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CLERK OF COURT
SUPREME COURT OF OHIO

# The Supreme Court of Ohio

Gerald A. Coniglio, M.D., J.D.

v.

State Medical Board of Ohio

Case No. 2007-2085

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

(Franklin County Court of Appeals; No. 07AP298)

THOMAS J. MOYER
Chief Justice

STATE MEDICAL BOARD
2008 FEB 25 A 9 48

IN THE SUPREME COURT OF OHIO

07-2085

| | | |
|---|---|---|
| Gerald A. Coniglio, MD, JD,<br>Appellant,<br><br>v.<br><br>State Medical Board of Ohio<br>Appellee. | :<br>:<br>:<br>:<br>:<br>:<br>:<br>: | On Appeal from the Franklin County Court of Appeals, Tenth Appellate District Case No. 07AP-298 |

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NOTICE OF APPEAL OF APPELLANT GERALD A. CONIGLIO, MD, JD

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Counsel for Appellant, Gerald A. Coniglio, MD, JD

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SUPREME COURT OF OHIO

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Asst. Attorney General
Health and Human Services Section
OFFICE OF ATTORNEY GENERAL MARC DANN
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

Counsel for Appellee, State Medical Board of Ohio

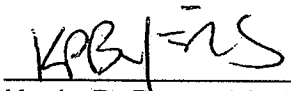
HEALTH & HUMAN
NOV 13 2007
SERVICES SECTION

Appellant hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in Case No. 07AP-298, on September 25, 2007.

This appeal raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,

KEVIN P. BYERS CO., LPA



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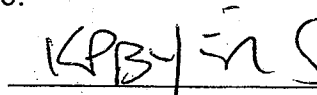
Counsel for appellant,
Gerald A. Coniglio, MD, JD

CERTIFICATE OF SERVICE

I certify that a true copy of this pleading was deposited in first class prepaid US Mail this 9th day of November, 2007, addressed to AAG Damion M. Clifford, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215.



Kevin P. Byers

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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|---|---|---|
| Gerald A. Coniglio, M.D., J.D., | : | |
| Appellant-Appellant, | : | |
| v. | : | No. 07AP-298 (C.P.C. No. 06CVF-14032) |
| State Medical Board of Ohio, | : | (ACCELERATED CALENDAR) |
| Appellee-Appellee. | : | |

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on September 25, 2007, appellant's assignments of error are overruled. Therefore, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs are assessed against appellant.

TYACK, BROWN & BOWMAN, JJ.

By _____
Judge G. Gary Tyack

BOWMAN, J., retired of the Tenth Appellate District, assigned to active duty under the authority of Section 6(C), Article IV, Ohio Constitution.

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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|---|---|---|
| Gerald A. Coniglio, M.D., J.D., | : | |
| Appellant-Appellant, | : | |
| v. | : | No. 07AP-298 (C.P.C. No. 06CVF-14032) |
| State Medical Board of Ohio, | : | (ACCELERATED CALENDAR) |
| Appellee-Appellee. | : | |

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O P I N I O N

Rendered on September 25, 2007

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*Kevin P. Byers Co., L.P.A.*, and *Kevin P. Byers*, for appellant.

*Marc Dann*, Attorney General, and *Damion M. Clifford*, for appellee.

---

APPEAL from the Franklin County Court of Common Pleas.

TYACK, J.

{¶1} Appellant, Gerald A. Coniglio, M.D., J.D., is appealing from a ruling of the State Medical Board of Ohio which limited his right to practice medicine in Ohio. Appellant assigns two errors for our consideration:

> FIRST ASSIGNMENT OF ERROR: THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO APPELLANT'S PREJUDICE WHEN IT FOUND THE ORDER OF THE STATE MEDICAL BOARD OF OHIO IS SUPPORTED BY RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE.
>
> SECOND ASSIGNMENT OF ERROR: THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO APPELLANT'S

PREJUDICE WHEN IT FOUND THE ORDER OF THE STATE MEDICAL BOARD OF OHIO IS IN ACCORDANCE WITH LAW.

{¶2} Appellant was disciplined as a result of the refusal of the Nevada Medical Board to grant him the privilege of practicing medicine in Nevada. There is no allegation that he has ever done anything harmful to a patient in Ohio or in New York, where he currently practices medicine. The refusal of the Nevada Medical Board to grant appellant privileges was apparently based upon the fact that he had a number of professional negligence claims in North Carolina and Michigan when he practiced medicine there some years ago. The Nevada Medical Board also expressed concerns about some of appellant's interpersonal relationships in years past.

{¶3} The common pleas court, in addressing appellant's appeal of the disciplinary order, found that the findings of the State Medical Board of Ohio were supported by reliable, probative and substantial evidence. The common pleas court also found that the State Medical Board of Ohio's action was in accord with law. Following the ruling of the Supreme Court of Ohio in *Pons v. Ohio State Medical Bd.* (1993), 66 Ohio St.3d 619, we are to review the findings of the common pleas court with respect to the medical board's factual findings to determine if the common pleas court abused its discretion. We are to review the question of law de novo, as if we were making the initial determination on legal issues.

{¶4} The Supreme Court of Ohio has defined reliable, substantial and probative evidence in *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571:

> (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

{¶5} The basis for the ruling of the State Medical Board of Ohio is solely the fact that the Nevada Medical Board refused to allow appellant to practice in Nevada. There is no allegation that appellant has ever provided substandard medical care in Ohio. Indeed, there is no factual basis in the record before us to find that appellant has ever provided substandard care anywhere.

{¶6} We cannot know what all motivated the Nevada Medical Board to deny appellant privileges in Nevada. Their deliberations are conducted in private. The public announcement which followed mentions the fact that appellant was sued 11 times in North Carolina over a decade ago and speculates that appellant at times had interpersonal relationship problems with the physicians at an earlier time in his medical career.

{¶7} The findings supposedly underlying the Nevada action were found by the common pleas court in this appeal as findings with "little evidence to support" them. The common peas court also indicated "the Court finds merit in [Dr. Coniglio's] arguments as to lack of evidence as to past professional relationship problems." Yet, because of the action of the Nevada Medical Board, whether based on something or nothing, R.C. 4731.22 permits the State Medical Board of Ohio to discipline appellant. We, as an appellate court, are bound to follow R.C. 4731.22, as did the common pleas court.

{¶8} We, as an appellate court, are also required to follow binding precedent from the Supreme Court of Ohio. For many years, the common pleas court and appellate courts have been bound by *Henry's Café, Inc. v. Bd. of Liquor Control* (1959), 170 Ohio St. 233. The second and third paragraphs of the syllabus for *Henry's Café* reads:

> 2. On appeal from an order of an agency (as defined in Section 119.01, Revised Code) to the Court of Common Pleas, the power of the court to modify such order is limited to the ground set forth in Section 119.12, Revised Code, i. e., the absence of a finding that the order is supported by reliable, probative, and substantial evidence.
>
> 3. On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion.

{¶9} In the context of cases which originated before the State Medical Board of Ohio, the edicts of *Henry's Café* have been reinforced by *Pons*, supra. The syllabus for the *Pons* case reads:

> When reviewing a medical board's order, courts must accord due deference to the board's interpretation of the technical and ethical requirements of its profession.

{¶10} In the case of appellant, there may be no reliable, substantial and probative evidence supporting the action of the Nevada Medical Board in denying appellant privileges in Nevada. However, there is no doubt that the Nevada Medical Board took the action it did. The fact that the action was taken is all that the State Medical Board of Ohio needs in order to take action of its own. The Ohio proceedings cannot be used as a means of conducting a collateral attack on the Nevada decision. Reliable, substantial and probative evidence demonstrates the fact of the adverse action by the Nevada Medical Board.

{¶11} The penalties assessed by the State Medical Board of Ohio under the facts or lack of facts of this case are open to serious question, but we are not permitted to question those penalties given the mandate of *Henry's Café*. We have no power to review the penalties until such time as the Supreme Court of Ohio modifies or overrules that precedent, now almost 50 years old.

{¶12} Under the circumstances, we must overrule both assignments of error. Reliable, substantial and probative evidence demonstrates the adverse action of the Nevada Medical Board. Given that adverse action, R.C. 4731.22(B)(22) authorizes the State Medical Board of Ohio to take action against appellant. The penalties assessed by the State Medical Board of Ohio cannot be reviewed by us, so are in accord under law.

{¶13} The judgment of the Franklin County Court of Common Pleas affirming the action of the State Medical Board of Ohio is therefore affirmed.

*Judgment affirmed.*

BROWN and BOWMAN, JJ., concur.

BOWMAN, J., retired of the Tenth Appellate District, assigned to active duty under the authority of Section 6(C), Article IV, Ohio Constitution.

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IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

| | | |
|---|---|---|
| Gerald A. Coniglio, MD, JD<br>115 Main Street<br>Mt. Morris, New York 14510<br>Appellant-Appellant, | : | Case No. _____ |
| | : | |
| v. | : | Accelerated Calendar |
| State Medical Board of Ohio<br>77 South High Street, 17th Floor<br>Columbus, Ohio 43215-0315<br>Appellee-Appellee. | : | CPC No. 06CVF-14032 |
| | : | |

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COMMON PLEAS COURT
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CLERK OF COURTS

Appeal from the common pleas court of Franklin County, Ohio

## NOTICE OF APPEAL

Notice is hereby given that Appellant, Gerald A. Coniglio, MD, JD, hereby appeals to the Court of Appeals of Ohio, Tenth Appellate District for Franklin County, from the judgment entry and decision (copies attached hereto) filed in this action by the lower court on March 13, 2007.

Respectfully submitted,

KEVIN P. BYERS CO., LPA

KPBYS

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FRANKLIN CO. OHIO
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CLERK OF COURTS

Attorney for Appellant,
Gerald A. Coniglio, MD, JD

07APE04 0298

Certificate of Service

I certify that a true copy of the foregoing Notice of Appeal was ~~hand-delivered~~ Mailed this 11th day of April, 2007, to AAG Damion M. Clifford, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KP Byers

Kevin P. Byers

**IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS**
**CIVIL DIVISION**

| | | |
|---|---|---|
| Gerald A. Coniglio, M.D., | : | Case No. 06 CV 14032 |
| Appellant, | : | TERMINATION NO. 10 BY KT |
| vs. | : | |
| State Medical Board of Ohio, | : | Judge Schneider |
| Appellee. | : | FINAL APPEALABLE ORDER |

**JUDGMENT ENTRY AFFIRMING ORDER OF THE STATE MEDICAL BOARD OF OHIO**

For the reasons contained in the March 5, 2007 decision, it is **ORDERED, ADJUDGED AND DECREED** that the Ohio State Medical Board's October 11, 2006 order concerning Gerald A. Coniglio, M.D. is **AFFIRMED**.

This is a final entry.

**Judge Charles A. Schneider**

Approved By:


/s/ per telephone authority
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Counsel for Appellee



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**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO**
**CIVIL DIVISION**

**GERALD A. CONIGLIO, M.D.,** **CASE NO. 06CVF-14032**

**APPELLANT ,** **JUDGE SCHNEIDER**

**VS.**

**OHIO STATE MEDICAL BOARD,**

**APPELLEE.**

HEALTH & HUMAN
MAR 0 8 2007
SERVICES SECTION

**DECISION ON MERITS OF APPEAL**

**ENTERED THIS 5 DAY OF March, 2007.**

**SCHNEIDER, J.**

This action was filed on October 25, 2006. Appellant Gerald A. Coniglio, M.D. has appealed an Order of the Ohio State Medical Board issued October 11, 2006. That order imposed limitations and restrictions of Appellant's certificate to practice medicine in Ohio. Among the restrictions are that Appellant may not commence practice in Ohio without a prior Board approval. Prior to approval of his practice, Appellant must notify the Board in writing that he intends to practice and provide notice of any written claims involving his practice of medicine that have been filed against him and unresolved since June 4, 2005. Appellant must also have an approved plan of practice and will be required to have a monitoring physician approved by the Board. If Appellant commences practice in Ohio, he will also be in a probationary status for at least three years. Appellant has filed this appeal under the provisions of R.C. 1191.2. Briefs have been filed by both parties and the record of proceedings from below has been submitted. Upon the reasons set forth below the decision of the Board is affirmed.

## PROCEDURAL BACKGROUND

Appellant was notified January 11, 2006 that disciplinary action was proposed. This was based upon a report that the Nevada State Board of medical examiners had denied his admission to practice in that state. The Ohio Board was considering action under R.C. 4731.22(B)(22) , which grants the Ohio Medical Board the right to impose sanctions for adverse actions taken by another state. Appellant requested and was granted a hearing before a hearing examiner for the Board. The hearing took place on April 21, 2006 and the hearing examiner issued his report and recommendation February 28, 2006. The Board adopted the recommendation with the addition of the requirement to report any claims relating to professional malpractice.

## STANDARD OF REVIEW

Numerous courts have addressed the standard of review to be used in an appeal under R.C. 119.12 involving decisions of the Medical Board. In *Rossiter v. State Med. Bd.*,[1] it was reaffirmed that when reviewing such an order, the court must accord due deference to the Board's interpretation of the technical and ethical requirements of its profession.[2] Under the applicable standard, the court must affirm the order if it is supported by reliable, probative and substantial evidence and is in accordance with law. In *Our Place, Inc. v. Ohio Liquor Control Comm.*[3], the Ohio Supreme Court defined such evidence to be: "(1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some

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[1] 155 Ohio App. 3d 689; 2004-Ohio-128; 802 N.E.2d 1149
[2] Citing *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St. 3d 619, 614 N.E.2d 748
[3] (1992) 63 Ohio St. 3d 570, 571, 589 N.E.2d 1303

weight; it must have importance and value." The *Rossiter* Court reiterated that if the evidence rose to the appropriate standard, then the reviewing court may not modify a sanction authorized by statute.[4] The query in considering the appropriateness of a sanction, is whether the sanction is within the range of acceptable choices. Even if this court found circumstances that weighed in Appellant's favor, it could not modify a sanction imposed by the medical Board as long as the sanction or penalty is one permitted under R.C. 4731.22. That section at part (B) provides "The Board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:***

(22) Any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand."

It has been determined that sanctions may be imposed for failure to disclose other state's disciplinary proceedings and by inference, this would include a denial. Appellant therefore had to disclose to the Ohio Board the denial from Nevada.[5]

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[4] *Henry's Cafe, Inc. v. Board of Liquor Control* (1959), 170 Ohio St. 233, 163 N.E.2d 678. Citing also to *Hale v. Ohio State Veterinary Med. Bd.* (1988), 47 Ohio App.3d 167, 548 N.E.2d 247

[5] *Guanzon v. State Medical Bd.* (1997), 123 Ohio App. 3d 489, 704 N.E.2d 598

The reviewing courts have determined, that from a due process standpoint, a proper evidentiary basis must be provided before levying a sanction. While a full adversarial and evidentiary proceeding may not be required, there must be some sort of reliable evidentiary review, including sworn testimony, as well as a full consideration of the circumstances of the case.[6]

LEGAL ARGUMENTS OF APPELLANT

Appellant asserts that the Board's actions are not supported by reliable, probative or substantial evidence. Appellant offers that the decision was "predicated on supposition, innuendo, inference and conjecture." (page 4 of Appellant's Brief) Appellant further argues that the order denies due process.

A great deal of the factual circumstances giving rise to the Board's order is not in dispute. Appellant has been a practitioner since graduating medical school in 1972. Since 2001 he has practiced in orthopedics at Wyoming County Community Hospital in New York. At the April hearing, Appellant offered his testimony as well as exhibits including a letter from the chief clinical officer at the Wyoming hospital and a letter from the medical director, both of whom stated that there have been no issues with standard of care or any complaints as to Appellant's conduct since beginning his tenure with the hospital in 2001. The record indicates that Appellant was sued in approximately 10 medical negligence cases from his time while practicing in North Carolina. Appellant was also sued three times in Michigan in the years 2000 and 2001. Testimony from the hearing also indicates that Appellant admitted that in his younger years he had difficulty accepting criticism, but he stated that he was unaware of any complaints as to

[6] *Goldman v. State Medical Bd.* (1996), 110 Ohio App. 3d 124, 673 N.E.2d 677, Dismissed by *Goldman v. State Medical Bd.*(1996), 77 Ohio St. 3d 1411, 670 N.E.2d 1001

professional relationships since 1995. (Transcript page 39) Appellant is certified in two specialties, orthopedics and emergency medicine. Appellant offered a letter from a lawyer who represented him in North Carolina as to the malpractice suits (Exhibit E.). That letter and Appellant's testimony both indicated that the suits were settled without Appellant's consent and that there was no admission of liability or negligence.

