She passed Steps 1 and 2, and then completed the residency program in internal medicine at the University of Jordan for four years, and one year of internship. As soon as she finished, she passed the Jordanian Internal Medicine Board, and then passed the Arabic Board exams. She then started the process of applying to come to the United States to start her residency. She was hoping for a fellowship.

Dr. Nijmeh stated that while you are overseas, you cannot sit for Step 3. She added that she was also not aware of the seven-year rule. As soon as she came over to the United States, she started her residency program in Canton, Ohio, and then, after the first year of internship, she applied for Step 3 but was notified that she had to take the clinical skills portion of Step 2. She passed that and then passed USMLE Step 3 with a good score.

Dr. Nijmeh stated that she's passed her American Board of Internal Medicine and is within the top ten percentile of scores. She's doing her fellowship in nephrology at OSU. Dr. Nijmeh stated that she's hoping to get her license so that she can practice in Ohio because she has friends and family members here, and she likes the state. Dr. Nijmeh stated that sitting for Steps 1 and 2 now would be really hard.

Dr. Nijmeh stated that she believes that she's qualified and she hopes that the Board members think the same. She has been boarded in internal medicine by Jordan, Arabia and now America. She has a higher specialization in internal medicine from Jordan. She stated that she hopes the Board will grant her application for a license.

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

Ms. Unver stated that Dr. Nijmeh is 31 months over the seven-year requirement to complete all three steps of the USMLE. This is not a case where the applicant is over the seven-year requirement by a few months. This is two years and seven months over the seven-year requirement. Ultimately, the determination of good cause for purposes of granting a waiver of the seven-year rule is for this Board to decide, based upon the facts presented. The Report and Recommendation highlights quite precisely the concern for determining that there is good cause in this case. While Dr. Nijmeh was somewhat delayed in coming to the United States due to the death of her father, much of the delay was due to her professional choices in deciding to complete a Jordanian residency first, and the fact that she was not familiar with Ohio's seven-year requirement.

Ms. Unver stated that there is no doubt that Dr. Nijmeh is a well-trained doctor who has never failed any step of the USMLE exam; but in determining what is considered "good cause" when there is a 31-month gap between when seven years ended and when an application is filed, there should be a compelling reason for delay. Ms. Unver stated that there just does not seem to be good cause here. She asked that the Board

adopted the Report and Recommendation as written.

DR. MADIA MOVED TO APPROVE AND CONFIRM MS. CLOVIS' FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF RUBA W. NIJMEH, M.D. DR. STEINBERGH SECONDED THE MOTION.

Dr. Varyani stated that he would now entertain discussion in the above matter.

Dr. Egner stated that the Board looks at these cases time and time again. What the Board looks for when the applicants are denied at the Committee level, then at a Board level, and then go to hearing is additional evidence to support waiving the requirement. There are times when the Board gets additional evidence. Someone brings up certain details at hearing that they hadn't brought up before. Dr. Egner commented that, unfortunately in this case, there is a significant time beyond the seven years where her reasons don't come under good cause. She added that Dr. Nijmeh has a remedy. She added that she knows these cases are always hard, but that's the rule.

Dr. Mahajan stated that he feels that this is a highly qualified and motivated person. The Board wants to promote family values and so forth. Dr. Nijmeh had a commitment to her family. When she tried to do her final exam, she was delayed because she had to do additional training. It's not 31 months that she did not try. She tried to do it earlier.

Dr. Mahajan referred to Dr. Nijmeh's exam scores, commenting that they were high, much better than the majority of the doctors who come before the Board. Dr. Mahajan again stated that he feels that this is a highly qualified and motivated person. She didn't sit around in Jordan, she was doing further training. He believes that she is even better for this. Dr. Mahajan stated that he feels the Board should grant Dr. Nijmeh a license.

Dr. Suppan asked whether there's a specific definition of the term, "good cause." She stated that it seems to her that there's been good cause when there are tragedies and things like that, but she asked whether "good cause" couldn't be because someone would make a great doctor in our state.

Dr. Varyani asked Ms. Debolt to respond to Dr. Suppan's inquiry.

Ms. Debolt stated that she needs to show good cause for being prevented from completing the exam sequence within seven years. Being a good doctor didn't prevent her from completing the sequence within seven years.

Dr. Varyani stated that there is good cause for not completing the sequence within seven years. The "good cause" would be defined as, if you pass USMLE Steps 1 and 2 outside the U.S., you cannot pass USMLE Step 3 outside the United States. That's a good cause. Dr. Varyani noted that Dr. Nijmeh had excellent scores, she's gone through higher education, she has the internal medicine boards, she's going through further training. Dr. Varyani stated that he doesn't see any interruption in training, residency, and she seems to be a very dedicated doctor. Dr. Varyani stated that, like Dr. Mahajan, he feels the Board should give Dr. Nijmeh a license. The reason he deferred to Ms. Debolt is that he doesn't want a repeat

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performance of what happened last month.

Ms. Debolt stated that it's "good cause" for why she did not complete the examination sequence within the seven-year period. She advised that "good cause" requires a showing that she's current in her medical knowledge and it includes, but is not limited to, participating in graduate medical education for a period of time greater than required by statute.

Dr. Varyani stated that the way he sees it, her education was not interrupted, she's not doing anything wrong, you cannot take the USMLE outside of the United States, so, really, it's good cause until she comes to the United States. She's here, she's applied, she's got great scores, and she's done her internal medicine boards. He asked what else could he want?

Ms. Debolt stated that the Board has lots of discretion here.

Dr. Amato stated that he can find good cause. He stated that Dr. Nijmeh stayed in Jordan to complete her internal medicine and to support her family. What the Board just heard puts credence on "she chose" to complete her residency, but that isn't the statement that he read. She chose to complete the residency and to support a parent. Dr. Amato stated that to him that's good cause.

Dr. Steinbergh stated that she would like to reiterate what Dr. Egner said. This applicant came to the Licensure Committee. The Committee recommended denial because of the length of time she was over the limit, 31 months. The Board voted against granting her a waiver at its May 2008 meeting. The Board had rejected the request because of the length of time the physician had exceeded the seven-year limit, and because the Board did not believe that delayed immigration had been good cause for the delay in completing the sequence. This is the third time around. Dr. Nijmeh had a right to a hearing. There was no new information brought to the Board. Dr. Steinbergh stated that that's the point Dr. Egner was making – there's nothing new here. Each of the Board members participated, either at Committee or at the Board meeting, where the same conversation was held and rejected her application. It has nothing to do with her not being appropriately trained. Dr. Steinbergh stated that it's the current rule. She added that as this Board moves forward, if rule change is in order, then the Board needs to do that. Dr. Steinbergh stated that she agrees with the Report and Recommendation.

Dr. Mahajan stated that the Board would be rejecting this physician on a technicality. He stated that Ohio needs good nephrologists. He stated that, to him, the Board doesn't have a good enough reason to not give Dr. Nijmeh a license. Dr. Mahajan again stated that Dr. Nijmeh was never sitting around, but was always furthering her education.

Dr. Steinbergh stated that the Board can feel badly for Dr. Nijmeh, but it cannot accept every applicant for licensure when he or she doesn't meet the standards that this Board has set by rule. She stated that rules can be changed, and if the Board disagrees with a rule that has been promulgated in the past, then the rule can be changed. But it can't ad lib. There's always a reason, and there's no question that the Board is sensitive to that.

Dr. Mahajan stated that he's not asking for a change in the rule. He's only asking that, taking Dr. Nijmeh's

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history and what she did and what she achieved, and how good a person she is, the Board should accept her explanation as good cause. He stated that they're not changing any rules.

Dr. Steinbergh stated that she understands that, the Board would need to change the rule in the future, if the Board felt that the current rule was not serving it properly.

Dr. Egner left the meeting at this time.

Dr. Amato stated that he does not recall on previous discussions of this applicant the death of her father. All that has to be done is to change the Conclusions of Law by deleting the word, "not," from the first sentence of paragraph 3. She was delayed by her father's death, and that was to support her mother. The Board has the authority to grant the exception to the rule if it feels that there is good cause. Her statement of good cause was a death in the family and the support of her mother.

Dr. Madia stated that he's on the Licensure Committee and he remembers the discussions at both Committee and Board levels in May, and he doesn't think that the Board had the information about her father's death. He reminded the Board that in the past the Board has reversed its rulings after hearing and additional information being received.

Dr. Varyani reminded Mr. Albert and Dr. Talmage that they can participate in the discussion of this matter.

Dr. Varyani stated that it is his understanding that the Board can grant this physician an exemption. He added that Ohio needs physicians and that there is no reason to believe that Dr. Nijmeh lacks the education needed. He added that he would feel bad if she isn't licensed in Ohio.

Dr. Talmage stated that he's been a military commander, used to rules and regulations and following those. He stated that there is another issue here. A just cause means that it's out of your control to do something within the time frame that was set to do it, and that is to take the three parts of the examination. If you do not do that, it is not a reflection on your intellectual ability because the test was passed. Dr. Talmage commented that it is a reflection on your professional responsibilities. You have a rule, you follow the rule, or you ignore the rule. If you ignore it, you ignore it at your own peril. While that rule may be changed, and probably should be, the Board has had this discussion time after time after time, but the Board hasn't changed it. It needs to debate and change the rule in a meaningful way. At this point, the reason is a death in the family and the length of time that required her to stay in Jordan.. Did it prevent her from taking the exams when she could have, or is it simply a convenience not to take the exams within the time frames set? Had this been six months, he would have much more sympathy. Two and a half years doesn't impress him much.

Dr. Mahajan stated that she tried to take the Step 3 but she couldn't. She had to go for more training because she was out of the country. It's difficult. It's pretty expensive.

DR. AMATO MOVED TO AMEND THE CONCLUSIONS OF LAW TO READ AS FOLLOWS:

Dr. Nijmeh has shown "good cause" for why she did not complete the examination sequence

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within seven years. Her reason being the death of her father, and the necessity to stay in Jordan to support her mother for longer than anticipated.

DR. AMATO FURTHER MOVED TO AMEND THE PROPOSED ORDER TO GRANT DR. NIJMEH A LICENSE. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- nay
	Dr. Varyani	- aye

Amato?

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF RUBA W. NIJMEH, M.D. DR. AMATO SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- nay
	Dr. Varyani	- aye

The motion carried.

PAUL H. VOLKMAN, M.D.

Dr. Varyani directed the Board's attention to the matter of Paul H. Volkman, M.D. He advised that objections were filed to Hearing Examiner Petrucci's Report and Recommendation and were previously distributed to Board members.

