



State Medical Board of Ohio

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June 14, 2006

Khalid Mahmoud Shirif, M.D.
487 Delaware Avenue
Buffalo, NY 14202

Dear Doctor Shirif:

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 June 14, 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 9835
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 7003 0500 0002 4329 9811
RETURN RECEIPT REQUESTED

Mailed 7-6-06

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 June 14, 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 Khalid Mahmoud Shirif, 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)

June 14, 2006

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

KHALID MAHMOUD SHIRIF, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 14, 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. **GRANT OF PHYSICIAN TRAINING CERTIFICATE SUBJECT TO CONDITIONS SPECIFIED IN THIS ORDER:** The application of Khalid Mahmoud Shirif, M.D., for a physician training certificate in the State of Ohio for the period July 1, 2005 to June 30, 2006, is GRANTED, provided that he otherwise meets all statutory and regulatory requirements, and subject to all of the terms, conditions, and limitations set forth in this Order:
- B. **APPLICATION FOR FULL LICENSE WILL NOT BE CONSIDERED UNTIL AFTER RELEASE ISSUED BY BOARD:** The Board shall not consider any application submitted to the Board by Dr. Shirif for a full medical license until after Dr. Shirif has been released from the terms of this Order as set forth in section G, below.
- C. **SUSPENSION OF CERTIFICATE:** The training certificate of Dr. Shirif in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than one year.

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

1. **Application for Reinstatement or Restoration:** Dr. Shirif shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Psychiatric Assessment:** Prior to submitting his application for reinstatement or restoration, Dr. Shirif shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. Shirif's choice.

Upon approval by the Board, Dr. Shirif shall obtain from the approved psychiatrist an assessment of Dr. Shirif's current psychiatric status. The assessment shall take place no more than sixty days prior to the submission of Dr. Shirif's application for reinstatement, unless otherwise approved by the Board. Prior to the initial assessment, Dr. Shirif shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

Upon completion of the initial assessment, Dr. Shirif shall cause a written report to be submitted to the Board from the approved psychiatrist. The written report shall include:

- a. A detailed report of the evaluation of Dr. Shirif's current psychiatric status and condition;
 - b. A detailed plan of recommended psychiatric treatment, if any, based upon the psychiatrist's informed assessment of Dr. Shirif's current needs;
 - c. A statement regarding any recommended limitations upon his practice, and
 - d. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.
3. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Shirif has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his/her fitness to resume practice.

- E. **PROBATION:** Upon reinstatement or restoration, Dr. Shirif's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Obey the Law:** Dr. Shirif shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 2. **Declarations of Compliance:** Dr. Shirif 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. Shirif's training certificate is restored or reinstated. 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. Shirif 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. Shirif's training certificate is restored or reinstated, 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. **Continue Psychiatric Treatment:** If the psychiatrist approved by the Board prior to Dr. Shirif's reinstatement or restoration recommended that Dr. Shirif undergo psychiatric treatment, Dr. Shirif shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved treating psychiatrist. The psychiatric reports shall contain information describing Dr. Shirif's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Shirif's compliance with the treatment plan; Dr. Shirif's psychiatric status; Dr. Shirif's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Shirif 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. Shirif's quarterly declaration.

In addition, Dr. Shirif shall ensure that his treating psychiatrist immediately notifies the Board of Dr. Shirif's failure to comply with his psychiatric treatment plan and/or any determination that Dr. Shirif is unable to practice due to his psychiatric disorder.

In the event that the designated psychiatrist becomes unable or unwilling to serve in this capacity, Dr. Shirif must immediately so notify the Board in writing and make arrangements acceptable to the Board for another

psychiatrist as soon as practicable. Dr. Shirif shall further ensure that the previously designated psychiatrist also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

5. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Shirif is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
6. **Professional Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Shirif shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

7. **Personal Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Shirif shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

- F. **DURATION/MODIFICATION OF TERMS:** All subsequent training certificates or other certificates that may be granted by the Board to Dr. Shirif shall be subject to the same terms, conditions and limitations, unless otherwise determined by the Board, until Dr. Shirif has completed at least a two year probationary period with the Board. Moreover, the term of probation shall be tolled during any period in which Dr. Shirif's training certificate has lapsed and no other certificate has been issued by the Board.