The evidentiary basis for the Board's actions rests upon denial of licensure in Nevada. It is uncontested that Nevada refused to license Appellant. The minutes of the Nevada Board reflected that they considered Appellant's application and then questioned the doctor who responded to questions surrounding the circumstances of the claims of malpractice against him and difficulties he had with interpersonal relationships at various hospitals he had worked in. Apparently Appellant's answers were not sufficient to assuage their concerns and the Board denied licensure. Appellant testified that this denial prompted a reprimand from the state of North Carolina, a fine from Michigan, and no action as of yet from the states of California, Arizona, Minnesota, or New York.

Appellant acknowledged the malpractice claims and offered his explanation of those claims, and why they occurred. His attorney's letter corroborated the testimony. There is no method to evaluate the probity of Appellant's testimony or the attorney's opinion. Both Boards did recognize that the North Carolina malpractice claims had all been filed by the same attorney and had occurred after Appellant had left the state. It is also uncontroverted that the cases were settled without the consent of Appellant. The discussion of the Ohio Board reflected in the minutes indicates a concern, not necessarily with the validity of the lawsuits, but the sheer number. One Board member did reflect that the field of orthopedics tends to be a high-risk profession, and probably attracts more

malpractice suits. It must be concluded that as to the Board's concern on the malpractice issue, the concerns were established by the evidence and well taken.

The position taken by Appellant that the Board acted upon innuendo, inference, and speculation relates to the Nevada Board's decision and its subsequent affirmation by the Ohio Medical Board, that there were interpersonal relationship difficulties. Upon review of the evidence presented, this court can find little evidence to support this finding. Clearly, no issues of interpersonal difficulties or standard of care issues have existed since Appellant took his position in New York in 2001. The doctor's testimony stands undisputed that since 1995 he was unaware of any written adverse claims made with respect to his professional dealings. The court is concerned with a conclusion by the hearing examiner, subsequently adopted by the Board, which is " Second, the Nevada Board stated that Dr. Conigliaro has received adverse reports from nearly every facility where he has worked. Dr. Conigliaro testified at hearing that he has had only one or two such reports, which contradicts the Nevada Board's statement. However, it seems unlikely that the Nevada Board was simply making that up. Moreover Dr. Conigliaro's curriculum vitae indicates that he has moved his practice a number of times, which would be consistent with the situation described by the Nevada Board." The court recognizes that the hearing officer has the superior position in determining credibility and the demeanor of witnesses. Nonetheless, there is a dearth of evidence relating to the finding by the Nevada Board that there were professional relationship problems and this dearth carries over to a lack of evidence to support the hearing examiner's determination that there were problems because he didn't believe that the Nevada Board simply made them up. The court is well aware of the scrutiny that should be given physicians because of the

potential effect when the standard of care is not met. The court agrees with Appellant that such scrutiny should be based upon evidence and not speculation or conjecture. It must be assumed that the Ohio Board could have made some attempt to locate materials relied upon by the Nevada Board in reaching their conclusion as to interpersonal problems. Whether such attempts were made or not is not reflected by the record.

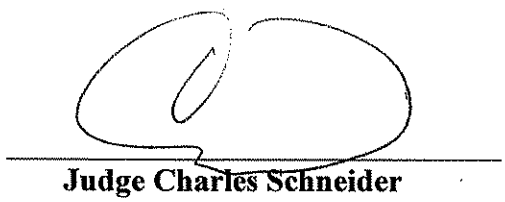
Appellee points out that the sanctions fall into an area as to which the court should refrain from interfering. The court recognizes this limitation, as noted in the standard of review above, that the Board has expertise and professional qualifications that this court lacks. Appellee also offers that this is not a denial of a license and is not a finding with respect to standard of care. The findings and conclusions of the hearing examiner and the minutes of the Board reference these unnamed and unknown work relationship issues and concerns with standard of care obviously generated the practice restrictions. The position of Appellee is that it is entitled to rely upon the reasons enunciated by Nevada in placing restrictions on Appellant's possible future Ohio practice. These restrictions are couched upon the duty of the Board to protect the public with safeguards that it has determined necessary in case Appellant does seek to practice in Ohio.

Appellant offered his explanation as to the North Carolina malpractice suits and admits to a "few" in Michigan. As noted by Appellant, no hearing took place in Nevada, other than what he has offered as a two-minute question and answer session. Upon review of the record and the circumstances in this matter, the court concludes that the Board had support in its decision with respect to malpractice claims against Appellant.

However, the inquiry does not end with this conclusion due to the issue of the concerns set forth by the examiner and the Board.

The minutes of the Ohio Board reflects that some members felt that Appellant was "a disruptive physician." (Page 5, September 13, 2006 minutes) The court has already stated that the malpractice claims did present evidence sufficient to warrant the Board's concern. On the other hand, there is a general lack of evidence to support adoption of Nevada's conclusion as to interpersonal relationships or standard-of-care issues as reflected in the Nevada Board minutes. The question thus posed is whether this should mandate alteration of the Board's imposed sanction. While the Board was in error on this issue, the restrictions could have been based solely upon the malpractice circumstances. The Court has concluded that there is sufficient evidence and reasoning to support the imposed sanctions. While the Court finds merit in Appellant's arguments as to lack of evidence as to past professional relationship problems or being a disruptive physician, the sanctions imposed by the Board still appear reasonable under the circumstances.[7]

Upon consideration of the arguments of the parties and the record of proceedings, the Court finds that the Order of the Board is supported by reliable, probative, and substantial evidence and is in accordance with law. To the extent noted above, the Order is AFFIRMED. Counsel for the Board shall prepare a Judgment Entry pursuant to Local Rule 25.01.



**Judge Charles Schneider**

[7] *In re Niehaus* (1989), 62 Ohio App. 3d 89, 574 N.E.2d 1104

Appearances:

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Attorney for Appellee

# IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
## CIVIL DIVISION

| | | |
|---|---|---|
| **Gerald A. Coniglio, MD, JD,**<br>115 Main Street<br>Mt. Morris, NY 14510<br>**Appellant,** | * | 06CVF10 14032<br>**CASE NO.** _____ |
| **v.** | * | |
| **State Medical Board of Ohio,**<br>77 South High St., 17th Floor<br>Columbus, Ohio 43266-0315<br>**Appellee.** | * | **JUDGE** _____ |
| | * | |

Appeal from the State Medical Board of Ohio

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## APPELLANT'S NOTICE OF APPEAL

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Pursuant to **RC 119.12**, notice is hereby given that Appellant, Gerald A. Coniglio, MD, JD, appeals the order of the State Medical Board dated September 13, 2006, and mailed October 11, 2006, (copy attached as *Exhibit A*.) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

**KEVIN P. BYERS CO., L.P.A.**

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*The 107 Building*
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**Attorney for Gerald A. Coniglio, MD, JD**

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2006 OCT 25 AM 9:06
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STATE MEDICAL BOARD
OF OHIO

Certificate of Service

I certify that the original of the foregoing document was hand-filed this 25th day of October, 2006, at the State Medical Board, 77 South High Street, 17th Floor, Columbus, Ohio 43215-0315 with a copy filed this same date in the Court of Common Pleas of Franklin County in accord with RC §119.12 and Ohio caselaw[1], with a courtesy copy mailed to Assistant Attorney General Damion M. Clifford, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3426.

Kevin P. Byers

STATE MEDICAL BOARD OF OHIO
2006 NOV -3 P 1:23



[1] Stultz v. Oh. Dept. of Admin. Svcs. 10th Dist. No. 04AP-602, 2005-Ohio-200

# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov


September 13, 2006

Gerald Anthony Coniglio, M.D.
15 Main Street
Mount Morris, NY 14510

Dear Doctor Coniglio:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 13, 2006, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4329 8630
RETURN RECEIPT REQUESTED

Cc: Kevin P. Byers, Esq.
CERTIFIED MAIL NO. 7003 0500 0002 4329 8654
RETURN RECEIPT REQUESTED

Mailed 10-11-06

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 13, 2006, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Gerald Anthony Coniglio, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

Lance A. Talmage, M.D.
Secretary

(SEAL)

September 13, 2006
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF *

*

GERALD ANTHONY CONIGLIO, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 13, 2006.

Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

A. **LIMITATION AND RESTRICTION OF CERTIFICATE:** The certificate of Gerald Anthony Coniglio, M.D., to practice medicine and surgery in the State of Ohio shall be LIMITED and RESTRICTED as follows:

1. **Refrain from Commencing Practice in Ohio**: Dr. Coniglio shall not commence practice in Ohio without prior Board approval.

2. **Conditions for Approval of Commencement of Practice in Ohio**: The Board shall not grant approval for Dr. Coniglio to commence practice in Ohio unless all of the following minimum requirements have been met:

   a. **Hold Current Certificate to Practice in Ohio**: Dr. Coniglio shall hold a current certificate to practice medicine and surgery in the State of Ohio.

   b. **Notify Board in Writing**: Dr. Coniglio shall notify the Board in writing that he intends to commence practice in Ohio. At the time that Dr. Coniglio provides such notification, he shall also notify the Board in

writing of any written claims that have been filed against him with any entity providing professional liability insurance or indemnification or that have been resolved since June 4, 2005.

c. **Practice Plan; Monitoring Physician**: Prior to his commencement of practice in Ohio, Dr. Coniglio shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Coniglio's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Coniglio shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

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

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Coniglio must immediately so notify the Board in writing. In addition, Dr. Coniglio 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. Coniglio shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

B. **PROBATIONARY CONDITIONS**: Upon commencing practice in Ohio, Dr. Coniglio's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:

1. **Obey Laws in Ohio**: Dr. Coniglio shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.

2. **Declarations of Compliance**: Dr. Coniglio 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. Dr. Coniglio shall also include in each declaration a statement as to whether any written claims have been filed against him with any entity providing professional liability insurance or indemnification or whether any claims have been resolved since the last such declaration. 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. Coniglio commences practice in Ohio. 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. Coniglio 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. Coniglio commences practice in Ohio, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Comply with Practice Plan**: Dr. Coniglio shall practice in accordance with the plan of practice approved by the Board, as set forth in paragraph A.2.c., above.

5. **Absence from Ohio**: In the event that Dr. Coniglio should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Coniglio must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

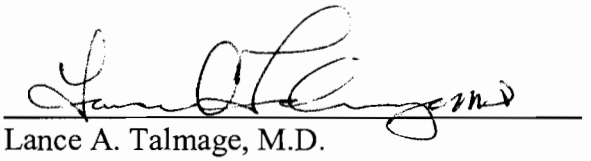
6. **Violation of Probation; Discretionary Sanction Imposed**: If Dr. Coniglio violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

C. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Coniglio's certificate will be fully restored.

D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Coniglio shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Coniglio shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Coniglio receives from the Board written notification of his successful completion of probation.

E. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Coniglio shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license.
Dr. Coniglio shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Coniglio shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Coniglio receives from the Board written notification of his successful completion of probation.

This Order shall become effective immediately upon mailing of notification of approval by the Board.



Lance A. Talmage, M.D.
Secretary

(SEAL)

September 13, 2006
Date

STATE MEDICAL BOARD
OF OHIO

2006 JUL 28 P 12: 34

# REPORT AND RECOMMENDATION
# IN THE MATTER OF GERALD ANTHONY CONIGLIO, M.D.

The Matter of Gerald A. Coniglio, M.D., was heard by R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on April 21, 2006.

## INTRODUCTION

I. Basis for Hearing

A. By letter dated January 11, 2006, the State Medical Board of Ohio [Board] notified Gerald Anthony Coniglio, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's proposed action was based on a report it had received that the Nevada State Board of Medical Examiners [Nevada Board] had denied Dr. Coniglio's application for a medical license in that state.

The Board alleged that the denial of Dr. Coniglio's application for a license constitutes "'[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery * * * in another jurisdiction, for any reason other than the nonpayment of fees: * * * denial of a license * * *,' as that clause is used in Section 4731.22(B)(22), Ohio Revised Code." Accordingly, the Board advised Dr. Coniglio of his right to request a hearing in this matter. (St. Ex. 1A).

B. On February 8, 2006, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Coniglio. (St. Ex. 1B).

II. Appearances

A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Damion M. Clifford, Assistant Attorney General.

B. On behalf of the Respondent: Kevin P. Byers, Esq.

## EVIDENCE EXAMINED

I. Testimony Heard

Gerald Anthony Coniglio, M.D.

II. Exhibits Examined

A. Presented by the State:

1. State's Exhibits 1A-1I: Procedural exhibits.

2. State's Exhibit 2: Certified copy of the Minutes of the Nevada Medical Board Meeting of June 3-4, 2005.

B. Presented by the Respondent:

1. Respondent's Exhibit A: Dr. Coniglio's curriculum vitae.

2. Respondent's Exhibit B: April 14, 2006, letter to Dr. Coniglio's counsel from Gregory Collins, D.O.

3. Respondent's Exhibit C: January 26, 2006, letter to the Board from Charles Riggio, M.D.

4. Respondent's Exhibit D: February 2, 2006, letter to Dr. Coniglio's counsel from Linnea Aina, Chief Clinical Officer of Wyoming County Community Health System in Warsaw, New York.

5. Respondent's Exhibit E: Copy of a January 11, 2001, letter to Barbara McClain, Credentialing Manager for Rochester Blue Cross and Blue Shield in Rochester, New York, from Erle E. Peacock Jr., M.D., J.D.

6. Respondent's Exhibit F: Copy of a January 31, 2006, North Carolina Medical Board Consent Order concerning Dr. Coniglio.

## SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

### Background Information

1. The Respondent, Gerald Anthony Coniglio, M.D., obtained his medical degree in 1972 from the State University of New York at Buffalo, School of Medicine. From January 1973 until July 1974, Dr. Coniglio participated in an anesthesiology residency at Upstate Medical Center in Syracuse, New York; from July 1974 through July 1975, Dr. Coniglio participated in a general surgery residency at St. Joseph's Hospital in Syracuse; and from July 1977

through July 1981 he participated in an orthopedic residency at Southwestern Michigan Area Health Education Center in Kalamazoo, Michigan. Subsequently, from July 1984 through July 1985, Dr. Coniglio participated in a spinal and adult reconstructive fellowship at the Orthopaedic Hospital of the University of Southern California School of Medicine. Finally, Dr. Coniglio was board certified in Emergency Medicine in 1977 and in Orthopedic Surgery in 1984. (Respondent's Exhibit [Resp. Ex.] A)

Dr. Coniglio holds medical licensure in Ohio, New York, Arizona, Michigan, Minnesota, North Carolina, and California. In addition, he is a licensed attorney in the State of New York. (Resp. Ex. A)

2. Dr. Coniglio noted the following work history in his curriculum vitae:

- From 1981 through 1984, Dr. Coniglio worked as a solo practitioner in Lockport, New York. In July 1984, Dr. Coniglio left that practice to enter a fellowship at the University of Southern California.

- After completing his fellowship in July 1985, Dr. Coniglio worked as a locum tenens orthopedic surgeon in San Diego, California, from October 1985 through February 1986, and in Woodland Hills, California from April through October 1986.

- From 1986 through 1989, Dr. Coniglio practiced in the cities of Rhinebeck, Kingston, and Castle Point, New York.

- From 1989 through 1994, Dr. Coniglio practiced in Lincolnton, Charlotte, and Morganton, North Carolina. During this period, Dr. Coniglio also served overseas as an orthopedic surgeon for the U.S. Army from 1990 through 1991 during Operation Desert Storm.

- In 1994, Dr. Coniglio moved to Michigan, where he practiced in Saginaw and Marlette from 1994 through December 2000.

- Since January 2001, Dr. Coniglio has been engaged as a solo orthopedic practitioner at Wyoming County Community Hospital in Warsaw, New York. He maintains offices in Warsaw and in Mt. Morris, New York.