DR. MADIA MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF PAUL H. VOLKMAN, M.D. DR. STEINBERGH SECONDED THE MOTION.

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Dr. Varyani stated that he would now entertain discussion in the above matter.

Dr. Steinbergh stated that in May 2006, the Board and Dr. Volkman entered into an interim agreement that prohibited him from practice until allegations against him by the DEA were adjudicated. Dr. Volkman at that time admitted that the Board was substantially justified in issuing the notice, and the Board agreed to not object to continuing the hearing on the notice until such time as the DEA issued its final adjudication.

Dr. Steinbergh stated that Dr. Volkman had inappropriately prescribed large numbers of medication, controlled substances. Dr. Volkman was employed by Tri-State, a medical office. Within three weeks of the time that he started, Ohio's State Board of Pharmacy received two complaints from Portsmouth pharmacists regarding his prescribing habits. In June 2003, he complained to the Pharmacy Board that the local pharmacists were refusing to fill his prescriptions. Around June 2003, Tri-State, for which Dr. Volkman was the only provider, decided to institute an on-site dispensary and provide pain medications to patients. It was a cash-only business. They charged \$200 per office visit, and they permitted no third-party billing. Dr. Volkman authorized ordering large quantities of these controlled substances, and the disposition of those substances cannot be adequately accounted for because he failed to maintain records.

Dr. Steinbergh stated that Dr. Volkman became the largest practitioner purchaser of Oxycodone in the nation, and the largest Ohio-based practitioner/purchaser of the combination of Hydrocodone/APAP. The DEA seized 900 patient files, which lacked documentation that he had performed an appropriate physical examination on the patients. The DEA reviewed the medical charts of six patients who died under his care, and they felt that the medications Dr. Volkman prescribed were the primary cause of death.

Dr. Steinbergh stated that the DEA decision was entered into the federal register, and thereafter he filed an appeal, which remains pending. The Board's agreement with Dr. Volkman was that it would not take action until the DEA took action, which it has done.

Dr. Steinbergh stated that she agrees with the Hearing Examiner's Conclusions of Law, and that the Proposed Order of permanent revocation, under Section 4731.22 (B)(24), is appropriate.

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

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Dr. Egner left the meeting at this time.

PROBATIONARY APPEARANCES

DAVID E. SUBLER, M.D.

Dr. Subler appeared before the Board pursuant to his request for release from the terms of his December 11, 2003 Step II Consent Agreement.

Ms. Bickers reviewed Dr. Subler's history with the Board.

Mr. Albert advised that Dr. Subler has been the poster person for recovery. He has done everything he should have done, and he works with other people in recovery. He also has very strong family support. Mr. Albert advised that Dr. Subler has indicated that he will continue his recovery program. Mr. Albert stated that he wishes that all of the Board's probationers were like Dr. Subler.

In response to Board members' questions, Dr. Subler first thanked the Board for treating his case with compassion and understanding. He stated that it's been a wonderful experience. He has a good relationship with his wife and kids, he has his health, and he has spirituality, which was something that he lacked before this became his reality. Dr. Subler stated that he works at Licking Memorial Hospital, and has been there for five years. He has isolated himself from touching any syringes or getting near any controlled substances. All of that is handled by nurses and technicians. Nurses remove the controlled substances from a Pixus machine. He deliberately stays on the opposite side of the room. He also makes it a point to tell all of his colleagues with whom he works that he is a recovering physician. He has been very open about it. He added that he has nothing but good things to say about Licking Memorial Hospital. He stated that they've been wonderful. It's a very warm and receptive place for recovering physicians. He's very grateful that they've allowed him to practice there.

Dr. Subler commented that Mr. Albert reminds him quite often that he is a lucky man. He stated that he believes that with his heart. He's very grateful and has gained a lot from the recovery program: a sense of spirituality, humility, and his gratitude are immeasurable.

DR. MADIA MOVED TO RELEASE DR. SUBLER FROM THE TERMS OF HIS DECEMBER 11, 2003 STEP II CONSENT AGREEMENT. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye

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Dr. Steinbergh - aye
Dr. Varyani - aye

The motion carried.

DAVID R. GOTHAM, JR., D.O.

Dr. Gotham made his initial appearance before the Board, pursuant to the terms of his January 10, 2007 Consent Agreement.

Ms. Bickers reviewed Dr. Johnson's history with the Board.

In response to Dr. Steinbergh's request, Dr. Gotham related his history with the Board for the benefit of the Ohio University osteopathic medical students present in the room. He advised that physicians are held to a high standard. They deal with patients who have the right to know the good and bad things about their physicians. He stated that that's what he learned through this. He stated that his pride got in his way in filling out his application for an Ohio license.

In response to further questions, Dr. Gotham stated that he's an orthopedic trauma surgeon in several level 2 trauma centers in Sacramento. The action taken by the California State Osteopathic Medical Board was a letter of reprimand. That was received prior to the situation here in Ohio. He has an active license in California.

Dr. Gotham thanked the Board for allowing him to come to speak and give his side of the story. He stated that he's learned a lot, not only from the ethics course he attended, but from the whole experience.

Ms. Bickers advised that there will not be another appearance before the Board. The consent agreement requires that Dr. Gotham make an initial appearance and an appearance upon reinstatement. When Dr. Gotham is eligible for release, she will review his history with the Secretary and Supervising Member and he will be released without another appearance before the Board.

DR. STEINBERGH MOVED TO CONTINUE DR. GOTHAM UNDER THE TERMS OF HIS JANUARY 10, 2007 CONSENT AGREEMENT. MR. HAIRSTON SECONDED THE MOTION. A
vote was taken:

ROLL CALL:

Mr. Albert	- aye
Dr. Talmage	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

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The motion carried.

JAMES CAMERON JOHNSON, D.O.

Dr. Johnson made his initial appearance before the Board, pursuant to the terms of his October 8, 2008 Step II Consent Agreement.

Ms. Bickers reviewed Dr. Johnson's history with the Board and noted that Dr. Johnson is also seeking approval of Leroy Brian Varney, M.D., to serve as his monitoring physician.

In response to Board members' questions, Dr. Johnson stated that he currently practices in Lancaster, Ohio, with Dr. Varney in Dr. Varney's private practice.

Dr. Steinbergh stated that she has grave concerns about Dr. Johnson's decision making and the fact that he entered into one Step 1 agreement and had to have another within a year because of relapse, and because of inappropriate decisions he's made in the past. Dr. Steinbergh stated that she has grave concerns about whether or not he will be successful.

In response to further questions, Dr. Johnson stated that he does understand his consent agreement. He is very active in A.A., and he has a home group that is regular for him. He has shared at A.A. meetings, and he attends a step study group with his sponsor. Dr. Johnson added that he has also been asked to lead meetings.

Dr. Johnson continued that in his daily life he's returned to the spiritual values he appreciated before he began making bad decisions. He advised that he thinks that things are going very well for him now.

In response to further questions, Dr. Johnson stated that he has some family in Ohio. He has one brother in Columbus, and he is very close to his parents and sisters in Albany. His parents do visit him frequently.

DR. STEINBERGH MOVED TO APPROVE LEROY BRIAN VARNEY, M.D., TO SERVE AS DR. JOHNSON'S MONITORING PHYSICIAN, WITH TEN CHARTS REVIEWED PER MONTH, AND TO CONTINUE DR. JOHNSON UNDER THE TERMS OF HIS OCTOBER 8, 2008 STEP II CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:

Mr. Albert	- aye
Dr. Talmage	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye

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Dr. Varyani - aye

The motion carried.

BRETON LEE MORGAN, M.D.

Dr. Morgan made his initial appearance before the Board, pursuant to the terms of his November 20, 2008 Step II Consent Agreement.

Ms. Bickers reviewed Dr. Morgan's history with the Board, and advised that Dr. Morgan's license was reinstated today.

In response to Board members' questions, Dr. Morgan stated that he is doing well. He acknowledged that one of the things of which he is most proud is the change he spearheaded in the state of West Virginia regarding exclusions on physicians with impairment. He explained that he has had an experience that has educated him for a lifetime, and he wants to be able to use that to help other physicians and health care professionals. He stated that in West Virginia the M.D.s and D.O.s are governed by two different boards. When he ran into this trouble with addiction and finally went to Atlanta and got help, the darkest parts of his life came after he achieved sobriety. He's had to face the actions that he took that led to his problems and deal with the consequences, but it's almost all been after he was in Atlanta. One of the problems was the felony drug charge of obtaining samples by fraud. Dr. Morgan stated that in West Virginia, an M.D. with a felony conviction can never be licensed and can never practice, whereas the D.O.s could. Dr. Morgan stated that he felt that that was an unequal playing field. His attorneys went before the West Virginia Legislature, and he's very thankful that that law got changed, and that both M.D.s and D.O.s with felony convictions can now practice.

Dr. Morgan continued that the second issue that came up was that he'd already gotten his West Virginia license back, but once he signed his Ohio Consent Agreement, it knocked down his West Virginia license immediately. He commented that that's because none of the lawyers in the room that day with Ms. Pastrick realized that if you're suspended in one state, you're automatically suspended in West Virginia. Dr. Morgan stated that he again approached the West Virginia Legislature and that law has been changed to read that under extraordinary circumstances, you can practice in West Virginia, even though you're suspended in another state. Dr. Morgan stated that he did regain his West Virginia license in July, and he's thankful to have his Ohio license now.

Dr. Morgan stated that he hasn't reopened his office yet because his newest battle is that by taking the samples, the Office of the Inspector General interpreted that as financial gain. Right after he got his West Virginia license in July 2008, he received a letter saying that he has a five-year Medicare exclusion. Dr. Morgan advised that he's now in Administrative Law in Washington, D.C. pointing out that at sentencing the Federal Judge stated that there was no financial gain, this was a personal problem. It was a person going into his office and taking samples. Dr. Morgan stated that his argument before the Administrative Law Judge was that if you start excluding doctors who take samples from their office, no matter what the sample is, whether it be an inhaler, a sugar pill or, as in his case, a hydrocodone pill, then you may as well get ready to exclude a lot of the doctors, because they do get samples in their offices.

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Dr. Morgan stated that when he was under investigation by the D.E.A., he was told that if he'd given his children antibiotics and not documented it, they're going to get him on that.

Dr. Morgan advised that he's learned a lot about the law. He's learned a lot about the nuances of the practice of medicine and some of the things that need to be changed for better or for worse. In this case he thinks that all three of these situations with which he was confronted will help future doctors. An Administrative Law Judge in a recent opinion wrote that he has no reluctance to lift the Medicare exclusion, but the final decision won't be made until January 5. He's waiting until after that to actually resume practice. He's negotiating with Holzer Health Care Systems in Gallipolis, Ohio, and Pleasant Valley Hospital in Point Pleasant, West Virginia. He's stayed very active in his own sobriety.

Dr. Morgan advised that when he got out of federal prison, he started a Caduceus group in Mason County. He added that he currently is doing nine urine tests a month, but he indicated that he will work with Ms. Bickers on combining the Ohio and West Virginia requirement.

Dr. Morgan stated that he has learned a lesson in life. He dealt with back surgery, divorce and other issues through the wrong methods. He became addicted to narcotics. Three years later he sits before the Board, very healthy. As for support, he stated that his family owns a chain of Kentucky Fried Chicken restaurants, and they've opened three stores this year. He's been on-site for all of those as they were being built.

Dr. Morgan stated that he is very thankful for a second chance, and he's looking forward to abiding by the rules.

Dr. Varyani asked what Dr. Morgan thinks the Board should change.

Dr. Morgan stated that he's been interested to hear today's discussions. He stated that he thought that the Board did the appropriate thing with the Jordanian physician. He stated that the Board has to realize that, in his case, what he found was that there are rules that are in place that sometimes don't fit every circumstance. He added that boards of medicine have to be allowed to have some discretion. He expressed concern that the Board took the worst days of his life and knocked him out of something he loves so much, the practice of medicine, for life based on a felony conviction. He reminded the Board that every physician that appears before it, addicted to narcotics, has broken the Federal Drug Act. Some got prosecuted and some didn't. He advised that there are different ways to take the word, "felony," than to turn it into a "scarlet letter" that a physician can't live down. Dr. Morgan stated that he believes that the Board needs to go after doctors that are practicing bad medicine. He acknowledged that he refused to get help, and finally admitted that he needed to get help after the D.E.A. came to his office. He stated that he's also thankful that the D.E.A. agent that actually "took him down" is also supporting him regaining his D.E.A. with restriction.

Dr. Morgan stated that you can come full circle in life by letting your actions and your future living show that the decisions that Boards make were the right decisions.

DR. STEINBERGH MOVED TO CONTINUE DR. MORGAN UNDER THE TERMS OF HIS NOVEMBER 20, 2008 STEP II CONSENT AGREEMENT, WITH FUTURE APPEARANCES

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BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. AMATO SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Dr. Egner returned to the meeting at this time.

UJWALA PAGEDAR, M.D.

Dr. Pagedar made her initial appearance before the Board, pursuant to the terms of the Board's Order of February 13, 2008.

Ms. Bickers reviewed Dr. Morgan's history with the Board.

In response to Board members' questions, Dr. Pagedar stated that she is currently looking for opportunities and she is not working at this time. She can't take her Board certification examination until after the Board's probation is lifted.

Concerning what she learned from her professional ethics course, Dr. Pagedar stated that her experience has been that it was a very positive reinforcement of all the ethical values that actually define the standards of care a physician should incorporate in his/her practice. She stated that the course gave her the time to think about her own personal, as well as professional, life, and it underlined all the moral values that she's sure will lead her in the future.

Dr. Pagedar added that the course also heightened her awareness in terms of responsibilities and accountabilities that actually branch out from the ethical and the legal aspects of patient care. One thing she learned and strongly believes is that all theories of moral reasoning ultimately help an individual to make his conscience a final determinant. Dr. Pagedar stated that that's something she learned and will carry in herself forever.

DR. STEINBERGH MOVED TO CONTINUE DR. PAGEDAR UNDER THE TERMS OF THE BOARD'S ORDER OF FEBRUARY 13, 2008, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

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ROLL CALL:

Mr. Albert	- aye
Dr. Talmage	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

KIMBERLY M. (TELMANIK) SCHERRY, P.A.

Ms. Scherry made her initial appearance before the Board, pursuant to the terms of her November 12, 2008 Superseding Step I Consent Agreement.

Ms. Bickers reviewed Ms. Scherry's history with the Board.

In response to Board members' questions, Ms. Scherry stated that she is doing better. She stated that she now "gets it" and has no questions of the Board.

DR. AMATO MOVED TO CONTINUE MS. SCHERRY UNDER THE TERMS OF HER NOVEMBER 12, 2008 SUPERSEDING STEP I CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

ROLL CALL:

Mr. Albert	- aye
Dr. Talmage	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

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FINDINGS, ORDERS & JOURNAL ENTRIESKIM ELLEN FISCHER, M.T.

Dr. Varyani advised that by letter of October 10, 2008 the Board issued its Notice of Opportunity for Hearing to Ms. Fischer, and documentation of service was received. There was no request for hearing filed, and more than 30 days have elapsed since the mailing of the Notice. The matter is therefore before the Board for final disposition. He added that Dr. Talmage and Mr. Albert may participate in the discussion and vote, as this case is not disciplinary in nature and concerns only the individual's qualifications for licensure.

DR. STEINBERGH MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE OCTOBER 10, 2008 NOTICE HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, APPROVING MS. FISCHER'S REQUEST FOR RESTORATION OF HER CERTIFICATE TO PRACTICE MASSAGE THERAPY, SUBJECT TO HER PASSING THE LIMITED BRANCH PORTION OF THE BOARD'S MASSAGE THERAPY EXAMINATION WITHIN SIX MONTHS OF OCTOBER 10, 2008. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

CITATIONS, PROPOSED DENIALS & ORDERS OF SUMMARY SUSPENSION AND NOTICES OF IMMEDIATE SUSPENSIONMOHAN S. CHANDRAN, M.D. – CITATION LETTER

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

DR. MADIA MOVED TO SEND THE CITATION LETTER TO DR. CHANDRAN. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
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Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye

The motion carried.

GREGORY GENE JOHNSON, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

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

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- abstain
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

ZAHAYR T. MADHUN, M.D. – CITATION LETTER

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

DR. STEINBERGH MOVED TO SEND THE CITATION LETTER TO DR. MADHUN. DR. MADIA SECONDED THE MOTION. A vote was taken:

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ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

DAVID RONALD MILLER, M.D. – CITATION LETTER

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

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

JOSHUA NATHAN SYPE, M.T. – CITATION LETTER

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

**DR. STEINBERGH MOVED TO SEND THE CITATION LETTER TO DR. SYPE.
MR. HAIRSTON SECONDED THE MOTION.** A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
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Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

DAVID LEE TOLLIVER, D.O. – CITATION LETTER

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

DR. STEINBERGH MOVED TO SEND THE CITATION LETTER TO DR. TOLLIVER. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

RATIFICATION OF SETTLEMENT AGREEMENTS

Dr. Varyani advised that he would like to table this topic until the Thursday morning session.

DR. STEINBERGH MOVED TO TABLE THE TOPIC, “RATIFICATION OF SETTLEMENT AGREEMENTS” UNTIL THE THURSDAY MORNING SESSION. MR. HAIRSTON SECONDED THE MOTION. All members voted aye. The motion carried.

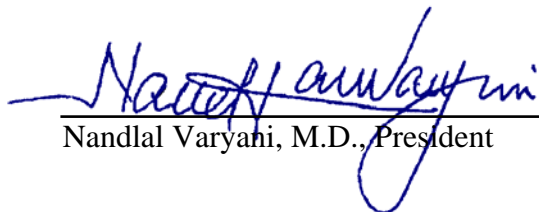
DR. STEINBERGH MOVED TO ADJOURN. DR. MAHAJAN SECONDED THE MOTION. All members voted aye. The motion carried.

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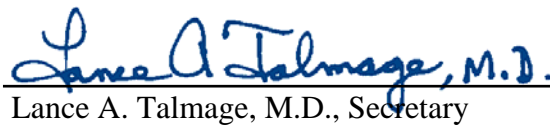
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Thereupon at 5:35 p.m. the December 10, 2008 session of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on December 10, 2008, as approved on January 14, 2008.



Nandlal Varyani, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)



December 11, 2008

MINUTES

THE STATE MEDICAL BOARD OF OHIO

December 11, 2008

Nandlal Varyani, M.D., President, called the meeting to order at 8:11 a.m., in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes State Office Tower, 30 E. Broad St., Columbus, Ohio 43215, with the following members present: Dalsukh Madia, M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; W. Frank Hairston; Jack C. Amato, M.D.; Darshan Mahajan, M.D., and Anita M. Steinbergh, D.O. The following joined the meeting at a later time: Marchelle L. Suppan, D.P.M. and Carol L. Egner, M.D. The following did not attend the meeting: Susan E. Stephens, M.D., and Jeffrey M. Jacobson, Esq.

Also present were: Richard A. Whitehouse, Executive Director; Diann K. Thompson, Assistant Executive Director; Kimberly C. Anderson, Assistant Executive Director; Sallie J. Debolt, General Counsel; William J. Schmidt, Senior Counsel, Enforcement, Compliance & Investigations; Rebecca J. Marshall, Chief Enforcement Attorney; David P. Katko and Karen Mortland, Enforcement Attorneys; Barbara J. Pfeiffer, Karen A. Unver, and Kyle C. Wilcox, Assistant Attorneys General; Joan K. Wehrle, Executive Staff Coordinator; Michael K. Miller, Public Policy & Government Affairs Officer; Danielle Bickers, Compliance Supervisor; Kay Rieve, Administrative Officer; and Barbara Jacobs, Public Services Administrator.

REPORTS OF ASSIGNED COMMITTEES

At this time, noting the absence of a number of voting Board members, Dr. Varyani stated that he would like to adjust the agenda to first hear the Legislative Liaison & Rules Committee Report.

LEGISLATIVE LIAISON & RULES REVIEW COMMITTEE

Mr. Miller reviewed his written report, a copy of which shall be maintained in the exhibits section of this journal, updating the Board on the following pieces of legislation of interest to the Board: SB 279 – Medical Board Procedures/allied health licensing; HB 493 – Pathology billing; and HB 648 – Access to Personal Information.