(Resp. Ex. A)

3. Sometime prior to June 2005, Dr. Coniglio applied for a medical license in the State of Nevada. Dr. Coniglio testified that he had done so because his wife "liked Nevada and the California mountains[]" and had wanted to move west. (Hearing Transcript [Tr.] at 14)

**The Nevada Board Action**

4. During its meeting on June 4, 2005, the Nevada State Board of Medical Examiners [Nevada Board] considered Dr. Coniglio's application for a license to practice medicine in Nevada. The minutes of that meeting concerning the Nevada Board's consideration of his application state as follows:

> Upon returning to Open Session, Dr. Baepler questioned [Dr. Coniglio], who appeared before the [Nevada] Board to respond to questions concerning his affirmative responses to Questions 12, 14, 19 and 31 on his application for licensure.
>
> Dr. Coniglio explained the circumstances surrounding the claims of malpractice against him and the difficulties he had with interpersonal relationships at various hospitals he had worked in.
>
> Mrs. Kirch moved to return to Closed Session. Ms. Stoess seconded the motion, and it passed.
>
> Upon returning to Open Session, Dr. Baepler moved that the Board deny Gerald Coniglio, M.D.'s application for licensure based upon the excessive number of malpractice claims against him which have been settled on his behalf, some in large amounts, and his continued pattern of receiving adverse reports from nearly every facility in which he has practiced, many concerning interpersonal relationships and others concerning standard-of-care issues in the communities where he has practiced. Mrs. Kirsch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

(State's Exhibit [St. Ex.] 2 at 33)

5. Dr. Coniglio testified at the present hearing that he had thoroughly disclosed all pertinent information to the Nevada Board when he applied for licensure there. At hearing, Dr. Coniglio identified a collection of documents as being a copy of his Nevada application materials. Dr. Coniglio noted that the material that he had presented to the Nevada Board is approximately one and one-half inches thick. (Tr. at 48-49) However, Dr. Coniglio's Nevada application was not offered into evidence. (Tr. at 48)

6. Dr. Coniglio testified at the present hearing that he would have liked to have discussed with the Nevada Board its concerns about an "excessive number of malpractice claims" against him, but that he was never given the opportunity to do so. Dr. Coniglio testified, "I don't think I had a chance to discuss it. * * * I mean, I explained it all and I thought we could discuss it further, but it * * * was very quick. It was like about a minute or two and that was it." (Tr. at 17-18)

**Evidence Presented by Dr. Coniglio concerning Malpractice Claims**

7. According to Dr. Coniglio, out of a total of fourteen malpractice actions that he has had, approximately ten or eleven of them had arisen "out of * * * a difference of opinion regarding spinal surgery of the lumbar spine" and had been filed by one attorney in North Carolina. The difference of opinion centered on Dr. Coniglio's outspoken opposition to spinal fusion surgery in certain cases. (Tr. at 16-19, 21-24)

   Dr. Coniglio explained that, early in his career, he had become very interested in lumbar spine surgery and did fellowship training in the area of degenerative disk disease of the lumbosacral spine. Dr. Coniglio further testified that during this training he observed that patients who had had spinal fusion surgery seemed to have worse results than patients who had not. Dr. Coniglio testified that he studied "very intensively" the subject of spinal fusion. Further, Dr. Coniglio testified that he also sought out and studied with Alf Nachemson, M.D., in Europe. Dr. Coniglio stated that Dr. Nachemson is a Nobel Prize winner[1] and an opponent of spinal fusion surgery. (Tr. at 19)

   Dr. Coniglio testified that, based on his research and experience, he had determined that performing spinal fusion surgery to treat pain due to degenerative disk disease "wasn't necessarily * * * a good thing."[2] Dr. Coniglio testified that, today, he remains "more convinced of that than ever." (Tr. at 21-22)

   Dr. Coniglio further testified he had thought that he had "discovered something, a clinical factor that [he] should try to disseminate in some way." Dr. Coniglio testified that, while working in North Carolina, he had become very busy treating patients who suffered from degenerative disk disease. Some of those patients had had previous spine surgery, others had not. Moreover, Dr. Coniglio testified:

   > I started doing things like taking apart spine fusions * * *. I had learned how to do that and I learned how to work around nerves that had spinal fusions and things like this and take out hardware and take out the compressive irritating bone on people's nerves and things like this. And I'd learned—I saw them improve and I got a lot of people coming to me for that.

   (Tr. at 23) Furthermore, Dr. Coniglio testified that patients had come to him seeking second opinions and that he had spoken out against spine fusion. Dr. Coniglio testified that he had instead advocated an approach whereby he would assist the natural healing process by removing the disk and inserting bone grafts into the disk space.[3] Dr. Coniglio stated

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[1] Note that the Hearing Examiner was unable to verify Dr. Nachemson's status as a Nobel Prize winner at http://nobelprize.org/nobel_prizes/lists/all/.

[2] Dr. Coniglio stated that this opinion applies only to spinal fusion surgery to treat degenerative disk disease, and not other lumbar spine disorders such as scoliosis, spondylosis, or trauma fractures. (Tr. at 22)

[3] Dr. Coniglio discussed this approach at length at Tr. at 25 through 29.

that this "annoyed certain people[.]" Dr. Coniglio testified that he began looking for a better place to work and was "recruited back to Michigan." (Tr. at 16-17, 23-24)

Dr. Coniglio testified that, some time after his return to Michigan, a series of ten or eleven malpractice lawsuits had been filed against him in North Carolina by one attorney. Dr. Coniglio testified that three or four had involved his having redone or revised surgery previously performed by other doctors. Dr. Coniglio further testified that other lawsuits concerned allegations that he had not performed a spinal fusion in the standard way or that he had not performed spinal fusion when he should have. (Tr. at 29-30, 50)

Dr. Coniglio testified that, for each of the North Carolina cases, there had been expert witnesses willing to testify in support of his care had the cases gone to trial. However, Dr. Coniglio testified that, although he had wanted to fight the lawsuits in court, his malpractice insurance company settled all of them without his consent for between $50,000 and $280,000 each, "without any admission of guilt[.]" (Tr. at 30, 35, 53-54)

8. In support of his testimony, Dr. Coniglio presented a copy of a letter sent by his North Carolina attorney, Erle E. Peacock, Jr., M.D., J.D., to Barbara MacClain, Credentialing Manager for Rochester Blue Cross and Blue Shield. (Resp. Ex. E)

   In his letter, Dr. Peacock discussed the North Carolina lawsuits against Dr. Coniglio. Dr. Peacock stated that in his judgment and in the judgment of "the best orthopedic surgeons in the country * * * there was no deviation from the standard of practice which the patients had a right to expect." Dr. Peacock further stated,

   > In my judgment, if the Mutual Insurance company indemnifying Dr. Coniglio had been willing to defend him in the first case, the rest would have been dropped without trial. Unfortunately, Medical Mutual Insurance Company was afraid to try the case, largely, I think, because they did not have confidence in Dr. Coniglio as a witness, and, as a result, the rest of the cases were settled also.

   (Resp. Ex. E) Finally, Dr. Peacock urged Ms. MacClain to "take a second look at [Dr. Coniglio's] application for a position with Rochester managed care organizations covered by Rochester Blue Cross and Blue Shield." (Resp. Ex. E) (Note that the State did not have an opportunity to cross-examine Dr. Peacock.)

9. According to Dr. Coniglio, in addition to the North Carolina lawsuits, he had had three malpractice cases in Michigan. In one case, the patient had fractured and dislocated an ankle. Dr. Coniglio testified that he fixed the fracture and that it had been in a satisfactory position and alignment per radiology. Nevertheless, Dr. Coniglio testified that, five days later, the surgery was re-done by another physician. Dr. Coniglio testified that the malpractice insurer settled that matter without his consent. (Tr. at 31-33)

Dr. Coniglio further testified that a second case involved a pilon fracture. Dr. Coniglio testified that he repaired the fracture but that the patient had taken a long time to heal after surgery due to multiple medical problems. Dr. Coniglio further testified that, "[e]ven though it was healing, it was termed a delayed union," and that the matter had settled for $50,000.00. (Tr. at 34-35)

Dr. Coniglio testified that the third Michigan case had involved a patient with an open fracture of the femur. Dr. Coniglio testified that he had been covering for another doctor and had intended to put a rod on the femur, when the doctor he was covering for "suddenly came to the hospital* * * and in the middle of the operation walked in and decided he wanted to send it to another institution." Dr. Coniglio testified that everything had been "under control" and that he believes that the other doctor "got nervous because of the bleeding from the open wound." Ten days later, the patient developed necrosis in the wound area. Dr. Coniglio testified that both he and the doctor for whom he had been covering were sued, as was the emergency room doctor. Dr. Coniglio testified that the matter settled, again without his consent. (Tr. at 35-37)

**Evidence Presented by Dr. Coniglio concerning Adverse Reports**

10. Another reason identified by the Nevada Board as a basis for its denial of Dr. Coniglio's application had been a "continued pattern of receiving adverse reports from nearly every facility in which [Dr. Coniglio] has practiced, many concerning interpersonal relationships and others concerning standard-of-care issues in the communities where he has practiced." (St. Ex. 2 at 33)

    Dr. Coniglio acknowledged that there had been one incident, while he was working at Saginaw General Hospital (where he worked from 1994 to 2000), in which he had gotten into a "heated discussion" after somebody suggested he do a spinal fusion on a patient, and Dr. Coniglio "expressed [his] indignation at that." When asked to explain what the Nevada Board meant when it stated that there had been a "continued pattern of receiving adverse reports from nearly every facility in which he had practiced," Dr. Coniglio replied that there had been one other incident during internship "when I fell asleep in a conference after I was awake all night for 24 hours." Dr. Coniglio testified that those are the only issues that he could recall. (Tr. at 42-45)

    Dr. Coniglio further testified that, in his "younger years," he had been "an extremely obsessive compulsive person" and would "get into arguments with people because I thought they were attacking me." He said he is less argumentative now, explaining that "I think I just matured more, became more philosophical and accepted things more[.]" He said he now tries to be calm and has not had problems like this for years. (Tr. at 38-39, 57)

    With regard to adverse reports concerning "standard-of-care issues," Dr. Coniglio testified that he believes that that had referenced the North Carolina malpractice lawsuits, and that he is aware of no other such issues. (Tr. at 45)

**Additional Information**

11. Dr. Coniglio said that, over the course of his career, he had performed between 400 and 500 back surgeries. Dr. Coniglio noted that, over a 25-year career, that is not a large number. (Tr. at 59)

12. Dr. Coniglio testified that he currently is under consideration to become the Chief of Surgery at Wyoming County Community Hospital in Warsaw, New York. He added that the leadership administration of Wyoming County Community Hospital is aware of both the Nevada Board's action and the Ohio Board's proposed action. (Tr. at 59)

13. Linnea Aina, Chief Clinical Officer of the Wyoming County Community Health System, wrote that Dr. Coniglio "has not had any utilization review or quality of care concerns since he has been on staff at Wyoming County Community Hospital." (Resp. Ex. D) (Note that the State did not have an opportunity to cross-examine Ms. Aina.)

14. The hearing record includes letters written in support of Dr. Coniglio. One of these letters was written by Gregory Collins, D.O., an emergency medicine physician and Medical Director at Wyoming County Community Hospital. Dr. Collins wrote, "I am aware of Dr. Coniglio's malpractice history. After careful review, I believe that this is an aberration and completely inconsistent with his performance at our facility and my direct personal observations of his work." (Resp. Ex. B) (Note that the State did not have an opportunity to cross-examine Dr. Collins.)

    In addition, Charles Riggio, M.D., wrote a letter in support of Dr. Coniglio. Dr. Riggio indicated that he had in the past served as Medical Director at Wyoming County Community Hospital, and that he had helped recruit Dr. Coniglio to work for that institution. Dr. Riggio indicated that he was therefore "intimately connected" with Dr. Coniglio's "history and interpersonal relationship" and had spoken with "all of the persons who have had something to say about him as a result of the credentialing process." Based upon this information, Dr. Riggio wrote that he considers Dr. Coniglio's malpractice history "an aberration having arisen because Dr. Coniglio was intellectually honest and motivated to treat surgical back pain conservatively, honestly, and in the best interest of his patients and the public." Dr. Riggio further wrote that, based on his own observations, he believes that Dr. Coniglio is an "excellent physician with very high ethical standards and technical capabilities as good as any" Dr. Riggio has seen. (Resp. Ex. C) (Note that the State did not have an opportunity to cross-examine Dr. Riggio.)

**Evidence Regarding Actions Taken or Pending in Other States**

15. Dr. Coniglio presented a copy of a January 31, 2006, Consent Order between Dr. Coniglio and the North Carolina Medical Board [North Carolina Board]. Pursuant to the Consent Order, the North Carolina Board reprimanded Dr. Coniglio based upon the Nevada Board

action. (Resp. Ex. F) (Note that the North Carolina Board action is not a subject of this matter, and that this matter concerns the Nevada Board action only.)

16. Dr. Coniglio testified that, as of the date of the hearing, the medical boards of California, Arizona, Minnesota, and New York have not instituted any action against him. (Tr. at 64-66) However, Dr. Coniglio testified that the medical board in Michigan has called for him to appear at a "compliance conference." (Tr. at 64-66)

## FINDINGS OF FACT

Gerald Anthony Coniglio, M.D., applied for a license to practice medicine in the State of Nevada. The Nevada State Board of Medical Examiners [Nevada Board] considered Dr. Coniglio's application during its meeting on June 4, 2005. The minutes of that meeting indicate that the Nevada Board denied Dr. Coniglio's application for a medical license, based upon the excessive number of malpractice claims settled on his behalf, and his continued pattern of receiving adverse reports from nearly every facility in which he practiced. The Nevada Board further indicated that many of the adverse reports had concerned interpersonal relationships and others had concerned standard-of-care issues in the communities where Dr. Coniglio had practiced.

## CONCLUSIONS OF LAW

The Nevada Board's denial of the medical license application of Gerald Anthony Coniglio, M.D., as set forth in the Findings of Fact constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery * * * in another jurisdiction, for any reason other than the nonpayment of fees: * * * denial of a license * * *," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

The issues raised by the Nevada Board in denying Dr. Coniglio's Nevada application are troubling. First, the Nevada Board stated that Dr. Coniglio had had an excessive number of malpractice claims. Although the number of malpractice claims Dr. Coniglio faced may simply be the result of the circumstances that Dr. Coniglio described, it may also reflect problems with Dr. Coniglio's practice. Second, the Nevada Board stated that Dr. Coniglio has received adverse reports from nearly every facility where he has worked. Dr. Coniglio testified at hearing that he has had only one or two such reports, which contradicts the Nevada Board's statement. However, it seems unlikely that the Nevada Board was simply making that up. Moreover, Dr. Coniglio's curriculum vitae indicates that he has moved his practice a number of times, which would be consistent with the situation described by the Nevada Board. Accordingly, the Board is warranted in imposing a limitation to assure that, should Dr. Coniglio decide to commence practice in Ohio, he will be monitored to ensure that his practice does not present a risk to the public.

## PROPOSED ORDER

It is hereby ORDERED that:

A. **LIMITATION AND RESTRICTION OF CERTIFICATE:** The certificate of Gerald Anthony Coniglio, M.D., to practice medicine and surgery in the State of Ohio shall be LIMITED and RESTRICTED as follows:

1. **Refrain from Commencing Practice in Ohio**: Dr. Coniglio shall not commence practice in Ohio without prior Board approval.

2. **Conditions for Approval of Commencement of Practice in Ohio**: The Board shall not grant approval for Dr. Coniglio to commence practice in Ohio unless all of the following minimum requirements have been met:

   a. **Hold Current Certificate to Practice in Ohio**: Dr. Coniglio shall hold a current certificate to practice medicine and surgery in the State of Ohio.

   b. **Notify Board in Writing**: Dr. Coniglio shall notify the Board in writing that he intends to commence practice in Ohio.

   c. **Practice Plan; Monitoring Physician**: Prior to his commencement of practice in Ohio, Dr. Coniglio shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Coniglio's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Coniglio shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

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

      The monitoring physician shall monitor Dr. Coniglio and his medical practice, and shall review Dr. Coniglio'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. Coniglio and his medical practice, and on the review of

Dr. Coniglio's patient charts. Dr. Coniglio 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. Coniglio's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Coniglio must immediately so notify the Board in writing. In addition, Dr. Coniglio 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. Coniglio shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

B. **PROBATIONARY CONDITIONS**: Upon commencing practice in Ohio, Dr. Coniglio's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:

1. **Obey Laws in Ohio**: Dr. Coniglio shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.

2. **Declarations of Compliance**: Dr. Coniglio 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. Coniglio commences practice in Ohio. 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. Coniglio 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. Coniglio commences practice in Ohio, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Comply with Practice Plan**: Dr. Coniglio shall practice in accordance with the plan of practice approved by the Board, as set forth in paragraph A.2.c., above.

5. **Absence from Ohio**: In the event that Dr. Coniglio should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Coniglio must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Order, unless

otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

6. **Violation of Probation; Discretionary Sanction Imposed**: If Dr. Coniglio violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

C. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Coniglio's certificate will be fully restored.

D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Coniglio shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Coniglio shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Coniglio receives from the Board written notification of his successful completion of probation.

E. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Coniglio shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Coniglio shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Coniglio shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Coniglio receives from the Board written notification of his successful completion of probation.

This Order shall become effective immediately upon mailing of notification of approval by the Board.

R. Gregory Porter, Esq.
Hearing Examiner

# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov


EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 13, 2006

REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Gerald Anthony Coniglio, M.D.; Souhail A. El-Asfouri, M.D.; Suzanne A. Haritatos, D.P.M.; Randall Don LeuVoy, D.O.; and Terri Lynne Savage, M.D. A roll call was taken:

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

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

Dr. Robbins - aye

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

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

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

GERALD ANTHONY CONIGLIO, M.D.