Dr. Steinbergh stated that H.B. 493 really concerns her. She stated that she's re-read the Council on Ethical and Judicial Affairs' (CEJA) opinion on billing and how it should be fair to the patient. She stated that this concerns her because these companies do take advantage of patients. She stated that this really has nothing to do with the Medical Board and patient protection. What concerns her still is that a patient can come to her office with no health insurance, and she can discuss with the patient how the patient will be billed for the tests. She stated that the patient is told that she can have the lab bill him or her, or she can bill the patient. The truth is that she gets a discount from the laboratory services. The patient pays less in her office than the patient would pay if the pathology company bills him or her. Dr. Steinbergh indicated that she feels that there's total disregard for this type of discussion in that bill. She stated that her suggestion

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would be that if they want to continue with this type of bill, that there be some language in the bill that says that if the patient has no health insurance, the pathology billing would be no greater than the amount that a third-party payer would pay. Under the bill's current language, if the pathologist bills for a particular service and bills for \$100, and the third party payer is willing to pay only \$30, and Dr. Steinbergh added that the price is pretty much the same across the Board for third-party payers, then the uninsured patient will be billed for the \$100, and will be expected to pay \$100. Dr. Steinbergh suggested that there should be some language in the bill that says that the pathologist can't take advantage of the patient and should agree to accept a reasonable sum that is in accordance with what a third party payer would pay. She stated that she doesn't know how that language would go, but that would be the intent. Dr. Steinbergh again stated that this legislation will allow labs to take advantage of the patient. Dr. Steinbergh stated that something must be happening to the labs that they're not telling the Board about what stimulated this bill.

Mr. Miller stated that he knows that this is happening on a national level. The group has been going around state-by-state, but he doesn't know what precipitated it.

Dr. Steinbergh also expressed concern that the labs will stop negotiating fees with physicians and not allowing discounts. She added that they won't do that because of the business. There's always going to be someone who will say, "I'll do it for you cheaper."

Mr. Miller stated that these points were brought up at length both before the full Senate Committee and at interested party meetings with the sponsors of the bill. They seemed to pick up on the point, but there focus was to make sure that a compromise was reached between the parties who brought the bill before them. That was their goal.

Mr. Miller referred to H.B. 648 – Access to Personal Information, which was introduced the previous week. He stated that this bill is related to the information searches that were going on at the Ohio Department of Jobs and Family Services regarding "Joe the Plumber." He advised that this legislation would generally require agencies to adopt rules and procedures regarding how employees access an individual's confidential personal information. Mr. Miller stated that a series of amendments to the bill were accepted the previous day, and one of those was at the Board's request. In the original bill the Board was to provide a list of confidential personal information that the Board has on an individual if they provided a written request for that information. Language was added to state that if that information was related to an investigation, based upon previous statutory authority, the Board does not have to provide that information to the requestor. Further clarifying language was added to differentiate between whether or not there needs to be password protection and authentication measures attached to electronic and paper documents. It will only apply to the electronic documents at this point in time. Mr. Miller added that the Board was going to have to track each specific time that an employee accessed confidential, personal information on an individual, but the cost estimates of doing that were in excess of \$100 million for the State, so an amendment was offered stating that when agencies get new information systems, programs or software, those items must have the tracking mechanisms in them in order to track employee's access to this information. A log of specific access to confidential information must still be kept, but a log of each specific access does not have to be kept. Mr. Miller advised that the Board can adopt rules governing how the Board is going to keep this log. He noted that the bill passed out of Committee yesterday, and off the House Floor, and there have already been hearings in the Senate. Mr. Miller advised that the primary

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sponsor of the bill seemed open to entertain any amendments to fix unintended consequences of the bill.

Mr. Miller stated that he did meet with the sponsor's office the previous day, and the Nursing Board had provided the sponsor's office with draft language to entirely exempt all of the health care licensing boards. He commented that it is highly unlikely that that will occur, especially in light of the fact that the previous day there was an amendment offered to exempt higher education institutions, the courts and local governments. He stated that he can't believe that they'll go beyond that at this point in time.

Mr. Miller stated that if someone is found to have accessed information illegally, the employee is subject to both civil action and criminal penalties. No state agency will be permitted to hire anyone who has been convicted under this statute.

Mr. Miller stated that the last item is an amendment regarding Foreign Medical Faculty Certificates. He reported that an amendment had been drafted that would provide for an annually renewable foreign medical faculty certificate. Mr. Miller advised that there are a number of concerns regarding this amendment, including the fact that the amendment doesn't even require graduate medical education, but only graduate education. He reviewed a number of other problems with this legislation. Mr. Miller advised that the problems have been shared with the sponsor, the chair of the Senate Health Committee, the Board of Regents, and the Ohio Ophthalmological Society. He added that, as of the previous day, the amendment has not been added to the Legislation.

Dr. Suppan arrived during Mr. Miller's report.

LICENSURE, PROBATION AND REINSTATEMENT CONSENT AGENDA

Dr. Varyani advised that at this time he would like the Board to consider the probationary reports, the probationary requests, and the licensure applications on today's consent agenda. Dr. Varyani asked whether any Board member wished to consider either an application for licensure or a probationary report or request separately. He noted that all probationers are in compliance.

DR. STEINBERGH MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES ON NOVEMBER 10 AND 14, 2008, WITH: DAVID B. AXELSON, M.D.; ASHRAF S. BADOOR, M.D.; KRISTINE M. BLAZEY, M.T.; KEVIN W. BOWERS, D.O.; ROBERT L. BRANDT, JR., M.D.; CELESTE D. BREWER-EDWARDS, P.A.; PAUL CLAASSEN, D.O.; L. JEAN COOPER, M.D.; WENDY KAY DEAN, M.D.; DAVID C. ERNST, M.D.; JAMES VINCENT FURICCHIA, M.D.; RALPH ARDEN HUGUNIN, M.D.; MELANIE LYNNE LEU, M.D.; BRIAN E. LEVE, M.D.; NANCY J. LISCH, M.D.; DAVID W. MASSIE, M.D.; IMRAN RAZA NAQVI, M.D.; PHILLIP THIELE NORTH, M.D.; MICHAEL PAUL PARKER, M.D.; WILLIAM J. PLATT, D.O.; DALE PRATT-HARRINGTON, D.O.; PAUL D. REIKOWSKI, JR., L.M.T.; JAMES M. ROSSELIT, D.O.; JULIA RUFFIN, D.P.M.; JODY LEE NELSON SHORT, D.O.; JON BERKLEY SILK, JR., M.D.; MICHAEL G. STRAYER, M.T.; TOBY JAMES TIPPIE, P.A.; MICHAEL CRAIG WARREN, D.O.; AND HEATHER LOUISE WHITTY, M.T.;

DR. STEINBERGH FURTHER MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS

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OF CONFERENCES AND THE SECRETARY AND SUPERVISING MEMBER'S RECOMMENDATIONS AS FOLLOWS:

- **TO GRANT ANDREW J. CASTELLANOS, M.D.'S REQUEST FOR APPROVAL OF GREGORY S. NIX, M.D., TO SERVE AS MONITORING PHYSICIAN, WITH 10 CHARTS REVIEWED PER MONTH;**
- **TO GRANT RICHARD J. DEFRANCO, M.D.'S REQUEST FOR APPROVAL OF WILLIAM A. PRICE, M.D., TO SERVE AS HIS NEW MONITORING PHYSICIAN, AND FOR APPROVAL OF A NEW PRACTICE PLAN THAT WOULD ALLOW THE DOCTOR TO WORK AS AN ADDICTIONOLOGIST FOR COMMUNITY SOLUTIONS ASSOCIATION;**
- **TO GRANT MILES E. DRAKE, JR., M.D.'S REQUESTS FOR: A REDUCTION IN DRUG SCREENS TO TWICE A MONTH; A REDUCTION IN ALCOHOL AND DRUG REHABILITATION MEETINGS TO TWO PER WEEK, WITH A TOTAL OF 10 PER MONTH; AND A REDUCTION IN APPEARANCES TO EVERY SIX MONTHS;**
- **TO GRANT WILLIAM CLARK HARLAN, D.O.'S REQUEST FOR APPROVAL OF HECTOR FLORES, LSW, LICDC TO SERVE AS MENTAL HEALTH PROVIDER;**
- **TO GRANT SRIPRIYA DOSS KOLAKALUR, M.D.'S REQUEST FOR APPROVAL OF EVERETT C. BURGESS, JR., M.D., TO SERVE AS MONITORING PHYSICIAN, WITH TEN CHARTS REVIEWED PER MONTH; AND TO DENY DR. KOLAKALUR'S REQUEST FOR APPROVAL OF PRADEEP MATHUR, M.D., TO SERVE AS PSYCHIATRIC PHYSICIAN;**
- **TO GRANT ALBERTO LEON, M.D.'S REQUEST FOR A REDUCTION IN APPEARANCES TO EVERY SIX MONTHS;**
- **TO GRANT DAVID J. LEVY, M.D.'S REQUEST FOR ELIMINATION OF REQUIRED PSYCHIATRIC SESSIONS;**
- **TO GRANT ZEV R. MAYCON, M.D.'S REQUEST FOR APPROVAL OF AN ETHICS COURSE TAILORED FOR THE DOCTOR BY DONNA F. HOMENKO, PH.D.;**
- **TO GRANT STEVEN T. REED, M.D.'S REQUEST FOR APPROVAL OF ROBERT DONALD GENIER FERGUSON, M.D., TO SERVE AS THE MONITORING PHYSICIAN, WITH TEN CHARTS REVIEWED PER MONTH;**
- **TO GRANT MARK A. RHODEBACK, M.T.'S REQUEST FOR APPROVAL OF ANGELA B. WALLENBROCK, M.D. TO SERVE AS HIS TREATING PSYCHIATRIST, AND APPROVAL OF AMY E. GIRTEN, LISW TO SERVE AS HIS MENTAL HEALTH PROFESSIONAL TO CONDUCT PSYCHOTHERAPY;**

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- **TO GRANT DIRK I. RODRIGUEZ, M.D.’S REQUEST FOR APPROVAL OF JUNE R. PETERS, PH.D., TO SERVE AS THE TREATING PSYCHOLOGIST;**
- **TO GRANT PATRICIA A. SPIESS, M.D.’S REQUEST FOR A WAIVER OF PERSONAL APPEARANCES UNTIL HER FINAL APPEARANCE IN MARCH 2009; AND**
- **TO DENY KERRIE VAN WAGONER, P.A.’S REQUEST FOR APPROVAL OF GEORGE M. KAISER, D.O., TO SERVE AS HER SUPERVISING PHYSICIAN.**

DR. STEINBERGH FURTHER MOVED TO APPROVE FOR LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS, THE PHYSICIAN APPLICANTS LISTED IN EXHIBIT “A,” THE P.A. APPLICANTS LISTED IN EXHIBIT “B,” THE ACUPUNCTURE APPLICANTS LISTED IN EXHIBIT “C,” AND THE ANESTHESIOLOGIST ASSISTANT APPLICANTS LISTED IN EXHIBIT “D.” DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

ELECTION OF OFFICERS FOR 2009

DR. STEINBERGH NOMINATED DR. MADIA AS PRESIDENT, DR. AMATO AS VICE-PRESIDENT, DR. TALMAGE AS SECRETARY AND MR. ALBERT AS SUPERVISING MEMBER. DR. SUPPAN SECONDED THE NOMINATIONS.

There were no further nominations. By acclamation, the officers for 2009 are:

Dr. Madia, President
 Dr. Amato, Vice-President
 Dr. Talmage, Secretary
 Mr. Albert, Supervising Member

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ADMINISTRATIVE REPORT

Mr. Whitehouse reported that the Controlling Board approved the Board's request for increased appropriation authority for contract hearing examiners. He announced that the Senate confirmed the appointments to the Board of Drs. Majahan, Steinbergh and Suppan. The preliminary report of the agency audit has been received and the exit interview is pending.

Mr. Whitehouse noted that pre-publication drafts of the agency's FY08 annual report have been distributed to Board members for their review and information.

Mr. Whitehouse pointed out that the written Administrative Report included in the agenda materials contains the complaint processing protocol for investigation of complaints against Board Members. He indicated that Dr. Talmage and Mr. Albert, as Board Secretary and Supervising Member, have approved this protocol.

Mr. Whitehouse reported that the Ad Hoc Management Committee met this morning to review proposed Key Performance Measures (KPMs) which will serve as a dashboard regarding board services. It is anticipated that the KPMs will be included on the January agenda for review by the full Board.

PRESIDENT'S REPORT

Dr. Varyani expressed his appreciation to the Board members and staff for their help during his presidential year.

REPORTS OF ASSIGNED COMMITTEES

PHYSICIAN ASSISTANT COMMITTEE:

Dr. Talmage stated that the Committee reviewed several special services plans.

Northeast Ohio Infectious Disease Associates

DR. TALMAGE MOVED TO APPROVE NORTHEAST OHIO INFECTIOUS DISEASE ASSOCIATES SPECIAL SERVICES PLAN REQUEST FOR REMOVAL OF CENTRAL VENOUS CATHETERS BY P.A.S. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye

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Dr. Steinbergh - aye
 Dr. Varyani - aye

The motion carried.

William Lovett, M.D.

DR. TALMAGE MOVED TO APPROVE THE SPECIAL SERVICES PLAN REQUEST FOR EXERCISE STRESS TESTING AS PRESENTED BY WILLIAM LOVETT, M.D. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

ROLL CALL:

Mr. Albert	- aye
Dr. Talmage	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

HMT Dermatology

Dr. Talmage reported that the special services plan for excision of benign nevi, cysts, atypical nevi and lipomas submitted by HMT Dermatology was tabled by the Physician Assistant Policy Committee (PAPC) for modifications and will not be considered by the Board at this time.

Orthopedic Specialists & Sports Medicine

DR. TALMAGE MOVED TO APPROVE THE SPECIAL SERVICES PLAN FOR THE APPLICATION OF CASTS AS SUBMITTED BY ORTHOPEDIC SPECIALISTS & SPORTS MEDICINE. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

ROLL CALL:

Mr. Albert	- aye
Dr. Talmage	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

South Dayton Surgeons

Dr. Talmage explained that the special services plan submitted by the group requested lab band port access. He indicated that the PAPC and the P.A. Committee recommended approval of this request.

DR. TALMAGE MADE A MOTION TO APPROVE THE SPECIAL SERVICES PLAN FOR LAP BAND PORT ACCESS AS SUBMITTED BY SOUTH DAYTON SURGEONS. MR. HAIRSTON SECONDED THE MOTION.

Dr. Steinbergh commented that she was initially concerned that the P.A. was the one making the decision on when the band would inflated or deflated. There is a stipulation that if the P.A. can't insert the needle properly and the inflation isn't going well, he or she will have to look to the supervising physician for care. That's the only concern she had with this.

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Spectrum Orthopedics

Dr. Suppan advised that she would recuse herself from the discussion of the special services plan submitted by Spectrum Orthopedics. Dr. Suppan left the meeting at this time.

Dr. Talmage reported that the following special service plan requests submitted by Spectrum Orthopedics were tabled by the PAPC for further clarification and will not be considered today:

- inject/aspirate joint/bursa hip;
- inject/aspirate joint/bursa ankle;
- inject/aspirate bursa/bursa ankle;
- injections ligament ankle;
- inject tendon sheath ankle.

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DR. TALMAGE MOVED TO APPROVE THE FOLLOWING SPECIAL SERVICES PLANS SUBMITTED BY SPECTRUM ORTHOPEDICS, IN AN OFFICE SETTING, UTILIZING 100% ONSITE SUPERVISION WITH THE P.A. OBSERVING THE PHYSICIAN PERFORM 25 PROCEDURES AND THE PHYSICIAN OBSERVING THE P.A. PERFORM NO LESS THAN 25 PROCEDURES TO DETERMINE COMPETENCY:

- **TO INJECT/ASPIRATE BURSA/JOINT FINGERS**
- **INJECT TENDON SHEATH TRIGGER FINGER**
- **INJECT TENDON SHEATH WRIST**
- **INJECT/ASPIRATE BURSA/BURSA SHOULDER**
- **INJECT/ASPIRATE CARPAL TUNNEL**
- **INJECT TENDON SHEATH PLANTAR FASCIAINJECT/ASPIRATE BURSA/BURSA TOES**
- **INJECT/ASPIRATE JOINT/BURSA TOES**
- **INJECT/ASPIRATE BURSA/BURSA OLECRANON**
- **INJECT/ASPIRATE JOINT/BURSA OLECRANON**
- **INJECT/ASPIRATE JOINT/BURSA ACROMIOCLAVICULAR**
- **INJECT/ASPIRATE BURSA/BURSA ACROMIOCLAVICULAR**
- **INJECT/ASPIRATE BURSA /BURSA FINGERS**
- **INJECT/ASPIRATE BURSA /BURSA WRIST**
- **INJECT/ASPIRATE JOINT/BURSA WRIST -INJECT/ASPIRATE BURSA/JOINT SHOULDER**
- **INJECT GANGLION CYSTS**
- **INJECT/ASPIRATE BURSA/BURSA ELBOW**
- **INJECT TENDON SHEATH ELBOW**
- **INJECT/ASPIRATE BURSA/JOINT ELBOW**

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- nay
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Dr. Suppan returned to the meeting at this time.

Dr. Talmage also reported that the P.A. Committee discussed replacement of gastrostomy tubes by PAs in

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response to an inquiry from the PAPC. He reported that the P.A. Committee relayed significant concerns with having anyone other than a surgeon perform this procedure.

Dr. Talmage announced that the DEA has approved Ohio P.A.s with prescriptive authority as being eligible for DEA registration to prescribe Schedules III through V drugs.

RATIFICATION OF SETTLEMENT AGREEMENTS

Board members were provided with copies of settlement agreements negotiated by Board staff and/or the staff of the Office of the Attorney General, as authorized by the Board's Secretary and Supervising Member, and as appropriate, the Board President, as well as copies of summaries of the agreements. The names and license numbers of the licensee or applicant subjects of such settlement agreements were removed from the documents.

JACK E. SLINGLUFF, DO – PERMANENT SURRENDER/ CONSENT TO REVOCATION OF LICENSE

DR. STEINBERGH MOVED TO RATIFY THE PERMANENT SURRENDER WITH CONSENT TO REVOCATION OF DR. SLINGLUFF'S LICENSE TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY IN OHIO. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

TIMOTHY A. HEINRICHS, M.D. - CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED STEP I CONSENT AGREEMENT WITH DR. HEINRICHS. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye

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Dr. Amato	- aye
Dr. Majahan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

WILLIAM E. TIEMANN, M.D. – CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED STEP I CONSENT AGREEMENT WITH DR. TIEMANN. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- abstain

The motion carried.

JOSEPH F. LYDON, JR, M.D. – CONSENT AGREEMENT

DR. MADIA MOVED TO RATIFY THE PROPOSED STEP I CONSENT AGREEMENT WITH DR. LYDON. DR. AMATO SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

KEVIN W. BOWERS, DO – CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED STEP I CONSENT AGREEMENT

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WITH DR. BOWERS. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Dr. Amato expressed his concern regarding licensees who have had a second relapse, especially if relapses occurred within a short period of time. He questioned if the licensee was truly working on recovery.

Dr. Steinbergh commented that the Board has discussed these issues in the past.

Mr. Albert explained the Board's monitoring and compliance activities for the benefit of the newer members.

STEPHEN RANDALL PORTER, M.D. – PERMANENT SURRENDER

DR. STEINBERGH MOVED TO RATIFY THE PERMANENT SURRENDER OF DR. PORTER'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

EXECUTIVE SESSION

DR. STEINBERGH MOVED THAT THE BOARD DECLARE EXECUTIVE SESSION TO CONFER WITH THE ATTORNEY GENERAL'S REPRESENTATIVES ON MATTERS OF

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PENDING OR IMMINENT COURT ACTION. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

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

Dr. Egner joined the meeting at this time.

REPORTS OF ASSIGNED COMMITTEES

IMPAIRMENT COMMITTEE

Ms. Anderson presented the Impairment Committee report. She noted that the agenda materials include a memorandum outlining a proposed amendment to Rule 4731-16-05(A)(1), Ohio Administrative Code (OAC), the rule regarding examinations. Following the November Board meeting, an inconsistency was found. Ms. Anderson noted the following:

- Section (A)(1): required urine screening or blood alcohol testing upon service of the Board order for the examination or on another day prior to the examination, and again at the beginning of the examination. Ms. Anderson explained that this requirement applies to all examinations ordered by the Board, not just the outpatient assessments for massage therapists and cosmetic therapists.
- Section (D) of the rule states that the Board may require a certificate holder or applicant to submit to a drug screen at the time it serves its order for the examination or at any time after it issues the examination order and before the examination is completed. This section makes the additional drug screening discretionary, while Section (A)(1) makes it mandatory.
- Section (D)(1) of the rule states that the Board shall forward the results of the test to the treatment provider, and that the results shall be considered part of the examination. The administrative procedure to be used by the Board to obtain the additional screen is still being developed, but it is anticipated that the individual ordered to the examination may be directed to the treatment provider to provide the specimen.

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Ms. Anderson advised that the proposed amendment corrects the inconsistency within the rule and makes the additional drug screening an option within the Board's discretion. The proposed amendment also modified (D)(1) to allow flexibility as to how the additional drug screening is conducted.

Ms. Anderson indicated that the Impairment Committee supported the proposed amendment.

MR. ALBERT MOVED TO APPROVE THE PROPOSED AMENDMENTS TO RULE 4731-16-05(A)(1), (A)(3) AND (D)(1). MR. HAIRSTON SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- nay
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

LICENSURE COMMITTEE

Yasushi Kisanuki, M.D.