Dr. Robbins directed the Board's attention to the matter of Gerald Anthony Coniglio, M.D. He advised that objections were filed to Hearing Examiner Porter's Report and Recommendation and were previously distributed to Board members.

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

Dr. Coniglio was accompanied by his attorney, Kevin P. Byers.

Mr. Byers stated that objections were filed and he trusts that the Board members have had a chance to study those, as well as the full record. He stated that he would like to make one correction. He noted that in his objections he'd referenced the Michigan sanction, which is also a bootstrap of the Nevada denial. He explained that he had erroneously said in his objections that Dr. Coniglio was in the midst of resolving that Michigan citation by accepting a $250 fine and a reprimand. The Michigan action has now been completely resolved, but it does not involve a reprimand. It was a straight $250 administrative fine.

Mr. Byers stated that it is critical for the Board to realize that this is not a standard-of-care case, which is what it looks like when you cut to the chase and look at the Board Order. It is not that kind of a case; there is no evidence of minimal standards of care violations. It's an incorporation of statements that the Nevada Board made, based on something, when denying a Nevada license. The matter before this Board is purely a reciprocal action because of another state's adverse action.

Mr. Byers stated that if the Board is concerned about Dr. Coniglio's present standard of care and the standard of care he's practiced with and through for the last six years in New York, there's evidence in the record, via Respondent's exhibits (B), (C) and (D) from practitioners who work side-by-side with him every day, and they have no concerns about his history. He has not tried to deceive anybody at any point in

time. There are no (B)(5) allegations here. This is just straight and simple reciprocity, based upon Nevada's denial, and what is appropriate for Ohio to do.

Dr. Coniglio thanked the Board members for allowing him to address them today. He stated that he believes this matter started in the early 1990s when he was practicing medicine and orthopedic surgery in North Carolina. At that time he became convinced that spine fusions were often overdone and didn't help patients. He'd seen a lot of failed spine surgeries in his practice by a lot of practitioners, and he'd studied the issue for a long time and done fellowship training. He determined in his own mind and in his own opinion that spine fusion is not a good thing to commonly do. Dr. Coniglio stated that he took that practice tack and incorporated it into his overall medical and orthopedic philosophy, in which he always tries to do the least he can do to help the patient the most. He stated that he's always been a conservative, thoughtful, studious practitioner of orthopedic surgery. However, his opinion unfortunately engendered some conflict within the orthopedic community in which he practiced. Subsequent to that he got recruited to take another position in Michigan. He went back to Michigan because he'd done his residency there. After he got back to Michigan, he was sued in North Carolina by one attorney on one day, representing several persons, all of whom were doing fine when he left. The cases went through the discovery procedures for the next three or four years. His counsel had several witnesses lined up to support him, but the malpractice insurance carrier decided that it wanted to settle cases after he had obtained a personal attorney. The malpractice insurance carrier took them out to lunch and actually apologized to him and his attorney about the matter but said that it was expedient to settle the cases. They were able to do that without his consent and with no admission of guilt.

Dr. Coniglio stated that he thought that the matter was pretty much over with at that time. Subsequent to that, in 2000, he went back to New York State to take care of an elderly mother, and at that time he got recruited by the hospital in which he works at this time. Since then he seems to have done fine. He has no issues whatsoever. He's never lost staff privileges anywhere. He's never had a restriction of medical staff privileges. He was elected chief of surgery in January 2006 at the institution in which he currently practices. He's considered a good practitioner. Dr. Coniglio stated that recently, however, his wife told him that she would like to go out west after retirement, and so he applied for a license in Nevada. Nevada denied him a license. He stated that he assumes that the denial was based on the number of malpractice settlements. Dr. Coniglio stated that these cases have also been reviewed by independent practitioners, and no violations of standard of care were found. Dr. Coniglio commented that this was a matter that he thought had been put to rest several years ago.

Dr. Coniglio continued that, after Nevada denied his licensure application, the Ohio administrative action arose. He stated that he is very sorry about it, and added that all he can ask the Board for is a fair, reasonable and objective analysis of the situation and a reasonable conclusion. He again thanked the Board for allowing him to speak.

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

Mr. Clifford stated that Mr. Byers is correct in his analysis that this is a (B)(22) action rather than a (B)(6),

but he thinks that the focus needs to be on the reason there was a denial by the Nevada Board, that it was due to the excessive number of malpractice claims, and a continued pattern of receiving adverse reports from nearly every facility in which Dr. Coniglio practiced. There were 14 malpractice cases. Ten by an attorney in North Carolina, and three others in other states in which Dr. Coniglio practiced. It is a bootstrap, and the focus is that there was a denial of a license. Mr. Clifford stressed, however, that the reason there was a denial of a license in Nevada was because of the malpractice cases and because of interpersonal issues. Mr. Clifford stated that the Board has the ability to impose the restriction proposed by the Hearing Examiner. He stated that he thinks that the proposed order is valid, if Dr. Coniglio wants to come to Ohio and practice, that the Board makes sure that the public in the State of Ohio is protected.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF GERALD ANTHONY CONIGLIO, M.D. DR. KUMAR SECONDED THE MOTION.**

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

Dr. Kumar stated that he thinks that the case has been presented very well in the sense that it is a bootstrap action, but the Board still has to realistically protect the citizens of the State of Ohio to make certain that, whatever the reason for the malpractice cases, there was some problem. Beyond that, there were three other cases in a short period of time. They were all settled. Dr. Kumar stated that he has a problem with taking no action against Dr. Coniglio; however, the way this Report and Recommendation is written, the Proposed Order does limit the license and requires Dr. Coniglio to develop a practice plan. The Proposed Order is missing one important component in that it does not in any way take into account Dr. Coniglio's malpractice cases. Dr. Kumar stated that he's asked staff to draft a small amendment to the existing Report and Recommendation.

**DR. KUMAR MOVED TO MODIFY THE PROPOSED ORDER AS FOLLOWS: TO AMEND PARAGRAPH A.2.b. TO READ AS FOLLOWS:**

b. **Notify Board in Writing**: Dr. Coniglio shall notify the Board in writing that he intends to commence practice in Ohio. At the time that Dr. Coniglio provides such notification, he shall also notify the Board in writing of any written claims that have been filed against him with any entity providing professional liability insurance or indemnification or that have been resolved since June 4, 2005.

**DR. KUMAR FURTHER MOVED TO AMEND PARAGRAPH B.2. TO READ AS FOLLOWS:**

2. **Declarations of Compliance**: Dr. Coniglio 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. Dr. Coniglio shall also include in each declaration a statement as to whether any written claims have been filed against him with any entity providing professional liability insurance or indemnification or whether any claims have been resolved since the last such

declaration. 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. Coniglio commences practice in Ohio. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

**DR. BUCHAN SECONDED THE MOTION.**

Dr. Kumar stated that the Board does need to protect the citizens of Ohio. There may or may not be a problem, but there does appear to be a pattern in the number of malpractice cases, during a period of time, whether they were handled by one attorney or multiple attorneys. He noted that one attorney handled ten cases, but there were three other cases, as well. There was a significant amount in settlements, and the Board needs to continue to monitor that.

Dr. Steinbergh disagreed with Dr. Kumar. She stated that she recognizes the malpractice suits, but she gets the sense that something's not quite right here. She referred to page 8 of the Report and Recommendation, noting a letter sent by Charles Riggio, M.D., the past Medical Director of Wyoming County Community Hospital in support of Dr. Coniglio. Dr. Steinbergh stated that the writer of that letter says that the malpractice history is inconsistent with the practice that Dr. Coniglio demonstrates at this time. She added that Dr. Riggio wrote that he considers Dr. Coniglio's malpractice history "an aberration, having arisen because Dr. Coniglio was intellectually honest and motivated to treat surgical back pain conservatively, honestly, and in the best interest of his patients and the public." From his own observations, Dr. Riggio indicated that Dr. Coniglio is an "excellent physician with very high ethical standards and technical capabilities as good as any." Dr. Steinbergh stated that she has a problem with the proposed amendment. She stated that she understands the Report and she understands the Recommendation, but she doesn't agree with it. If it were up to her, she would issue a reprimand, and that would be it.

Dr. Steinbergh continued that, serving on credentialing committees, she understands the concerns the Board would have, but she's not really influenced by it. Dr. Steinbergh stated that the Board doesn't really have any hard documentation about the concerns that the Nevada Board has, nor does it know the comments made by that Board. Dr. Steinbergh stated that she doesn't have the evidence to demonstrate to her that this is a bad physician.

Dr. Egner stated that Dr. Coniglio has the red flags of a disruptive physician. From early in his career, he did multiple different residencies; he's had six different jobs in diverse locations. Dr. Coniglio has a very unorthodox view of managing this kind of patient. None of those things, in and of themselves, gets one before the Medical Board. But it's a red flag to her when she sees all of these things put together. The Nevada Board looked at the specifics of what happened to Dr. Coniglio and came to the conclusion to deny him a license. Dr. Egner stated that she's wary to just say that "it was a fluke, let's just give him a reprimand." Dr. Egner stated that the Board knows a lot of unorthodox physicians who look at illness and disease process and treatment in a different way. That alone doesn't get them denied licensure. Dr. Egner stated that she's not sure that that alone gets a physician eleven malpractice suits. That's the part that says that there's an unstable baseline somewhere, and puts up the red flag of the disruptive physician. He has a

job and it's a problem every time.

Dr. Steinbergh asked whether the record reflects the numbers of malpractice cases that an orthopedic surgeon could expect in one's professional lifetime. She noted that orthopedics is certainly a high-risk practice that will stimulate a lot of suits. She stated that she would like to know whether this is a physician practicing outside the norm in terms of the number of malpractice claims. She stated that she doesn't know statistically what that might be.

Dr. Kumar stated that, even if he dismisses those ten cases by one attorney, those three cases in a span of time, those broken ankles, and somebody has to go back and do it, and, yes, one case where he was sued when he was covering somebody else and whether the other physician started to create the issue and take over the case, that he could understand. Still there are three or four cases. He added that he agrees with Dr. Steinbergh in some aspects, maybe there's not a whole lot there. Maybe he's a person caught in circumstances; but, certainly, there's a history of malpractice claims, and if Dr. Coniglio wants to practice in Ohio, Dr. Kumar needs to know of any further malpractice actions taken against Dr. Coniglio. Even if the Board reprimands him, Dr. Kumar wants extra quarterly information coming in, if there are any cases filed.

Dr. Buchan stated that he was unsettled by the North Carolina process and whether this attorney solicited patient information. He felt that something didn't sound right about that situation. Dr. Buchan stated that he was feeling more lenient and more sensitive to the situation; however, he can't ignore the three additional malpractice cases that came within six years in Michigan, which involved a couple of ankles and a femur. This really doesn't add up. Based upon the malpractice history and the additional malpractice cases in Michigan, he would like to see a little monitoring. Dr. Buchan stated that he doesn't think it's unreasonable to grant Dr. Coniglio a license; he would just feel more comfortable if the Board would monitor him for a bit. If this is an aberration or the North Carolina situation shouldn't have happened, the Board just needs to monitor for a few years and then he can move on. Dr. Buchan stated that he's in favor of the amendment.

A roll call vote was taken on the motion to amend:

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

The motion carried.

**DR. BUCHAN MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF GERALD ANTHONY CONIGLIO, M.D. DR. DAVIDSON SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov


January 11, 2006

Gerald Anthony Coniglio, M.D.
37 Murray Street
Mount Morris, NY 14510

Dear Doctor Coniglio:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Ohio Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

(1) By letter dated October 18, 2005, the Nevada State Board of Medical Examiners [Nevada Board] notified the Ohio Board that, on or about June 4, 2005, the Nevada Board denied your application for a medical license, based upon the excessive number of malpractice claims settled on your behalf and your continued pattern of receiving adverse reports from nearly every facility in which you practiced related, in part, to concerns about interpersonal relationship and/or standard of care issues. Copies of the October 18, 2005 Nevada Board letter and amended Nevada Board minutes of the June 4, 2005 meeting are attached hereto and incorporated herein.

The Nevada Board's denial of your medical license application, as alleged in paragraph (1) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

Mailed 1-12-06

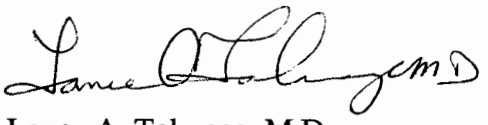
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4333 3874
RETURN RECEIPT REQUESTED

# Nevada State Board of Medical Examiners

*Via Federal Express delivery*

October 18, 2005

David P. Katko, Esq.
Enforcement Attorney
State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, OH 43215-6127

OHIO STATE MEDICAL BOARD
OCT 19 2005

*Re: Gerald Coniglio, M.D.*

Dear Mr. Katko:

The following is provided in response to your request for information from the Nevada State Board of Medical Examiners concerning its denial of the application for licensure of Gerald Coniglio, M.D. in June 2005.

At its quarterly meeting on June 4, 2005, the Nevada State Board of Medical Examiners denied the application for medical licensure in the state of Nevada of Gerald Coniglio, M.D., based upon the excessive number of malpractice claims against him which have been settled on his behalf, some in large amounts, and his continued pattern of receiving adverse reports from nearly every facility in which he has practiced, many concerning interpersonal relationships and others concerning standard-of-care issues in the communities where he has practiced. The motion was made by Secretary-Treasurer Donald H. Baepler, Ph.D., D.Sc., was seconded by Board Member Marlene J. Kirch, and passed unanimously, with all Board Members voting in favor of the motion.

Should you have any questions, please feel free to call me.

Sincerely,

Drennan A. Clark, J.D.
Executive Director/Special Counsel

LM

Mailing Address: P.O. Box 7238 • Reno, Nevada 89510-7238
Physical Address: 1105 Terminal Way, Suite 301 • Reno, Nevada 89502-2144
(775) 688-2559 • Fax (775) 688-2321
E-mail: nsbme@medboard.nv.gov • Website: www.medboard.nv.gov

STATE OF NEVADA
BOARD OF MEDICAL EXAMINERS
I, Drennan A. Clark, Official Custodian of the records, do hereby certify that this document is a true and correct copy of the original on file in this office.

Signed: _____
Executive Director

Date: _____

# Nevada State Board of Medical Examiners

# ***AMENDED MINUTES***

## OPEN SESSION BOARD MEETING

**Held in the Conference Room at the offices of the Nevada State Board of Medical Examiners**
**1105 Terminal Way, Suite 301, Reno, NV 89502**
**and videoconferenced to**
**the conference room of the Nevada State Board of Dental Examiners**
**6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118**

***FRIDAY, JUNE 3, 2005 – 8:30 a.m.***
***and***
***SATURDAY, JUNE 4, 2005 – 8:30 a.m.***

***Board Members Present***
Stephen K. Montoya, M.D., President
Joel N. Lubritz, M.D., Vice President
Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
Marlene J. Kirch
Sohail U. Anjum, M.D.
Javaid Anwar, M.D.
Jean Stoess, M.A.
Cindy Lamerson, M.D.

***Board Members Absent***
Charles N. Held, M.D.

***Staff Present***
Drennan A. Clark, J.D., Executive Secretary/Special Counsel
Laurie L. Munson, Deputy Executive Secretary/
Information Systems Administrator/Chief of Administration
Bonnie S. Brand, General Counsel
Edward O. Cousineau, Deputy General Counsel
Robert J. Barnet, M.D., Medical Reviewer
Lynnette L. Krotke, Chief of Licensing
Douglas C. Cooper, Chief of Investigations
Terri L. Ward, Investigator
Michael L. Huse, Investigator (in Las Vegas)

***Also Present***
Charlotte M. Bible, J.D., Chief Deputy Attorney General
Peter A. Mansky, M.D., Director, Nevada Health Professionals Assistance Foundation
Roger M. Belcourt, M.D., President, Nevada Health Professionals Assistance Foundation
Dan Hickey, P.A.-C, Physician Assistant Advisory Committee Member (in Las Vegas)
Michael J. Garcia, R.R.T., Practitioner of Respiratory Care Advisory Committee Member (in Las Vegas)

Mailing Address: P.O. Box 7238 • Reno, Nevada 89510-7238
Physical Address: 1105 Terminal Way, Suite 301 • Reno, Nevada 89502-2144
(775) 688-2559 • Fax (775) 688-2321
E-mail: nsbme@medboard.nv.gov • Website: www.medboard.nv.gov

## FRIDAY, JUNE 3, 2005

Agenda Item 1
**CALL TO ORDER AND ANNOUNCEMENTS** – Stephen K. Montoya, M.D., President

The meeting was called to order by President Stephen K. Montoya, M.D., at 8:35 a.m.

Dr. Montoya stated Chief Deputy Attorney General Charlotte Bible was not yet present, but would be joining the meeting later in the morning.