Dr. Egner advised that Dr. Kisanuki is over the seven-year time limit by 24 months. He passed Steps 1, 2 and 3 on the first attempt with scores of 80, 78 and 83. Dr. Kisanuki sent a letter of explanation saying he went over the seven-year limit for USMLE because he immigrated to the United States in 1994 and participated in basic science research projects at the University of Texas Southwestern Medical Center before continuing the USMLE exam sequence with Step 2 in March 1999.

Dr. Kisanuki graduated from the University of Tokyo in Tokyo, Japan in March 1994. He trained in Japan from June 1994 until November 1994, when he immigrated to the United States. Dr. Kisanuki participated in basic science research in molecular genetics at the University of Texas Southwestern Medical Center at Dallas from December 1994 until June 2001. Dr. Kisanuki then trained at the St. Joseph Mercy Health System in Ann Arbor, Michigan as an Internal Medicine resident from July 2001 until June 2002. He then started a Neurology residency at The University of Michigan Hospitals and Health System from July 2002 until June 2005. Dr. Kisanuki is currently serving as a Clinical Lecturer at the University of Michigan Hospital from July 2005 to the present. Dr. Kisanuki holds a current license in Michigan. He was American Board Certified in Psychiatry and Neurology in May 2006.

DR. EGNER MOVED TO APPROVE THE LIMITED EXCEPTION OF THE SEVEN-YEAR RULE AS OUTLINED IN 4731-6-14(C) (3), AND TO ACCEPT DR. KISANUKI'S EXAMINATION SEQUENCE IN ORDER FOR HIM TO BE GRANTED A LICENSE, CONTINGENT UPON ALL

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REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. DR. MADIA SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Mohamed Mohamed, M.D.

Dr. Egner advised that Dr. Mohamed is over the seven-year time limit by nine months. He passed Step 1 on the first attempt, and Steps 2 and 3 on the second attempt with scores of 84, 84 and 81. Dr. Mohamed sent a letter of explanation saying he went over the seven-year limit for USMLE because he did not need to pass it until he finished residency.

Dr. Mohamed graduated from Jordan University in Irbid, Jordan in June 1997. Dr. Mohamed worked and trained in Jordan from July 1997 until June 2002, when he immigrated to the United States. He trained at Mercy Hospital of Buffalo in Internal Medicine from July 2002 until June 2003. Dr. Mohamed then trained at the University of Iowa in Iowa City as a Pediatric resident from July 2003 until March 2007. He then started a Neonatology fellowship at Rainbow Babies and Children's Hospital in Cleveland from April 2007 to the present (projected end date 03/2010). Dr. Mohamed holds a current Ohio training certificate. He was American Board Certified in Pediatrics in October 2007.

DR. EGNER MOVED TO APPROVE THE LIMITED EXCEPTION OF THE SEVEN-YEAR RULE AS OUTLINED IN 4731-6-14(C) (3), AND TO ACCEPT DR. MOHAMED'S EXAMINATION SEQUENCE IN ORDER FOR HIM TO BE GRANTED A LICENSE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. DR. STEINBERGH SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye

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Dr. Amato	- aye
Dr. Majahan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

Mark Richards, M.D.

Dr. Egner advised that Dr. Richards is over the seven-year time limit by four months. He passed Steps 1, 2 and 3 on the first attempt with scores of 92, 88 and 89. Dr. Richards is over the seven-year limit because he obtained a M.D./Ph.D. from the University of Michigan. His Ph.D. was in Mechanical Engineering. Dr. Egner stated that, technically, the Board has required the Ph.D. to be in a biological science or related medical field; however, Dr. Richards is a cardiologist electrophysiologist, and the Ph.D. is appropriate for his specialty.

Dr. Richards graduated from the University of Michigan in June 1999. He trained at Washington University/Barnes Hospital in St. Louis, Missouri in Internal Medicine from July 1999 until June 2001. Dr. Richards then continued as a Cardiology Resident at Barnes Hospital from July 2001 until June 2005. He then started an Electrophysiology Fellowship at Washington University from July 2005 until June 2006. Dr. Richards practices as a Staff Electrophysiologist at St. Louis University from August 2006 to the present. Dr. Richards holds licenses in Michigan and Missouri. He was American Board Certified in Internal Medicine (2003) and Cardiovascular Disease (2005).

DR. EGNER MOVED TO APPROVE THE LIMITED EXCEPTION OF THE SEVEN-YEAR RULE AS OUTLINED IN 4731-6-14(C) (3), AND TO ACCEPT DR. RICHARDS' EXAMINATION SEQUENCE IN ORDER FOR HIM TO BE GRANTED A LICENSE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. DR. MADIA SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

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Tabitha Mills-Hoover, L.M.T.

Dr. Egner advised that Ms. Mills-Hoover is applying for restoration of her massage therapy license, which was originally issued in 1996. Ms. Mills-Hoover has indicated on her application for restoration that she has not actively practiced Massage Therapy since 1999.

DR. EGNER MOVED TO APPROVE MS. MILLS-HOOVER'S REQUEST FOR RESTORATION OF HER OHIO LICENSE SUBJECT TO SUCCESSFUL COMPLETION OF THE LIMITED BRANCH PORTION OF THE MASSAGE EXAMINATION AND CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. DR. STEINBERGH SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

LaRahn Wilkinson, L.M.T.

Dr. Egner advised that Ms. Wilkinson is applying for restoration of her massage therapy license in Ohio. Ms. Wilkinson has indicated on her application for restoration that she has not actively practiced Massage Therapy since 2005.

DR. EGNER MOVED TO APPROVE MS. WILKINSON'S REQUEST FOR RESTORATION OF HER OHIO LICENSE SUBJECT TO SUCCESSFUL COMPLETION OF THE LIMITED BRANCH PORTION OF THE MASSAGE EXAMINATION AND CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. DR. STEINBERGH SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye

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Dr. Majahan - aye
Dr. Steinbergh - aye
Dr. Varyani - aye

The motion carried.

Eugenia Abonyi M.D.

Dr. Egner advised that Dr. Abonyi is over the seven-year time limit by 28 months. She passed Step 1 on the ninth attempt with a 75, Step 2 on the eighth attempt with a 75, and Step 3 on the fifth attempt with a score of 81. Dr. Abonyi has sent a letter of explanation claiming she went over the seven-year limit for USMLE because of family tragedy and hardship.

Dr. Abonyi graduated from Volgograd Medical Academy in Volgograd, Russia in June 1990. She practiced in Nsukka, Nigeria from August 1990 until February 1992. She then immigrated to the U.S., and worked in non-medical jobs in Texas and California from March 1992 until September 2003. Dr. Abonyi then worked as a part time voluntary family practice intern in Garden Grove, California from February 2003 until September 2003, then for one month as a voluntary family practice intern at Atlanta Primary Care in Atlanta, Georgia in August 2003. Dr. Abonyi began her residency in Psychiatry at MetroHealth Medical Center from October 2003 until October 2006, and then continued as a Child and Adolescent Psychiatry fellow at University Hospitals of Cleveland from October 2006 until October 2008. Dr. Abonyi holds an Ohio training certificate, and does not report any American Board certification.

Dr. Egner advised that the Committee recommends denial of Dr. Abonyi's request.

DR. EGNER MOVED TO PROPOSE TO DENY DR. ABONYI'S REQUEST FOR A WAIVER OF THE SEVEN-YEAR LIMIT ON THE BASIS THAT SHE DID NOT SHOW GOOD CAUSE FOR MISSING THE DEADLINE. DR. STEINBERGH SECONDED THE MOTION.

Dr. Suppan asked for some discussion on this case. She noted that Dr. Abonyi describes her "family tragedy" as a motor vehicle accident involving her sister's family in Nigeria in 2003. Her brother-in-law and two of her sister's children were killed in the accident, and her sister was in a coma for five months and is now paralyzed from her neck down. Dr. Suppan noted that Dr. Abonyi is coordinating the care of her sister and her sister's child. Dr. Suppan stated that she's not advocating one way or the other, she just doesn't want the Board to miss anything.

Dr. Varyani stated that he can understand her being affected by the tragedy for a couple of years, but not for eight or nine exam attempts.

Dr. Steinbergh stated that if a person doesn't pass these exams as the Board expects, it's a clear indication that they don't have the capacity to practice medicine. She stated that tragedies are quite unfortunate, but the Board simply can't allow this type of individual to be licensed.

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

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VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Fabio Cominelli, M.D.

Dr. Egner advised that Dr. Cominelli is a graduate of the University Firenze, in Firenze, Italy. He stated on his application that he has completed a 24-month Research Fellowship in Gastroenterology at the UCLA Medical Center. Dr. Cominelli graduated from the University Firenze in Firenze, Italy in July 1983. He trained and practiced in Italy from November 1983 until April 1987. Dr Cominelli then immigrated to the U.S. to participate in a 24-month Research Fellowship in Gastroenterology at the UCLA Medical Center from April 1987 until March 1989. Dr Cominelli continued at UCLA as a Visiting Scientist and Research Associate, then as an Assistant Professor from April 1989 until June 1995. He then served as Professor of Medicine/Division Chief and attending physician at the University of Virginia Health System in Charlottesville from July 1995 until June 2007. Dr Cominelli is currently serving as the Center Director at the University of Virginia Health System since July 2007 to the present time. Dr. Cominelli does not report any American Board of Medical Specialty certification.

DR. EGNER MOVED TO APPROVE DR. COMINELLI'S REQUEST THAT THE BOARD DEEM HIS 24-MONTH FELLOWSHIP IN THE UNITED STATES AND HIS TRAINING AND EXPERIENCE IN ITALY TO BE EQUIVALENT TO THE 24 MONTHS OF GRADUATE MEDICAL EDUCATION THROUGH THE SECOND-YEAR LEVEL REQUIRED SO THAT HE MAY BE GRANTED A LICENSE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. DR. STEINBERGH SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye

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Dr. Varyani - aye

The motion carried.

Mychailo M. Fulmes, M.D.

Dr. Egner reported that Dr. Fulmes is over the seven-year time limit by 9 months. He passed Step 1 on the second attempt, Step 2 on the third attempt and Step 3 on the fourth attempt with scores of 80, 76 and 83. Dr. Fulmes is over the seven-year limit because he was defending his Ph.D. thesis in the Ukraine, and doing his postgraduate training in the United States.