Agenda Item 2
**APPROVAL OF MINUTES**
- March 4 & 5, 2005 Board Meeting – Open/Closed Sessions
- March 24, 2005 Emergency Telephone Conference Call Board Meeting – Open Session
- April 22, 2005 Emergency Telephone Conference Call Board Meeting – Open Session

Ms. Stoess moved to approve the Minutes of the March 4 & 5, 2005 Board Meeting - Open/Closed Sessions. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Baepler moved to approve the Minutes of the March 24, 2005 Emergency Telephone Conference Call Board Meeting – Open Session. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Ms. Stoess moved to approve the Minutes of the April 22, 2005 Emergency Telephone Conference Call Board Meeting – Open Session. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 3
**PERSONNEL**
**Closed Session**
- Annual Review and Discussion of Professional Competency of Staff
- Set Staff Compensation
  - Joel N. Lubritz, M.D., Vice President and Chairman of the Internal Affairs Committee;
  - Drennan A. Clark, J.D., Executive Secretary/Special Counsel

**Open Session**
- Introduction of New Board Staff
  - Drennan A. Clark, J.D., Executive Secretary/Special Counsel

- **Annual Review and Discussion of Professional Competency of Staff**
- **Set Staff Compensation**

Mrs. Kirch moved to go into Closed Session to discuss the professional competency of Board staff. Ms. Stoess seconded the motion, and it passed.

Upon returning to Open Session, Dr. Baepler moved to table the discussion on this agenda item until Saturday, June 4, 2005. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor.

**- Introduction of New Board Staff**

Mr. Cooper introduced the Board's new Investigator, Shawna M. Rice, and new Administrative Assistant for Investigations, Rebecca L. Grunau, and presented a brief history of the professional background of each.

Agenda Item 4
**REPORT ON STATUS OF THE BOARD'S PUBLIC SERVICE ANNOUNCEMENT PROGRAM THROUGH NEVADA BROADCASTERS ASSOCIATION**
- Drennan A. Clark, J.D., Executive Secretary/Special Counsel

Mr. Clark told the Board there are currently three radio ads and one television ad running in both English and Spanish, and he had received two new radio ads for review from the Nevada Broadcasters Association – one in English and one in Spanish. The Board created a Public Relations Committee to review the previous advertisements and he recommended that the Committee be reinstated, with Ms. Stoess as the Chair, as she has an extensive background in public relations. He would volunteer for the Committee and one other Board member should be appointed.

Dr. Montoya asked Ms. Stoess if she was willing to Chair the Committee, and she indicated she was. Ms. Kirch volunteered to be the third member of the Committee.

Agenda Item 9
**APPROVAL OF CONTRACT WITH NEVADA HEALTH PROFESSIONALS ASSISTANCE FOUNDATION FOR THE BOARD'S DIVERSION PROGRAM FOR JULY 1, 2005 THROUGH JUNE 30, 2007**
- Drennan A. Clark, J.D., Executive Secretary/Special Counsel

Mr. Clark advised the Board that the contract with the Nevada Health Professionals Assistance Foundation for July 1, 2005 through June 30, 2007, at $150,000 per year, had been presented to, and approved by, the Nevada Board of Examiners.

Dr. Montoya asked whether the Foundation had been seeking out other sources of funding, and Mr. Clark stated they had, but he did not know whether they had received any.

Dr. Baepler stated that the Foundation needs to be made aware that they cannot use any of the Board's funding for legal expenses incurred in any lawsuits against them.

Dr. Montoya said Sunrise Hospital is waiting to see what happens in the Legislature before deciding whether to give money to any programs in addition to those they are already contributing to.

Dr. Lubritz stated he was concerned the Foundation is not fiscally responsible and needs better accountability.

Discussion ensued concerning funding of the diversion program.

Dr. Baepler stated the Board currently contributes 10% of its income to the diversion program, which is too high.

Dr. Montoya suggested that he, Mr. Clark and Dr. Mansky, as well as any other Board members who would like to attend, meet and discuss the diversion program's funding.

Agenda Item 10
**INDIVIDUAL REQUEST FOR APPROVAL TO PRACTICE OUTSIDE OF THE UNIVERSITY OF NEVADA SCHOOL OF MEDICINE'S FAMILY PRACTICE RESIDENCY PROGRAM, PER NRS 630.265(4)**
- Drennan A. Clark, J.D., Executive Secretary/Special Counsel

Mr. Clark advised the Board that they had received a second request for approval to moonlight from Gurpreet Padam, M.D., who initially requested approval at the March meeting, but this time the Director of the Family Residency program and the Medical School are supporting her. Based upon an agreement with the Medical School, if the School provides the Board with an appropriate letter of support, the Board will consider the request, and on that basis he recommended the Board approve the request.

Dr. Montoya stated he would like to make a request to the Legislature in 2007 to change the statute to allow the Medical School to make its own decisions concerning applications for moonlighting, rather than bringing them to the Board. Dr. Baepler suggested a combined request to the Legislature from the Board and Medical School.

Ms. Stoess moved that the Board grant Dr. Padam's request to practice outside the University of Nevada School of Medicine's Family Practice Residency Program. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 11
**CONSIDERATION OF REDUCTION IN NUMBER OF CME CREDITS REQUIRED FOR RENEWAL OF LICENSES OF PHYSICIAN MEMBERS OF THE BOARD FOR PARTICIPATION AS MEMBERS OF THE BOARD**
- Charles N. Held, M.D., Board Member

Dr. Montoya stated he would not want it to appear that physician Board members are privileged because they are on the Board, so he is not in favor of reducing the number of CME credits required for renewal of physician Board members' licenses.

Dr. Lubritz suggested that if any requirement was to be reduced, it could be the ethics credits.

Dr. Baepler said he was told by several physicians during a hearing on a proposed regulation change several months ago that the ethics courses were some of the most worthless courses they had taken.

Mr. Cousineau stated he receives a lot of inquiries concerning whether courses qualify to receive continuing medical education credits, and in general, continuing medical education credits must be AMA Category 1 approved, so there could be an issue as to whether what the Board does qualifies as AMA Category 1, and it may be seen as disparate treatment.

Dr. Baepler noted the Board gives credits for peer reviews so it would be, in essence, the same type of activity as what Board members do with the Investigative Committees and such.

Dr. Lubritz moved that the Board maintain the current number of required continuing medical education requirements for physician Board members. Dr. Anwar seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 12
**CONSIDERATION OF REQUIRING APPLICANTS TO HANDLE THEIR OWN APPLICATIONS FOR LICENSURE**
- Jean Stoess, M.A., Board Member

Ms. Stoess stated she had initially requested this item be placed on the agenda for discussion due to the applicant who appeared at the March Board meeting whose wife had completed a large portion of his application and also appeared with him. Her concern was that applicants should be responsible for completion of their own applications. Mr. Clark has since explained to her that applicants are responsible for everything contained in their applications, regardless of how they are completed, so she no longer feels any action is necessary on this item.

Agenda Item 13
**CONSIDERATION OF USE OF VERIDOC LICENSURE VERIFICATION SYSTEM**
- Lynnette L. Krotke, Chief of Licensing

Ms. Krotke stated that 10 or 12 other states were currently utilizing the VeriDoc system to verify licensure information from other states over the Internet, but she was not comfortable with verifying licensure in this manner. Verification by this method is not direct-source verification, in that it is not coming directly from the boards. Additionally, there is no way to ensure the information in fact came from the boards, as there are no seals or stamps on documents received over the Internet. At this point, the Licensing Division is not accepting these verifications.

Mrs. Kirch moved that the Board not accept VeriDoc licensure verifications or contract with VeriDoc for licensure verification. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 14
**CONSIDERATION OF APPROVAL OF SYMPOSIUM IN LAS VEGAS TO DEMONSTRATE BOTOX AND RESTYLANE INJECTIONS**
- Lynnette L. Krotke, Chief of Licensing

Ms. Krotke explained that this is a request from a group of physicians who want to come to Las Vegas and perform injections of Botox and Restylane on members of their staff as a demonstration for physicians interested in these procedures. There will be a Nevada-licensed physician, Julio Garcia, M.D., on site while the injections are being done, and physicians who participate will receive AMA Category 1 continuing medical education credits.

Discussion ensued concerning whether the out-of-state physicians who would be performing injections would be required to obtain a Nevada license in order to do so, or whether the statutes allow for an exception for this type of one-time training session, and concerning whether it had been verified that the out-of-state physicians were licensed in another state.

Dr. Anjum moved to approve the symposium with the caveat that all patients be informed prior to treatment that out-of-state physicians will be performing the injections on them and the additional caveat that Dr. Garcia take medical and legal responsibility for any liability that may result from the treatment rendered. Dr. Lubritz seconded the motion, and it passed, with Mrs. Kirch and the Chair opposed.

The Board directed Ms. Krotke to notify the requesters of the Board's requirements upon them in order to hold the symposium and to verify that the out-of-state physicians are duly licensed in some other state.

Agenda Item 15
**DISCUSSION CONCERNING INFORMATION CONTAINED IN LICENSEE LOOKUP MODULE OF BOARD WEBSITE**
- Javaid Anwar, M.D., Board Member

Dr. Anwar stated the only information that should be available to the public on the Board's website is what is required by Nevada statutes, as that is what the Board voted on at the last meeting. Currently, information regarding malpractice claims against licensees is included on the website, which is information that is not required by Nevada statutes.

Mr. Cooper explained that all malpractice claims, settlements and judgments are reportable to the National Practitioner Data Bank, as part of its disciplinary mode, and that is why it is included on the Board's website.

Discussion ensued concerning the public's use of information regarding malpractice claims against the Board's licensees.

Ms. Bible stated that malpractice claims are not disciplinary actions, they are civil matters.

Dr. Montoya stated that many physicians are concerned about the information contained on the website regarding malpractice claims and settlements because it makes them appear to be bad physicians.

Ms. Stoess moved that the Public Relations Committee get together to discuss this matter and present a recommendation at the next Board meeting. Mrs. Kirch seconded the motion, and the motion failed, with Mrs. Kirch and Ms. Stoess voting in favor and the remaining Board members opposed. Dr. Montoya stated that accordingly, the action taken by the Board at the March meeting remains the Board's policy and the only information regarding actions taken against the Board's licensees that will remain on the website is that which is required by Nevada statutes.

Agenda Item 5
**CONSIDERATION OF RENEWAL OF ANNUAL CONTRACT WITH NEVADA BROADCASTERS ASSOCIATION FOR THE BOARD'S PUBLIC SERVICE ANNOUNCEMENT PROGRAM FOR OCTOBER 1, 2005 THROUGH SEPTEMBER 30, 2006**
- Robert D. Fisher, President and CEO - Nevada Broadcasters Association

Mr. Clark stated that the current contract with Nevada Broadcasters Association will expire on October 1, 2005, and asked the Board whether they wanted to renew it at that time or have the Public Relations Committee review it and make a recommendation to the Board at its September meeting.

Dr. Montoya stated the Board had been receiving good response to the current advertisements and suggested the current contract be renewed. Ms. Stoess agreed.

Mrs. Kirch moved that the Board renew the contract with Nevada Broadcasters Association for another year, from October 2005 to October 2006. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 6
**AMENDMENTS TO NEVADA ADMINISTRATIVE CODE CHAPTER 630**
- Review of Public Comments on, and Consideration of Adoption of Proposed Amendment to NAC 630.560, Increasing the Membership of the Practitioner of Respiratory Care Advisory Committee to Five Members, and NAC 630.050, Concerning Reapplication for Licensure Following a Denial of Application for Licensure
  - Drennan A. Clark, J.D., Executive Secretary/Special Counsel
- Consideration of Amendment to NRS 630.301(9), to Adopt a Code of Professional Ethics
  - Robert J. Barnet, M.D., Medical Reviewer; Drennan A. Clark, Executive Secretary/Special Counsel

- **Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to NAC 630.560, Increasing the Membership of the Practitioner of Respiratory Care Advisory Committee to Five Members, and NAC 630.050, Concerning Reapplication for Licensure Following a Denial of Application for Licensure**

Mr. Clark stated that two workshops had been held, one in Reno and one in Las Vegas, and a public hearing was held in Reno, concerning amendment of NAC 630.560 to increase the number of members of the Practitioner of Respiratory Care to five, and amendment of NAC 630.050, to allow the Board discretion to bar an applicant from reapplying for licensure following denial of an application for a period of from one to three years, which would prevent serial applications from an applicant. He then explained that these two regulations were ready for Board approval and if approved, they would become effective immediately because they are temporary regulations at this point due to the Legislature being in session. When the legislative session concludes, the approval process will have to be repeated to make the regulations permanent, so he was also requesting approval from the Board at this time to go through the process to make permanent these two regulation amendments, as well as the regulation amendment approved by the Board previously which sets a time limit and a limit on the number of attempts to pass all three steps of the USMLE.

Dr. Baepler moved to approve the amendments to NAC 630.560 and NAC 630.050 as temporary regulations. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Baepler moved to authorize Board staff to proceed to take the necessary steps to make the three temporary regulations permanent. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Consideration of Amendment to NRS 630.301(9), to Adopt a Code of Professional Ethics**

Mr. Clark stated that NRS 630.301(9) authorizes the Board to adopt by regulation a Code of Ethics, and Dr. Barnet has done a great job of going through the National Code of Ethics and preparing a succinct draft code of ethics for the Board's review.

Dr. Barnet stated that this portion of the Nevada Revised Statutes was adopted as long as 10 years ago. This issue has come up in Investigative Committee meetings several times a year, as the Investigative Committees want to take action based upon a violation of the code of ethics, but can't because one has never been adopted by the Board. He has attempted to create a document physicians would read and the Board could use in reviewing ethical violations. He feels it is important for the good of the profession and to send a strong message to the public that the Board has integrity and is concerned with the welfare of the public.

Dr. Baepler stated Dr. Barnet did a great job in putting the proposed code of ethics together, but expressed concerns about the breadth of the code as drafted.

Mr. Clark stated that if the Board approves of the code of ethics in general by moving to go forward with drafting a regulation to adopt the code of ethics, Board staff could go through the process and bring the matter back to the Board for approval at the September or December Board meeting.

Dr. Lubritz suggested the Board obtain legal advice before adopting a code of ethics to ensure that it will both serve the public and not leave physicians open to additional lawsuits.

Dr. Barnet stated that both Mr. Clark and Ms. Brand have reviewed the draft and have opined that it is a sound document.

Dr. Anjum suggested a Code could be adopted as a guideline or policy only, and not enforced by statute or regulation.

Dr. Montoya stated that Dr. Barnet drafted the Code of Ethics to fill holes in the statutes.

Ms. Bible stated that the purpose of a code of ethics is to provide ethical guidelines to assist in making determinations as to unethical or disreputable conduct. Much of the language in the draft code of ethics concerning ethical and standard of care issues is already covered in the statutes, and the Board may not want to duplicate what is already contained in the statutes in a code of ethics.

Dr. Barnet explained his intent was to put together the information contained in the statutes and regulations into one concise document so that physicians could easily see what was expected of them and the Board's Investigative Committees would also have that information in one place to assist them in their deliberations.

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, stated he was on the committee in the mid-90s that adopted the language currently in the statute concerning adoption of the national code of ethics, and there was no desire at that time to adopt the National Code of Ethics. There is a bill in committee right now to amend the statute to allow the Board to adopt a code based upon the National Code of Ethics, rather than requiring it adopt the National Code of Ethics.

Dr. Lubritz moved that the Board not move forward with adoption of a code of ethics at this time. Dr. Baepler seconded the motion. Ms. Stoess requested an amendment to the motion to add that the Board would review a new draft of the code of ethics at its September meeting, after review by the Board's attorneys. Dr. Lubritz did not accept the amendment and stated his motion remained as originally moved. Dr. Baepler again seconded the motion, and it passed, with Ms. Stoess and the Chair opposed to the motion.

Mrs. Kirch requested that the Board's attorneys review the current draft of the code of ethics and again present a draft to the Board at its September meeting.

Agenda Item 7
**PRESENTATION BY NEVADA DIVISION OF MENTAL HEALTH AND DEVELOPMENTAL SERVICES CONCERNING DISASTER PREPAREDNESS AND RESPONSE TEAM**
- Jeff Whitesides, Statewide Disaster Response Coordinator; Robin Albrandt, Regional Mental Health Disaster Response Team

Jeff Whitesides, Statewide Disaster Response Coordinator for the Nevada Division of Mental Health and Developmental Services, made a presentation to the Board concerning the mental health services that would be offered by Nevada's Mental Health Disaster Response Team during times of large-scale disasters in the state or surrounding states. Their goal is to recruit mental health professionals to establish a roster of those willing to provide mental health services during statewide activations and they are seeking assistance in that area from the Board.

Mr. Whitesides was advised that he could provide information on the program to Ms. Munson for inclusion in an upcoming Board newsletter.

Agenda Item 8
**CONSIDERATION OF REQUEST BY CARL HEARD, M.D. AND NEVADA HEALTH CENTERS, INC. TO ADJUST BOARD'S ADMINISTRATIVE PROCEDURE REGARDING FOREIGN MEDICAL GRADUATES**
- Carl Heard, M.D., Chief Medical Officer, Nevada Health Centers, Inc.

Dr. Heard, Chief Medical Officer for Nevada Health Centers, Inc., stated they have found foreign medical graduates to be an asset to the public health in rural and underserved areas within the state. When a foreign medical graduate applies for licensure in Nevada, he or she

must also apply for an H1B1 Visa to work in the United States. The Visa process cannot begin until the Board issues a letter to the State Department indicating the physician meets the requirements for licensure in Nevada. Currently, the Board will not issue that letter until it receives written confirmation of completion of the third year of residency, and therefore, it typically takes a year or more for these physicians to become licensed in the state. He is requesting that the Board change its procedure to issue that letter as soon as the Board has completed its processing of the application, regardless of whether it has received confirmation of completion of the third year of residency, in order to speed up the Visa process and allow these foreign medical graduates to obtain their licenses sooner.

Mrs. Kirch and Ms. Krotke both expressed concern with issuing the letter without confirmation of completion of training.

Dr. Baepler moved that the Board decline the request for adjustment of the Board's administrative procedures and continue with the current procedure. Dr. Lubritz seconded the motion, and the motion failed, with Dr. Baepler, Dr. Anjum, Ms. Stoess and the Chair voting in favor of the motion and Dr. Lubritz, Mrs. Kirch, Dr. Anwar and Dr. Lamerson opposed.

Dr. Baepler moved that the Board draft a new letter to the State Department stating that if the individual meets all requirements for licensure in Nevada, which requirements are attached to the letter, the Board will issue a license to that individual. Ms. Stoess seconded the motion, and it passed, with Mrs. Kirch opposed and the Chair voting in favor of the motion.

Agenda Item 16
**REPORT ON COMPLIANCE REVIEW PROJECT AND PRESENTATION OF COMPLIANCE TRACKING PROCEDURES**
- Douglas C. Cooper, Chief of Investigations; Terri L. Ward, Investigator

Mr. Cooper introduced Terri L. Ward as the new Compliance Review Officer and described the program that has been implemented to monitor compliance with orders issued by the Board.

Ms. Ward explained that a comprehensive review was made of the 240 cases in which a licensee had been issued a fine, was required to pay costs, perform continuing medical education, participate in the Diversion Program, or some other requirement. Of those, 207 were in compliance and 33 were not. She stated staff is asking the Board to approve a change to her position description to include compliance monitoring as part of her duties, and to authorize staff to implement procedures to collect the delinquent balances owed by licensees, which currently total $158,807.54.

Dr. Baepler stated the change to the job description could be made administratively, but the request for authorization for the collection procedure should be placed on the agenda for the September Board meeting.

Agenda Item 20
**ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. CRAIG DANIEL CLARK, M.D.*, BME CASE NO. 04-11909-1**
- Bonnie S. Brand, J.D., General Counsel

**OPEN SESSION**

Dr. Montoya described the facts of the case. He stated that when the Board's expert first reviewed the case, he opined Dr. Clark had committed malpractice. A formal complaint was filed against Dr. Clark. The Board's expert reaffirmed his position prior to the hearing; however, at the hearing, the expert changed his opinion and testified that Dr. Clark did not commit malpractice. Discussion ensued.

Dr. Lubritz moved that the Board find Craig Daniel Clark, M.D. did not commit malpractice, and that the case be dismissed. Ms. Stoess seconded the motion, and it passed unanimously, with all adjudicating members voting in favor of the motion.

Agenda Item 21
**ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. JUAN MANZUR, M.D.*, BME CASE NO. 04-9342-1**
- Bonnie S. Brand, J.D., General Counsel

**OPEN SESSION**

Dr. Montoya described the facts of the case. Ms. Bible read Count I of the formal complaint against Dr. Manzur.

Dr. Baepler moved that the Board find Juan Manzur, M.D. guilty of Count I of the formal complaint against him for engaging in conduct that brings the medical profession into disrepute, a violation of NRS 630.301(9). Ms. Stoess seconded the motion, and it passed unanimously, with all adjudicating members voting in favor of the motion.

Ms. Bible read Count II of the formal complaint against Dr. Manzur.

Dr. Baepler moved that the Board find Juan Manzur, M.D. guilty of Count II of the formal complaint against him as there is clear and convincing evidence that Dr. Manzur is unable to practice medicine with reasonable skill and safety due to mental illness and/or his use of drugs, narcotics or other substances, a violation of NRS 630.306(1). Ms. Stoess seconded the motion, and it passed unanimously, with all adjudicating members voting in favor of the motion.

Dr. Baepler moved that the Board revoke Juan Manzur, M.D.'s license to practice medicine and recover all fees and costs associated with the case from Dr. Manzur, to be paid within 90 days of the Board's order. Dr. Anjum seconded the motion, and it passed unanimously, with all adjudicating members voting in favor of the motion.

Agenda Item 17
**REPORTS**

- Legislative Update - Keith L. Lee, Esq., Legislative Counsel
- Diversion Program - Quarterly Report - Peter Mansky, M.D., Executive Director, Nevada Health Professionals Association
- Physician Assistant Advisory Committee - John P. Lanzillotta, P.A.-C, Advisory Committee Member
- Practitioner of Respiratory Care Advisory Committee - Michael J. Garcia, R.R.T., Advisory Committee Member
  - Consideration of Recommendations for Appointment to Advisory Committee
- Investigative Committees - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer, Chairperson, Investigative Committee A
  Joel N. Lubritz, M.D., Vice President, Chairperson, Investigative Committee B
  - Consideration of Cases Recommended for Closure by the Committees
- Investigations Division - Douglas C. Cooper, Chief of Investigations
  - Status of Investigative Caseload
- Nevada State Medical Association Liaison Report - Stephen K. Montoya, M.D.; Lawrence P. Matheis, Executive Director of the Nevada State Medical Association
- Clark County Medical Society Liaison Report - Stephen K. Montoya, M.D., President; Weldon Havins, M.D., J.D., CEO and Special Counsel, Clark County Medical Society
- Washoe County Medical Society Liaison Report - Cindy Lamerson, M.D., Board Member; Jeanie L. Catterson, Executive Director, Washoe County Medical Society
- Secretary-Treasurer - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
  - Status of Finances
- National Association of Drug Diversion Investigators (NAADI) Training, April 25-27, 2005, Las Vegas, NV Douglas C. Cooper, Chief of Investigations
- Administrators in Medicine's *Physician Licensing, Technology & Investigations Workshops*, April 27-29, 2005, Albuquerque, N.M. - Carolyn H. Castleman, Deputy Chief of Licensing; Pamela J. Castagnola, Deputy Chief of Investigations
- Administrators in Medicine's 2005 Annual Meeting, May 11, 2005, Dallas, TX - Drennan A. Clark, J.D., Executive Secretary/Special Counsel
- Federation of State Medical Boards of the United States, Inc.'s 2005 Annual Meeting, May 12-14, 2005, Dallas, TX Stephen K. Montoya, M.D., President; Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer

**- Physician Assistant Advisory Committee**

John Lanzillotta, P.A.-C explained that the Physician Assistant Advisory Committee is concerned that under current laws, physician assistants might be held in violation of the Medical Practice Act for practicing without supervision when rendering assistance in an emergency situation because they are not covered by the state's Good Samaritan law or any other laws which would apply to those situations. Accordingly, they would like to amend Nevada statutes to specifically allow physician assistants to render emergency assistance without supervision. He has provided to the Board AAPA draft model language that could be used to amend the laws.

Ms. Bible read NRS 41.505. Discussion ensued concerning whether the statute covers physicians and physician assistants.

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, stated that when care is rendered gratuitously and done in response to an emergency situation, physicians are covered under the law. Ms. Bible stated that although that is true, physician assistants are not specifically covered under the law. Mr. Matheis suggested either the Physician Assistant Advisory Committee or the State Medical Association could request legislation to make the change in the next session. Ms. Bible read paragraph 2 of NRS 41.505 and stated that may cover physician assistants. She suggested the Physician Assistant Advisory Board review the statute and if it is determined physician assistants are not covered, they could come back to the Board for further consideration.

**- Practitioner of Respiratory Care Advisory Committee**
**- Consideration of Recommendations for Appointment to Advisory Committee**

Michael J. Garcia, R.R.T. provided a brief biography of the two Practitioners of Respiratory Care the Committee was requesting the Board appoint to the Practitioner of Respiratory Care Advisory Committee, John Steinmetz, M.B.A., R.R.T., and Greg Roaldson, R.R.T., and asked that the Board approve their appointments.

Mrs. Kirch moved that the Board approve the appointments to the Practitioner of Respiratory Care Advisory Committee as recommended by the Committee. Dr. Lubritz seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**INVESTIGATIVE COMMITTEES – Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer, Chairperson, Investigative Committee A**
**Joel N. Lubritz, M.D., Vice President, Chairperson, Investigative Committee B**

- Consideration of Cases Recommended for Closure by the Committees

**- Consideration of Cases Recommended for Closure by Committees**

Dr. Baepler reported that Investigative Committee A considered 71 cases, authorized filing formal complaints in 3 cases, appearances were requested in 4 cases, 2 cases were sent out for peer review, 4 cases were referred back to investigative staff for further investigation and 58 cases were recommended for closure.

Dr. Lubritz reported that Investigative Committee B considered 89 cases, authorized filing formal complaints in 4 cases, 1 case was sent out for peer review, appearances were requested in 2 cases, 5 cases were referred back to investigative staff for further investigation and 77 cases were recommended for closure.

Dr. Anjum moved to approve for closure the cases recommended by the Investigative Committees. Dr. Anwar seconded the motion, and the motion carried unanimously, with the Chair voting in favor of the motion.

**- Investigations Division**
**- Status of Investigative Caseload**

Mr. Cooper stated there were 646 open cases prior to the most recent meetings of the Investigative Committees, and after closing those recommended by the Investigative Committees, there will be 511, with 89 new cases to be opened. After this meeting, there will be 85 cases per investigator, which is the first significant drop in a quite some time. The number of investigators remains the same. There are still a lot of Clark County cases to pull for review, and he will be hiring temporary help to assist with that.

**- Nevada State Medical Association Liaison Report**

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, reported their annual meeting was held in Sparks several weeks ago. There was discussion concerning legislation and the outcome of the liability ballot questions, and a number of resolutions were adopted, none of which he thinks involve the Board.

**- Clark County Medical Society Liaison Report**

Dr. Montoya reported the Clark County Medical Society is concerned with the University of Pittsburgh's plans to open a Center of Excellence in Las Vegas and completely exclude local physicians. They are happy with what the Board is doing and has similar issues before the Legislature.

**- Washoe County Medical Society Liaison Report**

Dr. Lamerson stated nothing pertinent to the Board was addressed at the most recent Washoe County Medical Society meeting. They were concerned by an advertisement asking anyone who had been assaulted by an OB/Gyn to contact the organization sponsoring the advertisement. Mr. Cooper stated the Investigations Division looked into the advertisement and found it to be sponsored by a support group for those who have been abused by their OB/Gyns.

**- Secretary-Treasurer**
**- Status of Finances**

Dr. Baepler stated the figures on the balance sheets provided to the Board do not reflect the end of May figures; rather, they reflect figures from approximately mid-May. With six weeks left in the fiscal year, it is not an accurate view because all the money the Board is collecting now is to be counted against expenses beginning July 1, so it provides a false sense of where the Board's finances currently stand. The investigations budget is overextended due to the hugely increased caseload, which was unforeseen when the budget was drafted; however, the Board's finances are in good shape and are where they were anticipated to be. The Board's reserve will have been reduced by a quarter of a million dollars and the Board will meet its target on June 30. The reserves will be further reduced by another half a million during the next biennium.

**- National Association of Drug Diversion Investigators (NAADI) Training, April 25-27, 2005, Las Vegas, NV**

Mr. Cooper told the Board he would like to continue to keep the dues paid for one person to go once a year to training.

**- Administrators in Medicine's *Physician Licensing, Technology & Investigations Workshops,* April 27-29, 2005, Albuquerque, N.M.**

Ms. Krotke reported that she and Deputy Chief of Licensing Carolyn Castleman attended the Licensing and Technology modules of the training. They compared information concerning how the various boards verify information for licensure, and Nevada is very strong. The Board's technology is a little behind, however, with respect to interaction with the public, in that documents related to disciplinary actions are not available online and the Board does not currently offer online licensure.

Ms. Castagnola reported the Investigations module of the training covered background checks, collaboration between agencies during investigations, organization of investigative staff, and ethical issues concerning email and faxes and what information is privileged or subject to discovery.

**- Administrators in Medicine's 2005 Annual Meeting, May 11, 2005, New Orleans, LA**

Mr. Clark reported Administrators in Medicine (AIM) will institute an online system accessible by board counsel from all states to allow them to query each other and share information on questions that come before them, and offer a training program with certification for investigators.

**- Federation of State Medical Boards' Annual Meeting, May 12-14, 2005, Dallas, TX**

Dr. Montoya stated that physician competency will be coming back to the forefront soon, as the Annual Meeting focused on that issue quite extensively.

Mr. Cousineau stated the meeting was tailored more towards physicians than anyone else and the breakout session for attorneys was not terribly beneficial, although some good contacts with other state boards were made.

**RECESS**

Dr. Montoya recessed the meeting for lunch at 12:45 p.m.

**RECONVENE**

Dr. Montoya reconvened the meeting at 1:30 p.m.

Agenda Item 22
**ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. SCOTT SOUTHARD, M.D.*, BME CASE NO. 04-6292-1**
- Bonnie S. Brand, J.D., General Counsel

**OPEN SESSION**

Dr. Montoya described the facts of the case. Dr. Southard surgically repaired a patient's Achilles tendon, and the patient subsequently died from an embolism a month post surgery. Discussion ensued.

Dr. Lubritz moved that the Board find that Scott Southard, M.D.'s care of the patient did not fall below the standard of care ordinarily used under similar circumstances and he did not commit malpractice. Dr. Southard exercised his best medical judgment at the time and there were mitigating factors, in that the patient did not advise Dr. Southard he was having pain in the area of his surgery and he had taken two trips to San Francisco following his surgery. Additionally, the autopsy did not conclude the embolism originated in his leg and was DVT. Accordingly, Dr. Southard was not guilty of malpractice. Dr. Lamerson seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 23
**ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. ALVARO DEVIA, M.D.*, BME CASE NO. 04-12275-1**
- Edward O. Cousineau, J.D., Deputy General Counsel

**OPEN SESSION**

Dr. Montoya described the facts of the case. Dr. Devia treated the patient following a motorcycle accident, which included performing tests and admitting the patient to the hospital for observation for 24 hours. Despite negative changes in the patient's tests the following day, Dr. Devia released the patient, who later went into cardiac arrest and died. Discussion ensued.

Dr. Anjum moved that the Board find Alvaro Devia, M.D. guilty of one count of malpractice for failing to use the reasonable care, skill or knowledge ordinarily used in similar circumstances in the treatment of the patient, a violation of NRS 630.301(**4**). Dr. Devia did not follow protocol concerning the tests run on the patient, did not properly analyze the test results, and discharged the patient from the hospital without being fully informed as to the condition of the patient. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Baepler moved that the Board impose a fine upon Dr. Devia in the amount of $5,000, payable within 6 months of the Board's order, successfully complete 20 hours of continuing medical education in chest trauma, in addition to continuing medical education hours required for licensure, within 1 year of the Board's order, and pay all administrative fees and costs incurred in the investigation and prosecution of the case against him, payable within 6 months of the Board's order. Dr. Anjum seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 28
**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE**

Dr. Baepler moved to go into Closed Session to discuss the character and professional competence of applicants for licensure approval. Dr. Lubritz seconded the motion, and it passed.

**CLOSED SESSION**

**28(a) Ramanathan Prakash, M.D.**

Upon returning to Open Session, Dr. Lubritz questioned Ramanathan Prakash, M.D., who appeared before the Board on his application for licensure by endorsement. Dr. Lubritz asked him what circumstances he could cite which would compel the Board to grant him licensure by endorsement when he otherwise doesn't meet the requirements for licensure because he is not Board Certified and he has not passed a major examination within the last 10 years, and Dr. Prakash could cite none.

Mrs. Kirch moved to return to Closed Session. Ms. Stoess seconded the motion, and it passed.

Upon returning the Open Session, Dr. Lubritz moved that the Board decline to exercise its discretion to grant licensure by endorsement to Ramanathan Prakash, M.D. or to grant him a peer review, as he does not bring any special expertise to the state that the state does not already have. Mrs. Kirch seconded the motion, and the motion passed unanimously, with the Chair voting in favor of the motion.