Dr. Fulmes graduated from the Lviv Medical University, the Ukraine in June 1989. Dr. Fulmes trained and practiced in the Ukraine from July 1989 until April 1998. He then immigrated to the U.S. and worked as a surgical assistant at Southwest General Hospital in Cleveland from April 1998 until June 2002. Dr. Fulmes then began residency as a General Surgery Resident at Fairview Hospital from July 2002 until June 2008. Dr. Fulmes holds an Ohio training certificate, and does not report any American Board certification.

Dr. Egner indicated that the Committee discussed this at length and did not feel that Dr. Fulmes' explanations were sufficient to find "good cause."

DR. EGNER MOVED TO PROPOSE TO DENY DR. FULMES' REQUEST FOR A WAIVER OF THE SEVEN-YEAR RULE ON THE BASIS THAT SHE DID NOT SHOW GOOD CAUSE FOR MISSING THE DEADLINE. DR. MADIA SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Dr. Mahajan left the meeting at this time.

Jeffrey Mark Lubow, M.D.

Dr. Egner advised that Dr. Jeffrey Lubow has requested to take the computer-based USMLE Step 3 with special accommodations under the Americans with Disabilities Act of 1990. He has been diagnosed with ADHD. Dr. Lubow is requesting extra time (double time), additional break time, permission to cover the

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window, and a separate testing area.

Dr. Lubow had requested and received the above mentioned accommodations for Step 1 and Step 2. However, the National Board of Medical Examiners expert has recommended that Dr. Lubow be given extra time (only time and one half) and a separate testing area only.

Dr. Steinbergh asked what is meant by “permission to cover the window.”

Dr. Egner stated that Dr. Lubow indicated that an uncovered window could be distracting. She stated that the NBME recommended for this candidate. She commented that if there’s another person in the room, that person might find the cover distracting.

Dr. Suppan stated that he’s requested a separate testing room.

Dr. Egner stated that this means separate from the rest of the large group; it might not be isolated. She added that her other feeling is that this is a physician, and if he is going to be practicing medicine, there are windows everywhere. You have to make decisions in the presence of a window.

Dr. Varyani commented that you also have to make decisions when there’s beeping going on, someone’s yelling at you. Dr. Varyani stated that he has a problem granting all the accommodations.

Dr. Egner stated that the separate testing area and the time and a half are pretty standard accommodations that the Board allows. She stated that she doesn’t have a problem with that, but she does have a problem with the window.

Dr. Suppan stated that all they have to do is face him away from the window and he should be okay.

DR. EGNER MOVED TO APPROVE THE NBME EXAMINER’S RECOMMENDATION THAT DR. LUBOW BE GIVEN EXTRA TIME (ONLY TIME AND ONE HALF) AND A SEPARATE TESTING AREA ONLY DURING THE ADMINISTRATION OF THE STEP 3 OF THE USMLE. DR. STEINBERGH SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- abstain

The motion carried.

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Lynn Janoch, L.M.T.

Dr. Egner reported that Ms. Janoch is applying for restoration of her massage therapy license, originally issued in 1999. Ms. Janoch indicated on her application for restoration that she has not actively practiced Massage Therapy since 2005.

DR. EGNER MOVED TO APPROVE MS. JANOCH'S REQUEST FOR RESTORATION OF HER OHIO LICENSE SUBJECT TO SUCCESSFUL COMPLETION OF THE LIMITED BRANCH PORTION OF THE MASSAGE EXAMINATION AND CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. DR. STEINBERGH SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Majahan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Geralyn M. Meny, M.D.

Dr. Egner reported that Dr. Meny is applying for licensure in Ohio and has indicated that she has not been engaged in the clinical practice of medicine since May 2000.

Dr. Meny graduated from the University of Texas Southwestern Medical Center in Dallas, Texas in June 1990. She is requesting endorsement of her FLEX scores taken for Texas in June 1990. Dr. Meny completed residency training in Anatomical and Clinical Pathology at the University of Texas Southwestern Medical Center from July 1990 until June 1995. Dr. Meny then worked as an Assistant Professor of Pathology/Associate Laboratory Director at the University of Texas Southwestern Medical Center from July 1995 until May 2000. Dr. Meny has served as the Medical Director of the American Red Cross Blood Services in Philadelphia from May 2000 until the present. Dr. Meny is American Board certified in Anatomical and Clinical Pathology since 1995, and Blood Banking and Transfusion Medicine since 1998. She holds licenses in Washington DC, Virginia, Maryland, New Jersey, Pennsylvania and Texas.

DR. EGNER MOVED TO APPROVE DR. MENY'S REQUEST FOR OHIO LICENSURE PENDING SUCCESSFUL COMPLETION OF THE SPEX EXAM OR BOARD RECERTIFICATION, AND CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING

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**RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS.
DR. STEINBERGH SECONDED THE MOTION.** A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Pierce Park, M.D.

Dr. Park is over the seven-year time limit by eight months. He passed Step 1, 2 and 3 on the first attempt with scores of 87, 83 and 81. Dr. Park is over the seven-year limit because he changed from General Surgery to Internal Medicine, and had an intervening period of basic science research.

Dr. Park graduated from the University of Chicago Pritzker School of Medicine in June 1998. Dr. Park trained at Indiana University School of Medicine as an Intern in Surgery from July 1998 until June 1999. Dr. Park then participated in Clinical Research at the University of Chicago from July 1999 until June 2001. Dr. Park then began residency as an Internal Medicine Resident at Loyola University Medical Center from July 2001 until June 2004. He then started a Renal Fellowship at Johns Hopkins University School of Medicine from July 2004 until of June 2007. Dr. Park then trained as a Hepatology Fellow at the University of Nebraska from July 2007 until June 2008. Dr. Park holds licenses in Indiana, Illinois, Maryland and Nebraska. He was American Board certified in Internal Medicine (2004) and Nephrology (2006).

DR. EGNER MOVED TO APPROVE THE LIMITED EXCEPTION OF THE SEVEN-YEAR RULE FOR GOOD CAUSE, AS OUTLINED IN 4731-6-14(C) (3), AND TO ACCEPT DR. PARK'S EXAMINATION SEQUENCE IN ORDER FOR HIM TO BE GRANTED A LICENSE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. DR. STEINBERGH SECONDED THE MOTION. A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye

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Dr. Amato - aye
Dr. Steinbergh - aye
Dr. Varyani - aye

The motion carried.

Dr. Mahajan returned to the meeting at this time.

Thai Rubenstein Rivitz, M.D.

Dr. Egner reported that Dr. Rubinstein Rivitz is applying for licensure in Ohio and has indicated on her application that she has not actively practiced clinical medicine since June 2005. Dr. Rubinstein Rivitz is a graduate of the University of Sao Paulo, in Sao Paulo, Brazil. She is requesting endorsement of her USMLE scores. Dr. Rubinstein Rivitz completed training and also practiced Pediatrics in Brazil from July 1996 through August 2001. Dr. Rubinstein Rivitz then immigrated to the U.S. and served a Pediatric residency at Sinai Hospital of Baltimore in Baltimore, Maryland from May 2003 until June 2005. Since July 2005, she has taken specialty Boards and been at home with her family. Dr. Rubinstein Rivitz holds a license in Iowa and has been American Board Certified in Pediatrics since November 2005.

Dr. Steinbergh noted that Dr. Rubinstein Rivitz was just recertified in 2005, and questioned making her be tested again.

Dr. Egner stated that the Committee did discuss this case and noted that soon she will have been out of practice for four years.

DR. EGNER MOVED TO APPROVE DR. RUBINSTEIN RIVITZ'S REQUEST FOR OHIO LICENSURE SUBJECT TO SUCCESSFUL COMPLETION OF THE SPEX EXAM OR BOARD RECERTIFICATION, AND CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. DR. STEINBERGH SECONDED THE MOTION. A vote was taken

VOTE:

Mr. Albert - aye
Dr. Egner - aye
Dr. Talmage - aye
Dr. Suppan - aye
Dr. Madia - aye
Mr. Hairston - aye
Dr. Amato - aye
Dr. Mahajan - aye
Dr. Steinbergh - aye
Dr. Varyani - aye

The motion carried.

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Proposed amendments to Rule 4731-6-14

Dr. Amato stated that at the Board's meeting in November, he was the member of the Licensure Committee who recommended adoption of a rule change. Later that day the Board made what he felt was a right decision that turned out to be an illegal decision. Dr. Amato stated that he then had a meeting at the State House, and the rule that he recommended the Board adopt in Committee the Board then passed.

Dr. Amato stated that the previous day the Board reconsidered its "illegal right decision" and made it legal. The rule change that the Board recommended go to hearing was rule 4731-6-14(C), which is actually more restrictive than the rule that the Board wanted to override in November.

DR. AMATO MOVED TO WITHDRAW THE RULE FROM THE HEARING PROCESS, AND TO SEND IT BACK TO STAFF AND THE LICENSURE COMMITTEE.

Dr. Amato advised that he's making the motion because, as the Board proved in November, it would have no discretionary authority within the rule, as he understands it. Dr. Amato stated that he really feels that the function of this Board is to assert discretion.

DR. SUPPAN SECONDED DR. AMATO'S MOTION.

Dr. Egner stated that she would like to respond to Dr. Amato's statement. She stated that, being the head of the Licensure Committee, with all due respect, she's a little offended that this is where Dr. Amato decided to bring this matter up. She stated that he's on the Committee, and the Committee has talked about this a number of times. The Committee has worked on this rule for months. She stated that neither she nor Ms. Thompson nor Ms. Rieve knew anything about Dr. Amato's recommendation. She stated that she thinks that they deserve to hear about this, at least, in the Committee.

Dr. Amato apologized. He stated that he actually made the motion in Committee in November. He stated that he made an error the previous day in Executive Committee.

Dr. Egner stated that the Licensure Committee held a meeting the previous day.

Dr. Amato stated that prior to the Licensure Committee, he went to the Executive Committee and asked where he should bring this up.

Dr. Egner stated that she thinks that it should have been brought up during the Licensure Committee meeting. She added that there is a very small part of the amended rule that is restrictive, in the sense that it takes away some of the Board's discretionary decision making. On the other hand, it is allowing far more people licensure than is probably allowed now because it will be a ten-year rule for everyone and it will be tied to passage of exams for everyone. Dr. Egner stated that Ms. Thompson has done fabulous research that has been presented to the Committee that shows how this is now more fair.

Dr. Egner stated that she understands the emotional attachment that everyone has had to Dr. Higgs, but he is one person. Dr. Egner asked whether changing a rule for one person is where the Board wants to be.

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Dr. Egner asked what Dr. Amato wants the discretion to be. The “good cause” has led the Board down a terrible road. It has been inconsistent. She stated that she thinks that the “good cause” clause has been more unfair to licensees than anything else because it’s just so arbitrary. She asked what Dr. Amato proposes for being the reason for making the exception.