Dr. Montoya suggested to Dr. Prakash that if he wanted to reapply, he should read Nevada's statutes thoroughly before doing so.

Agenda Item 24
**ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. ANGELICA HONSBERG, M.D.*, BME CASE NO. 04-10514-1**
- Bonnie S. Brand, J.D., General Counsel

**OPEN SESSION**

Dr. Montoya described the facts of the case. Dr. Honsberg had treated a patient in the UMC emergency room who arrived there by ambulance exhibiting signs of stroke. The patient's condition deteriorated to the point where the patient's family withdrew medications and further efforts to prolong life and the patient expired. The Board's complaint alleged Dr. Honsberg committed malpractice by administering heparin to the patient when the patient had received TPA less than three hours earlier.

Dr. Lubritz moved that the Board find Angela Honsberg, M.D. did not fail to exercise the degree of care, skill and knowledge ordinarily used under similar circumstances. There were no protocols in the Las Vegas area hospitals at the time for treatment of ischemic stroke with TPA.

Dr. Honsberg had conducted research to find the most recent articles concerning use of TPA in stroke patients prior to ordering heparin be administered, and could find nothing conclusive. The NINDS study was a clinical trial and did not provide specific protocols. Additionally, the patient had a stroke score of 21, which carried a high risk for poor outcome. Based upon those findings, Dr. Lubritz moved that the case be dismissed. Mrs. Kirch seconded the motion, and the motion passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 25
**CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. ELLIOTT SCHMERLER, M.D.*, BME CASE NO. 04-9279-1**
- Edward O. Cousineau, J.D., Deputy General Counsel

**OPEN SESSION**

Mr. Cousineau stated that Dr. Schmerler's license was currently revoked and Dr. Schmerler hoped to re-obtain licensure in Nevada in the future. Following filing of this case against Dr. Schmerler, Dr. Schmerler advised Mr. Cousineau he was not going to hire counsel to represent him in this matter, and that he would like to settle the case by completing 16 hours of continuing medical education. Mr. Cousineau took Dr. Schmerler's settlement proposal to the Investigative Committee. The Committee refused the offer, but offered to accept 1 count of malpractice against Dr. Schmerler, a public reprimand to Dr. Schmerler and payment of all costs associated with the case. Dr. Schmerler agreed to the settlement and it is now before the Board for consideration.

Dr. Baepler moved that the Board accept the terms of settlement, as outlined by Mr. Cousineau, find Elliott Schmerler guilty of one count of malpractice for failing to use the reasonable care, skill or knowledge ordinarily used under similar circumstances in providing care or treatment to a patient, a violation of NRS 630.301(4), issue a public reprimand to Dr. Schmerler and that Dr. Schmerler pay all costs and fees associated with the case against him. Dr. Anjum seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 26
**CONSIDERATION OF DISMISSAL OF COMPLAINT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. BRUCE OGDEN, M.D.*, BME CASE NO. 04-6039-1**
- Edward O. Cousineau, J.D., Deputy General Counsel

**OPEN SESSION**

Mr. Cousineau stated the case had originally been former General Counsel Stephen Quinn's case. Investigative Committee B authorized filing a formal complaint against Dr. Ogden in March of 2004 and set the matter for pre-hearing and hearing. The Board's Peer Reviewer, Dr. Zucker, originally opined malpractice had occurred, but upon subsequently receiving additional information, opined malpractice had not been committed by Dr. Ogden.

Dr. Baepler stated the Investigative Committee determined it could not find Dr. Ogden failed to use reasonable care under those circumstances and therefore there is no basis to proceed with the case against Dr. Ogden.

Dr. Anjum moved that the Board dismiss the case against Dr. Ogden. Dr. Lamerson seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 28 **(CONTINUED)**
**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE**

Dr. Anjum moved to go into Closed Session to discuss the character and professional competence of applicants for licensure approval. Mrs. Kirch seconded the motion, and it passed.

**CLOSED SESSION**

**28(b) Elliott Saferin, M.D.**

Upon returning to Open Session, Dr. Baepler questioned Elliott Saferin, M.D., who appeared before the Board to respond to questions concerning his affirmative responses to Questions 12, 13 and 31 on his application for licensure and regarding his medical training.

Dr. Saferin described his medical training and stated it was progressive. He described the circumstances surrounding the malpractice claims against him, as well as the cases against him for insurance fraud, hostile work environment and sexual harassment.

Mrs. Kirch moved to return to Closed Session. Dr. Lamerson seconded the motion, and it passed.

Upon returning to Open Session, Dr. Baepler moved that the Board grant Elliott Saferin, M.D.'s application for licensure. Dr. Anjum seconded the motion, and it passed, with Dr. Lubritz, Mrs. Kirch and Dr. Lamerson opposed and the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Anwar seconded the motion, and it passed.

**28(c) Arnel Garcia, M.D.**

Upon returning to Open Session, Dr. Lamerson questioned Arnel Garcia, M.D., who appeared before the Board on his application for licensure by endorsement. Dr. Lamerson asked him what circumstances he could cite which would compel the Board to grant him licensure by endorsement when he otherwise doesn't meet the requirements for licensure because he is not Board Certified and he hasn't passed a major examination within the last 10 years, and Dr. Garcia could cite none.

Mrs. Kirch moved to return to Closed Session. Dr. Lubritz seconded the motion, and it passed.

Upon returning to Open Session, Dr. Lamerson moved that the Board decline to exercise its discretion to grant licensure by endorsement to Arnel Garcia, M.D. or to grant him a peer review. Dr. Baepler seconded the motion, and the motion passed unanimously, with the Chair voting in favor of the motion.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(d) Ralph Fenn, M.D.**

Dr. Fenn appeared with Steven Zuchowski, M.D., Director of the Psychiatry Residency Program at the University of Nevada School of Medicine. Ms. Stoess questioned Dr. Fenn concerning his affirmative response to Question 19 on his application for licensure.

Dr. Fenn described his past residency training and explained the circumstances surrounding his being placed on academic probation during his pathology residency at Stanford University.

Dr. Zuchowski stated he supported Dr. Fenn's application for licensure.

Mrs. Kirch moved to return to Closed Session. Dr. Anwar seconded the motion, and it passed.

Upon returning to Open Session, Ms. Stoess moved to grant a limited license to Ralph Fenn, M.D. to participate in the University of Nevada School of Medicine Psychiatry Residency Program. Mrs. Kirch seconded the motion, and it carried unanimously, with the Chair voting in favor of the motion.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(e) Brian Spencer, P.A.-C**

Upon returning to Open Session, Ms. Stoess questioned Brian Spencer, P.A.-C, who appeared before the Board to respond to questions concerning his affirmative responses to Questions 13, 21, 22 and 24 on his application for licensure.

Mr. Spencer explained the circumstances surrounding the spousal abuse charges against him, which were later dismissed, and his arrest in California for possession of and being under the influence of a narcotic, and described his participation in the California diversion program.

Dr. Baepler moved that the Board grant Brian Spencer, P.A.-C's application for licensure contingent upon continued participation in the Nevada Diversion Program. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Ms. Stoess seconded the motion, and it passed.

**28(f) Kord Strebel, M.D.**

Upon returning to Open Session, Dr. Montoya questioned Kord Strebel, M.D., who appeared before the Board to respond to questions concerning his affirmative response to Question 19 on his application for licensure.

Dr. Strebel explained the circumstances surrounding his being placed on probation during his residency at Wright State University.

Mrs. Kirch moved to return to Closed Session. Dr. Anwar seconded the motion, and it passed.

Upon returning to Open Session, Dr. Anwar moved that the Board grant Kord Strebel, M.D.'s application for licensure. Dr. Lamerson seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(g) Sanjeev Suri, M.D.**

Sanjeev Suri, M.D. appeared before the Board on his application for licensure.

Upon returning to Open Session, Dr. Anwar advised Dr. Suri that the Board had received confirmation of the continuing medical education credits required by the Board and a letter from Dr. Jagarlapudi concerning his observership in Nephrology.

Dr. Anjum asked Dr. Suri if he had had any medical or legal problems since he appeared before the Board in March, and he stated he had not.

Dr. Anwar moved that the Board grant Sanjeev Suri, M.D.'s application for licensure pending issuance of an H1B1 Visa. Dr. Baepler seconded the motion, and it passed, with the Chair voting against the motion.

Dr. Anjum moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(i) Srinadh Rao, M.D.**

Upon returning to Open Session, Dr. Anjum questioned Srinadh Rao, M.D., who appeared before the Board concerning his affirmative response to Question 13 and negative response to Question 31 on his application for licensure.

Dr. Rao explained the circumstances surrounding his conviction for DUI in 2002, stated his misstatements to Dr. Mansky were due to the fact that he didn't recall the facts surrounding his arrest at the time he met with Dr. Mansky, stated he responded in the negative to Question 31 on his application for licensure because he did not understand the question, and stated he did not self-report because he did not know it was required of him.

Dr. Anjum moved that the Board grant Srinadh Rao, M.D.'s application for licensure contingent upon participation in the Nevada Diversion Program. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(j) Linda Ash-Jackson, M.D.**

Upon returning to Open Session, Dr. Lubritz questioned Linda Ash-Jackson, M.D., who appeared before the Board on her application for licensure by endorsement. Dr. Lubritz asked her what circumstances she could cite which would compel the Board to grant her licensure by endorsement when she otherwise doesn't meet the requirements for licensure because she has not passed a major examination within the last 10 years and has not practiced clinical medicine since 1987, and Dr. Ash-Jackson could cite none.

Dr. Ash-Jackson described her background in Administrative Medicine and stated she was going to be taking the Special Purpose Examination. Dr. Lubritz asked if she would be practicing clinical medicine if she passed the Special Purpose Examination, and she stated she might consider going to the University in the future and get additional training so she could practice medicine as a volunteer after she retires. She currently holds a license in Florida and keeps up with continuing medical education. She explained the circumstances surrounding her approvals and denials of referrals for treatment in her current employment and stated she did not consider that to be practicing medicine since she was not in direct contact with patients, but she understands how it might be construed as practicing medicine. She does have an unrestricted medical license in Florida.

Mrs. Kirch moved to return to Closed Session. Dr. Anwar seconded the motion, and it passed.

Upon returning to Open Session, Dr. Lubritz moved that the Board decline to exercise its discretion to grant licensure by endorsement to Linda Ash-Jackson, M.D. Mrs. Kirch seconded the motion, and the motion passed unanimously, with the Chair voting in favor of the motion.

Dr. Lubritz moved that the Board grant Linda Ash-Jackson, M.D. a restricted license, restricted to the practice of Administrative Medicine, and the license would be contingent upon Dr. Ash-Jackson passing the Special Purpose Examination and completing 20 hours continuing medical education in Internal Medicine within the next three months. Dr. Anwar seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Anwar seconded the motion, and it passed.

**28(k) Louis Alpern, M.D.**

Upon returning to Open Session, Mrs. Kirch questioned Louis Alpern, M.D., who appeared before the Board on his application for licensure by endorsement. Mrs. Kirch asked him what circumstances he could cite which would compel the Board to grant him licensure by endorsement when he otherwise doesn't meet the requirements for licensure because he has not passed a major examination within the last 10 years, and Dr. Alpern could cite none.

Dr. Alpern told the Board he recently signed up to take a recertification examination in Ophthalmology, but he cannot take it until next year.

Mrs. Kirch moved to return to Closed Session. Dr. Anwar seconded the motion, and it passed.

Upon returning to Open Session, Dr. Anjum moved that the Board decline to exercise its discretion to grant licensure by endorsement to Louis Alpern, M.D. Mrs. Kirch seconded the motion, and the motion passed unanimously, with the Chair voting in favor of the motion.

Dr. Anjum moved to grant an unrestricted license to Louis Alpern, M.D. pending successful passage of a peer review or board recertification. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**RECESS**

Dr. Montoya recessed the meeting at 6:45 p.m.

## SATURDAY, JUNE 4, 2005

***Board Members Present***
Stephen K. Montoya, M.D., President
Joel N. Lubritz, M.D., Vice President
Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
Marlene J. Kirch
Sohail U. Anjum, M.D.
Javaid Anwar, M.D.
Jean Stoess, M.A.
Cindy Lamerson, M.D.

***Board Members Absent***
Charles N. Held, M.D.

***Staff Present***
Drennan A. Clark, J.D., Executive Secretary/Special Counsel
Laurie L. Munson, Deputy Executive Secretary/
Information Systems Administrator/Chief of Administration
Bonnie S. Brand, General Counsel
Edward O. Cousineau, Deputy General Counsel
Lynnette L. Krotke, Chief of Licensing
Trent S. Hiett, Investigator (in Las Vegas)

***Also Present***
Charlotte M. Bible, J.D., Chief Deputy Attorney General

**RECONVENE**

Stephen K. Montoya, M.D., President, reconvened the meeting at 8:30 a.m.

Agenda Item 17 **(CONTINUED)**
**REPORTS**
- Legislative Update - Keith L. Lee, Esq., Legislative Counsel
- Diversion Program - Quarterly Report - Peter Mansky, M.D., Executive Director, Nevada Health Professionals Association
- Physician Assistant Advisory Committee - John P. Lanzillotta, P.A.-C, Advisory Committee Member
- Practitioner of Respiratory Care Advisory Committee - Michael J. Garcia, R.R.T., Advisory Committee Member
  - Consideration of Recommendations for Appointment to Advisory Committee
- Investigative Committees - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer, Chairperson, Investigative Committee A
  Joel N. Lubritz, M.D., Vice President, Chairperson, Investigative Committee B
  - Consideration of Cases Recommended for Closure by the Committees
- Investigations Division - Douglas C. Cooper, Chief of Investigations
  - Status of Investigative Caseload
- Nevada State Medical Association Liaison Report - Stephen K. Montoya, M.D.; Lawrence P. Matheis, Executive Director of the Nevada State Medical Association
- Clark County Medical Society Liaison Report - Stephen K. Montoya, M.D., President; Weldon Havins, M.D., J.D., CEO and Special Counsel, Clark County Medical Society

Agenda Item 17 **(CONTINUED)**
**REPORTS**

- Washoe County Medical Society Liaison Report - Cindy Lamerson, M.D., Board Member; Jeanie L. Catterson, Executive Director, Washoe County Medical Society
- Secretary-Treasurer - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
  - Status of Finances
- National Association of Drug Diversion Investigators (NAADI) Training, April 25-27, 2005, Las Vegas, NV Douglas C. Cooper, Chief of Investigations
- Administrators in Medicine's *Physician Licensing, Technology & Investigations Workshops*, April 27-29, 2005, Albuquerque, N.M. - Carolyn H. Castleman, Deputy Chief of Licensing; Pamela J. Castagnola, Deputy Chief of Investigations
- Administrators in Medicine's 2005 Annual Meeting, May 11, 2005, Dallas, TX - Drennan A. Clark, J.D., Executive Secretary/Special Counsel
- Federation of State Medical Boards of the United States, Inc.'s 2005 Annual Meeting, May 12-14, 2005, Dallas, TX Stephen K. Montoya, M.D., President; Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer

**- Legislative Update**

Keith L. Lee, Esq., the Board's Legislative Counsel, reported on the various bills before the 2005 Legislature which might affect the Board. The Board's bill, AB 555, takes care of all but one of the Board's legislative issues, which was the requirement that in order for a homeopathic physician to be licensed in Nevada, the licensee must also hold a current license under NRS Chapter 630 or 633. That provision was deleted from AB 555. Additionally, a provision requiring physicians licensed pursuant to NRS 630 and 633 to report to the Board of Medical Examiners and the Board of Osteopathic Medicine on an annual basis all in-office surgeries utilizing several levels of sedation and any seminal events from those surgeries, may be added from AB 120, a bill that is technically dead.

**- Diversion Program: Quarterly Report**

Peter Mansky, M.D. stated the Nevada Health Professionals Association was pleased with the Board's renewal of their contract. He distributed a report to Board members and told the Board the Diversion Program is working towards increasing its outreach to hospitals, surgical centers and group practices, and they hope to increase the number of referrals to the program as well as funding. Additionally, they hope to increase their involvement with hospitals and group practices to include working with disruptive physicians and those suffering from psychiatric illnesses. They have also implemented a new urine monitoring system. They currently have a three-to-four-month operating reserve and 90 participants in the program, with 75 under contract.

Agenda Item 18
**EXECUTIVE STAFF REPORTS**

- Consideration of Approval of 2004 Board Annual Report
- Consideration of Request for Staff Attendance at Educational Meetings
- Status of Staff Additions and Report on Status of Office Space in Las Vegas for Investigators
- Informational Items
  - Drennan A. Clark, J.D., Executive Secretary/Special Counsel
- Status of Processing July 1, 2005 through June 30, 2007 Biennial Licensure Registration Renewals
  - Lynnette L. Krotke, Chief of Licensing

**- Consideration of Request for Staff Attendance at Educational Meetings**

Mr. Clark requested authority for staff to attend the educational meetings listed on the handout provided to Board members for review.

Dr. Baepler moved to authorize attendance at the aforementioned educational meetings as requested. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Consideration of Approval of 2004 Board Annual Report**

Dr. Baepler moved to approve the Board's 2004 Annual Report. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Baepler asked that future annual reports include statistics on the number of cases investigated.

**- Status of Staff Additions and Report on Status of Office Space in Las Vegas for Investigators**

Mr. Clark told the Board the office in Las Vegas is operational and ready for the investigators to use. Doug will be hiring a temporary employee for the summer to catch up with the Clark County court filings. Dr. Calvanese has become a full-time employee of the Board and is currently working three-quarter time, or 30 hours per week. He has offered to assist with preparation of the cases to go before the Investigative Committees and cross-examinations during hearings.

**- Status of Processing July 1, 2005 Through June 30, 2007 Biennial Licensure Registration Renewals**

Ms. Krotke stated that to date 3,107 physicians and physician assistants have renewed their licenses for the 2005-2007 biennium, 207 have chosen non-renewal, and 37 have requested a change in status from active to inactive.

Agenda Item 19
**LEGAL REPORTS** - Bonnie S. Brand, J.D., General Counsel
Edward O. Cousineau, J.D., Deputy General Counsel
Charlotte M. Bible, J.D., Chief Deputy Attorney General

- Board Litigation Status

**- Board Litigation Status**

Ms. Brand reported that since the March Board meeting, there were 5 adjudications acted upon by the Board at this meeting, there are 4 cases with synopses being prepared for submission at the next Board meeting, 4 licenses had been summarily suspended, with hearings scheduled on all but one, because the licensee is in jail with an extremely high bail, 14 letters of concern had been mailed out, there are 24 cases scheduled for hearing, there are 11 cases in which the Investigative Committees have authorized the filing of a formal complaint,

4 cases pending settlement, 2 of which the Board acted upon at this meeting, and there are 26 cases requiring Investigative Committee summaries.

Ms. Bible reported several Board members and staff had been sued by Karen Giarrusso, M.D., alleging civil rights violations and tort claims involving invasion of privacy. The case has been removed to federal court and she will file a motion to dismiss, which should summarily dispose of the case. She is working with outside counsel on the case. With respect to the Mower case, all briefing has been completed and it will be set for oral argument before the Nevada Supreme Court.

Agenda Item 28 **(CONTINUED)**
**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE**

Dr. Anwar moved to go into Closed Session to discuss the character and professional competence of applicants for licensure approval. Mrs. Kirch seconded the motion, and it passed.

**CLOSED SESSION**

**28(l) John Daake, M.D.**

Upon returning to Open Session, Dr. Anwar questioned John Daake, M.D., who appeared before the Board to respond to questions concerning his affirmative response to Question 12 on his application for licensure.

Dr. Daake explained the circumstances surrounding the claims of malpractice against him.

Dr. Anwar moved to return to Closed Session. Mrs. Kirch seconded the motion, and it passed.

Upon returning to Open Session, Dr. Anwar moved that the Board grant John Daake, M.D.'s application for licensure. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(m) Liberacion Albinda, M.D.**

Upon returning to Open Session, Dr. Anjum questioned Liberacion Albinda, M.D., who appeared before the Board on her application for licensure by endorsement. Dr. Anjum asked her whether she was Board Certified in Gastroenterology or Internal Medicine.

Dr. Albinda described her practice and stated she had not passed the Internal Medicine Boards when first practicing, and had not attempted them again. Dr. Anjum asked what circumstances Dr. Albinda could cite which would compel the Board to grant her licensure by endorsement when she otherwise doesn't meet the requirements for licensure because she has not passed a major examination within the last 10 years, and she could cite none.

Dr. Anjum moved that the Board decline to exercise its discretion to grant licensure by endorsement to Liberacion Albinda, M.D. or to grant her a peer review. Mrs. Kirch seconded the motion, and the motion passed unanimously, with the Chair voting in favor of the motion.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(n) Richard Davis, M.D.**

Upon returning to Open Session, Dr. Lubritz questioned Richard Davis, M.D., who appeared before the Board to respond to questions concerning his affirmative responses to Questions 12 and 31 on his application for licensure.

Dr. Davis explained the circumstances surrounding the claims of malpractice against him and the steps he has taken to ensure there are no future incidences of operating on incorrect body parts.

Mrs. Kirch moved to return to Closed Session. Ms. Stoess seconded the motion, and it passed.

Upon returning to Open Session, Dr. Lubritz moved that the Board grant Richard Davis, M.D.'s application for licensure. Dr. Anwar seconded the motion, and it passed, with Dr. Anjum and Ms. Stoess opposed and the Chair voting in favor of the motion.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(o) Jeffrey Wick, M.D.**

Upon returning to Open Session, Dr. Baepler stated Dr. Wick was here on a new application, his previous application having been denied in December 2003. His application in December 2003 was denied due to Dr. Wick's responses to certain questions on his application which the Board found to be untruthful. It would appear that the deficiencies in the old application have been corrected on the new application, in that Dr. Wick correctly answered the questions he answered incorrectly on the first application; however, he asked Dr. Wick why the Board should now grant him a license when nothing else has changed.

Dr. Wick stated he had responded to the questions the way he did on his 2003 application due to an agreement he made with the University of Wisconsin that he would never mention the suspension occurred because technically it didn't occur since they didn't follow appropriate procedures.

Dr. Anwar stated that the Board's denial of Dr. Wick's application in 2003 was based on a question of honesty and asked Dr. Wick if there was a reason for the Board to believe that its decision at that time was unfounded or that he has changed and is a more honest person now. Dr. Wick stated he did not attempt to deceive the Board at that time and he doesn't feel he was dishonest as he had answered the same way on other applications for licensure. Dr. Lubritz asked Dr. Wick whether the answers he supplied to the subject questions on his 2003 application for licensure were true or false. Dr. Wick stated he believed they were true

statements given the information he had at that time, in that no suspension could have formally occurred at Wisconsin. Dr. Lubritz asked Dr. Wick if he had been suspended, and Dr. Wick responded in the affirmative.

Dr. Anwar moved to return to Closed Session. Ms. Stoess seconded the motion, and it passed.

Upon returning to Open Session, Dr. Baepler moved that the Board deny Jeffrey Wick, M.D.'s application for licensure pursuant to NRS 630.304(1), based upon his false, misleading and/or inaccurate statements on his 2003 application for licensure, and because his current application, and the explanations contained therein, were not completed in an adequate manner. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(p) Henry Daniels, M.D.**

Upon returning to Open Session, Ms. Stoess questioned Henry Daniels, M.D., who appeared before the Board to respond to questions concerning his affirmative responses to Questions 13 and 19 on his application for licensure.

Dr. Daniels explained the circumstances surrounding the domestic battery case against him which was later dismissed, and regarding his academic probation during his internship.

Ms. Stoess moved that the Board grant Henry Daniels, M.D.'s application for licensure. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(w) Joseph Johnson, M.D.**

Upon returning to Open Session, Dr. Anwar questioned Joseph Johnson, M.D., who appeared before the Board to respond to questions concerning his affirmative response to Question 12 on his application for licensure and concerning the fact that he has not practiced clinical medicine since December of 1999.

Dr. Johnson told the Board his position at Sierra Health Services is strictly an administrative position and does not, and will not, require him to practice clinical medicine; however, he will be making decisions to grant or deny treatment, which he considers the practice of medicine.

Dr. Anwar moved that the Board grant Joseph Johnson, M.D.'s application for licensure. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Ms. Stoess seconded the motion, and it passed.

**28(q) Christopher Breeden, M.D.**

Upon returning to Open Session, Mrs. Kirch questioned Christopher Breeden, M.D., who appeared before the Board to respond to questions concerning his affirmative response to Question 12 on his application for licensure.

Dr. Breeden described the circumstances surrounding the one claim of malpractice against him which resulted in a settlement.

Mrs. Kirch moved that the Board grant Christopher Breeden, M.D.'s application for licensure. Dr. Anwar seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(r) James Hockenberry, M.D.**

Upon returning to Open Session, Dr. Montoya questioned James Hockenberry, M.D., who appeared before the Board to request a change in status of his license from inactive to active, and to respond to questions concerning his affirmative response to Question 12 on his application for licensure.

Dr. Hockenberry explained the circumstances surrounding the single claim of malpractice against him.

Dr. Lamerson asked Dr. Hockenberry what he had done to keep current since he last practiced clinical medicine in November of 2003, and Dr. Hockenberry explained that although he hasn't been able to practice clinical medicine with an inactive license, he has kept up with continuing medical education.

Mrs. Kirch moved to return to Closed Session. Dr. Anwar seconded the motion, and it passed.

Upon returning to Open Session, Dr. Baepler moved that the Board grant James Hockenberry, M.D.'s request for change in license status from inactive to active. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(s) Kitae Kim, M.D.**

Upon returning to Open Session, Dr. Montoya questioned Kitae Kim, M.D., who appeared before the Board to respond to questions concerning his negative response to Question 19 on his application for licensure. Dr. Kim appeared with his attorney, Hal Taylor, Esq.

Dr. Kim explained the circumstances surrounding his suspension from St. Vincent Catholic Medical Center during his residency training, stating he responded negatively to Question 19 on his application for licensure because he never received any notification that he was suspended. He was told not to show up for work while being investigated, but he was paid during that time, and he was unaware of any disciplinary action being taken against him.

Dr. Lubritz read to the Board an e-mail from Neil Mandava, M.D., Chairman of Surgery at St. Vincent Catholic Medical Center, which said, "Dr. Kim was informed of a five working day suspension in a letter dated 2/24/03 from Duncan Quarless, Regional Director of Human Resources. The actual days of suspension were June 9, 2003 through June 13, 2003." Dr. Lubritz then asked Dr. Kim if he received the 2/24/03 letter, and Dr. Kim indicated he had. He said the letter advised him he was going to be suspended for five days but did not specify what days and he never had a hearing. Dr. Lubritz asked Dr. Kim if he had lied on his application for licensure, and Dr. Kim stated he had not been forthcoming.

Dr. Anwar moved to return to Closed Session. Mrs. Kirch seconded the motion, and it passed.

Upon returning to Open Session, Dr. Kim explained the circumstances surrounding the incident wherein he slashed the tires on a vehicle belonging to an unknown person in response to feelings of anger he experienced while working at the hospital during his residency, and stated he has no problem working with patients or staff.

Dr. Anjum moved that the Board grant Kitae Kim, M.D.'s application for licensure. Ms. Stoess seconded the motion. A vote was taken on the motion, which resulted in no action, with Dr. Baepler, Dr. Anjum, Dr. Anwar and Ms. Stoess voting in favor of the motion and Dr. Lubritz, Mrs. Kirch, Dr. Lamerson and the Chair voting against the motion.

After further discussion, Dr. Anjum again moved that the Board grant Kitae Kim, M.D.'s application for licensure. Ms. Stoess seconded the motion, and it passed, with Dr. Lubritz, Mrs. Kirch and Dr. Lamerson opposed, and the Chair voting in favor of the motion.

Dr. Anjum moved to amend the motion to grant Dr. Kim's application for licensure to add as a condition of licensure that Dr. Kim receive an evaluation concerning anger management and referral to an anger management program approved by the Board and to be monitored by the Diversion Program. Ms. Stoess seconded the motion, and it passed, with Dr. Lubritz, Mrs. Kirch and Dr. Lamerson opposed, and the Chair voting in favor of the motion.

Agenda Item 30
**ELECTION OF OFFICERS AND APPOINTMENT OF COMMITTEE MEMBERS**

Dr. Montoya announced that nominations were open for election of President of the Board.

Dr. Lubritz nominated Dr. Montoya for another term as President. Dr. Baepler seconded the nomination, and it passed unanimously.

Dr. Montoya announced that nominations were open for election of Vice President of the Board.

Dr. Lubritz nominated Dr. Anwar to serve as Vice President. Dr. Baepler seconded the nomination, and it passed unanimously.

Dr. Montoya announced that nominations were open for Secretary-Treasurer of the Board.

Ms. Stoess nominated Dr. Baepler for another term as Secretary-Treasurer. Dr. Anjum seconded the nomination, and it passed unanimously.

Dr. Anwar left the meeting at 12:15 p.m.

Dr. Lamerson moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**28(u) Ira Finch, M.D.**

Upon returning to Open Session, Dr. Lamerson questioned Ira Finch, M.D., who appeared before the Board to respond to questions concerning his affirmative response to Question 12 on his application for licensure.

Dr. Finch described the circumstances surrounding the one claim of malpractice against him which resulted in a settlement.

Dr. Lamerson moved that the Board grant Ira Finch, M.D.'s application for licensure. Dr. Anjum seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Ms. Stoess seconded the motion, and it passed.

**28(t) Benjamin Bruk, M.D.**

Upon returning to Open Session, Mrs. Kirch questioned Benjamin Bruk, M.D., who appeared before the Board on his application for licensure by endorsement. Mrs. Kirch asked Dr. Bruk what circumstances he could cite which would compel the Board to grant him licensure by endorsement when he otherwise doesn't meet the requirements for licensure because he

has not passed a major examination within the last 10 years, and Dr. Bruk could cite none. Dr. Bruk stated he only intended to practice part time.

Mrs. Kirch moved to return to Closed Session. Ms. Stoess seconded the motion, and it passed.

Upon returning to Open Session, Mrs. Kirch moved that the Board decline to exercise its discretion to grant licensure by endorsement Benjamin Bruk, M.D. or to grant him a peer review. Dr. Lubritz seconded the motion, and the motion passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Ms. Stoess seconded the motion, and it passed.

**28(v) Gerald Coniglio, M.D.**

Upon returning to Open Session, Dr. Baepler questioned Gerald Coniglio, M.D., who appeared before the Board to respond to questions concerning his affirmative responses to Questions 12, 14, 19 and 31 on his application for licensure.

Dr. Coniglio explained the circumstances surrounding the claims of malpractice against him and the difficulties he had with interpersonal relationships at various hospitals he had worked in.

Mrs. Kirch moved to return to Closed Session. Ms. Stoess seconded the motion, and it passed.

Upon returning to Open Session, Dr. Baepler moved that the Board deny Gerald Coniglio, M.D.'s application for licensure based upon the excessive number of malpractice claims against him which have been settled on his behalf, some in large amounts, and his continued pattern of receiving adverse reports from nearly every facility in which he has practiced, many concerning interpersonal relationships and others concerning standard-of-care issues in the communities where he has practiced. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 3 **(CONTINUED)**

**PERSONNEL**

**Closed Session**

- Annual Review and Discussion of Professional Competency of Staff
- Set Staff Compensation
  - Joel N. Lubritz, M.D., Vice President and Chairman of the Internal Affairs Committee;
  - Drennan A. Clark, J.D., Executive Secretary/Special Counsel

**Open Session**

- Introduction of New Board Staff
  - Drennan A. Clark, J.D., Executive Secretary/Special Counsel

**- Annual Review and Discussion of Professional Competency of Staff**
**- Set Staff Compensation**

Dr. Lubritz moved to go into Closed Session to discuss the professional competency of Board staff. Mrs. Kirch seconded the motion, and it passed.

Upon returning to Open Session, Mrs. Kirch moved to accept the recommendations of the Internal Affairs Committee with respect to staff compensation. Ms. Stoess seconded the motion, and it passed unanimously, with the chair voting in favor.

Agenda Item 27
**LICENSURE RATIFICATION**
- Ratification of Licenses Issued, and Reinstatements of Licensure and Changes of Licensure Status Approved, Since the March 4 & 5, 2005 Board Meeting

Dr. Baepler moved to ratify the licenses issued, and reinstatements of licensure and changes of licensure status approved, since the March 4 & 5, 2005 Board meeting. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 29
**MATTERS FOR FUTURE AGENDA**

Mr. Clark stated the following matters would be on the Agenda for the September Board meeting: consideration of adoption as permanent, the three temporary regulations the Board adopted at previous meetings, the proposed amendment to NRS 630.301(9) to adopt a Code of Professional Ethics, and a proposed regulation to deal with laser surgery.

Dr. Lubritz asked that Mr. Clark work on the definition of "disrepute" if AB 555 passes.

Agenda Item 31
**PUBLIC COMMENT**

The Board received no public comment.

**ADJOURNMENT**

Dr. Anjum moved that the Board adjourn. Ms. Stoess seconded the motion, and it passed unanimously.

Dr. Montoya adjourned the meeting at 1:25 p.m.