Dr. Talmage stated that he thinks that this illustrates the fact that this is the Committee discussion. To delay submitting the rule and taking it back to Committee, therefore, seems justified. The Board is discussing here what the Committee should be discussing. Dr. Talmage stated that he would agree with the motion to hold submission, to return it to Committee, to have all of these discussions, and to bring back a recommendation to the Board. Dr. Talmage stated that that makes perfectly good sense to him.

Dr. Steinbergh stated that she agrees with Dr. Egner on this. She stated that the discretionary piece is difficult. She stated that it does get to be a very emotional thing for those who have been on the Board a long number of years. Who should get their license? Is this doctor different from this doctor? It’s a difficult thing. Dr. Steinbergh stated that she thinks that licensure should be more administrative than anything. She understands Dr. Amato’s concern that, “if we don’t have discretion, we should just rubberstamp, and what is the Board here for?” Dr. Steinbergh agreed that licensing is a big piece of what the Board does, but she thinks that it should be mostly administrative; i.e., they meet criteria or they don’t meet criteria. That’s where the Board got into trouble with the current rules. It has a level of discretion and it’s always torn. She added that using that discretion is very arbitrary and it is difficult to see this Board continue to have some level of discussion on this. She noted that there are applications upon which the Board has already decided that the Board will see again because attorneys are watching the decisions the Board makes.

Dr. Steinbergh suggested looking at other states’ licensure requirements, adding that at some point you do have to have requirements. If you are a state who cares less about requirements and wants to bring in a lot of doctors, you’re going to have the bad as well as the good. Dr. Steinbergh stated that one piece about Ohio for which the Board should be very proud is that it has high-quality physicians, even though the Board has to discipline a small percentage of its doctors. But the Board has to take a stand and say that “this is what you have to do to meet our requirements.” Dr. Steinbergh stated that she thinks that the ten-year rule gives people a lot of time to get appropriately credentialed in order to get licensed by the State of Ohio.

Dr. Steinbergh stated that she really disagrees with the Board giving a doctor who is 31 months over the seven-year rule a license just because she came to hearing and had emotional reasons. The Board approving her license was arbitrary because the Board has turned away people like her time and time again. There has to be a wall, and it has to end someplace. The Board can’t keep pushing the envelope and saying it’s going to also have discretion. The Board needs to maintain high standards of licensure in this state or else the Medical Board will see a difference in the types of discipline it has to impose and, also, it will become less strong as a medical board.

Dr. Mahajan stated that he doesn’t think that the Board has given a license to anyone that Board members didn’t feel was deserving. The Board looked at everything. He added that, concerning discretion, it is up to the Board members to decide how much discretion. He stated that if the Board goes from a seven-year

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deadline to a ten-year deadline, there will be a lot of people who were rejected and who have had three attempts, four attempts, five attempts, that will roll into the ten years and some will pass through. Dr. Mahajan commented that Ohio will have more bad physicians come through than it would have if it stayed with the rule it had before. Dr. Mahajan stated that the Board should allow reasonable discretion. He stated that he doesn't think that any Board members are illogical.

Dr. Mahajan stated that he felt strongly about the doctor who was 31 months over the seven-year deadline. He noted that she had family commitments, she was out of the country, and she did very well in her examinations. He feels that she will be a good physician.

Dr. Mahajan stated that the Board needs to be discreet in how much discretion it's going to use. He added that he doesn't think that the Board did anything wrong the previous day.

Dr. Suppan stated that, although she understands what Dr. Steinbergh is saying, she really doesn't feel that she has personally acted on emotion but, rather, on what she thinks is her best judgment. She stated that she would hope that all Board members do that. She said it's a judgment issue, not an emotional issue.

Dr. Suppan stated that in the case of Dr. Higgs, the Board already had a case where the Board's decision was changed in the Peterman case. There was at least one court that felt that the way that the Board made its decision did not fully consider the issue and come to a judgment that allowed for all of the facts. The court has looked at this situation and said, at least in this particular case, that it thinks the Board's decision should have been different. Dr. Suppan stated that what the Board is faced with, everyday and everything it does, from the moment it walks in the door, and really from all month, is to look at the facts, study the facts, and to try to make the best judgment it can.

Dr. Suppan continued that she understands the administrative part, and she agrees in part with that. However, if it's solely an administrative decision, she doesn't think that the Board would have to consider those cases at all. All it would have to do is have a list and approve them.

Dr. Suppan stated that the Board could define "good cause," giving it a very rigid definition and say that "this is" what "good cause" means. That was not the intent of having "good cause." The intent was that Board members would each use their judgment to interpret what that means.

Dr. Suppan stated that she supports the concept of judgment in decision making and discretion in decision making. She stated that she feels that that's what the Board is here for.

Mr. Whitehouse stated that, for the record, in the Peterman case, the court didn't speak to the merits of this individual and whether the Board should or shouldn't license him and whether he was qualified or not. It spoke to the decision of the Board with regard to the three-strikes rule. In the record of that deliberation, there is no reference as to how the three strikes played out – what reference or relevance there was to "three strikes" and someone's qualifications. That's why the court ruled the way it did in that case.

Mr. Whitehouse stated that, with regard to discretion as it relates to licensing, the Board has discretion. It can exercise that discretion with everyone who comes in the door and it can listen to every one of those

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individuals and make its decision, or the Board can establish a rule that tells everyone what is expected and that is what the Board will follow. He commented that the Board kind of ended with this hybrid with regard to this rule, when it opened up this “good cause” exception. That allowed a lot more folks to come in the door and argue and for the Board to figure out what “good cause” is and isn’t. He stated that the Board has talked about due process and fairness, but consistency is the other side of that coin. The Board needs to be able to assure people, whether they’re all coming in individually or whether they’re looking at the rule and what’s being applied to them, that there is consistency with regard to this decision making that the Board exercises. He stated that no one is taking away the Board’s discretion. The question is how the Board chooses to exercise it, whether it chooses to tell people, “here’s our rule and this is what we decide, as the Medical Board, is our criteria for you to be licensed,” or, “come on in one at a time and we’ll decide, and hopefully those decisions will be consistent.”

Ms. Debolt stated that the rule seems more restrictive in that you don’t have any “good cause” consideration, but it really is more permissive because a lot more people will be allowed to be licensed without even having to consider “good cause.” She suggested that the Board might want Ms. Thompson to explain to it the basis for the rule and why the language was developed from the licensing perspective and from the administrative efficiency perspective as well. She stated that Ms. Thompson is the one that knows how it works, what they see, and the impact of the rule.

Dr. Varyani asked whether Board members wish further discussion on this issue.

Dr. Amato stated that he agrees wholeheartedly with Dr. Steinbergh that licensure should be mostly pro forma. This rule as written is excellent and staff has done an excellent job, the Committee did an excellent job. By going from seven years to ten years the Board will eliminate probably 95% of its appeals. As a Board member, all he’s asking for is that at the ten year, he wants a little wiggle room for the rare “Dr. Higgs” who comes through. He wants one or two lines to give the Board some discretion. Hopefully the Board will only have to use it once a year.

Dr. Steinbergh stated that that’s the problem. She stated that she understands where Dr. Amato is going.

Dr. Amato stated that that’s a problem, but that’s the Board’s job.

Dr. Egner asked Dr. Amato what he’s suggesting that that discretion be. Dr. Egner stated that if this goes back to Committee, it gets settled next month, because this rule needs to go through. She stated that it is upsetting to her that this is now delaying this rule. The Board has had so much opportunity to be here at this point, and she wants this rule approved.

Dr. Madia stated that he agrees with Dr. Talmage that it should go back to Committee.

Mr. Albert called the question.

A vote was taken on Dr. Amato’s motion:

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

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Dr. Talmage	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

Mr. Albert left the meeting at this time.

PRESCRIBING COMMITTEE

Mr. Schmidt reported that the Prescribing Committee considered comments received at the July 14, 2008 public hearing regarding Rule 4731-11-03 (A)(1). In general, Rule 4731-11-03 addresses the utilization of schedule II controlled substance stimulants. Paragraph (A)(1) permits the use of schedule II controlled substance stimulants for the treatment of narcolepsy.

Mr. Schmidt advised that the Committee considered amended language proposed by Dr. Virgil Wooten, a sleep medicine specialist, in his written testimony, allowing for the utilization of schedule II controlled substance stimulants in the treatment of other sleep disorders. He noted that Dr. Wooten testified that schedule II drugs are no longer being used for just narcolepsy, but for other related sleep disorders. Mr. Schmidt referred to Mr. Miller's memorandum of November 26, which contained proposed amended language to cover Dr. Wooten's recommendation.

Mr. Schmidt stated that the Pharmacy Board has had an opportunity to review this proposal and it expressed concerns that one of the phrases might return Ohio to the 1980s, and what was going on with amphetamines at that time. The Pharmacy Board was concerned with how "sleep disorders" might be defined.

Mr. Schmidt stated that Dr. Wooten and Mr. Benedict of the Pharmacy Board had an opportunity to talk before the Committee and the Committee discussed language that they agreed would meet everybody's needs. Mr. Schmidt reported that the Prescribing Committee approved the following changes to Paragraph (A)(1):

- (A) A physician shall not utilize a schedule II controlled substance stimulant for any purpose except:
 - (1) The treatment of narcolepsy, idiopathic hypersomnia, or hypersomnias due to medical conditions known to cause excessive sleepiness.

Mr. Schmidt stated that the changed language locks in the fact that there has to be a medical condition.

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Mr. Schmidt stated that Mr. Wooten, Mr. Benedict and the Prescribing Committee all approved the revised language.

DR. STEINBERGH MOVED TO APPROVE THE PROPOSED CHANGES TO RULE 4731-11-03(A)(1) BASED UPON THE COMMENTS RECEIVED AT THE JULY 14, 2008 PUBLIC HEARING. MR. HAIRSTON SECONDED THE MOTION. A vote was taken

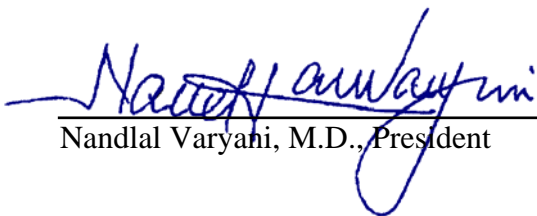
VOTE:	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.


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

Thereupon at 10:08 a.m. on December 11, 2008, the December 10-11, 2008 meeting of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on December 10-11, 2008, as approved on January 14, 2008.



Nandlal Varyani, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)