- G. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Shirif's certificate will be fully restored.
- H. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Shirif 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. Shirif 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. Shirif receives from the Board written notification of his successful completion of probation.
- I. **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. Shirif 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. Shirif 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. Shirif 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. Shirif receives from the Board written notification of his successful completion of probation.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

June 14, 2006
Date

**REPORT AND RECOMMENDATION
IN THE MATTER OF KHALID MAHMOUD SHIRIF, M.D.**

The Matter of Khalid Mahmoud Shirif, M.D., was heard by R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on July 29, 2005.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated May 18, 2005, the State Medical Board of Ohio [Board] notified Khalid Mahmoud Shirif, M.D., that it had proposed to take disciplinary action against or refuse to register or reinstate his training certificate to practice medicine and surgery in Ohio. The Board alleged that Dr. Shirif had failed to provide full and accurate disclosure of information on a 2005 application for an Ohio training certificate, and on written communications with other entities.

The Board further alleged that the above conduct constitutes:

- “‘fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,’ as that clause is used in Section 4731.22(A), Ohio Revised Code”;
- “‘[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,’ as that clause is used in Section 4731.22(B)(5), Ohio Revised Code”; and/or
- “a failure to furnish satisfactory proof of good moral character as required by Sections 4731.29 and 4731.08, Ohio Revised Code.”

(State’s Exhibit 1 at 6-12)

- B. By letter received by the Board on August 1, 2005, Dr. Shirif requested a hearing. (State’s Exhibit 1 at 5)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Jonathan R. Fulkerson, Assistant Attorney General.

- B. On behalf of the Respondent: Eric J. Plinke, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State

Khalid Mahmoud Shirif, M.D., as upon cross-examination

- B. Presented by the Respondent

1. Khalid Mahmoud Shirif, M.D.
2. Jeffrey Visco, M.D.

II. Exhibits Examined

- A. Presented by the State

1. State's Exhibits 1: Collection of documents consisting of copies of the following:¹
 - a. Pages 1-5: Procedural exhibits. (Note: The Board's May 18, 2005, notice of opportunity for hearing for Dr. Shirif can be found at pages 6 through 12.)
 - b. Pages 13-17: Certification letters from the University of Minnesota, Brigham and Women's Hospital, the University of Utah, The Cleveland Clinic Foundation, and Tufts-New England Medical Center.
 - c. Pages 18, 24, 25, 28, 30, 47, 50, and 57: Excerpts from the transcript of an April 20, 2005, Board investigative deposition of Dr. Shirif.
 - d. Pages 90-102: Withdrawn by agreement of the parties because it duplicates State's Exhibit 2. Nevertheless, post hearing, page 100 was admitted to the record as Board Exhibit A by the Hearing Examiner *sua sponte*. See Procedural Matters 3, below.
 - e. Pages 103-111: Dr. Shirif's January 5, 2004, Application for Plastic Surgery Residency Program through the Plastic Surgery Central Application Service in Phoenix, Arizona.

¹ Social Security numbers were redacted from these documents wherever found. See Hearing Transcript at 351.

- f. Page 112: Undated letter of resignation from Dr. Shirif to “Dr. Belani.”
- g. Pages 113-117: January 1, 2001, Graduate Medical Education Program Residency/Fellowship Agreement between the University of Minnesota and Dr. Shirif.
- h. Pages 118-119: November 13, 2000, University of Minnesota Medical School GME Program Human Resource Information Form concerning Dr. Shirif.
- i. Pages 120-121: November 13, 2000, Application for Residency Permit from Dr. Shirif.
- j. Page 122: November 9, 2000, Letter of Appointment from the University of Minnesota to Dr. Shirif.
- k. Page 123: October 23, 2000, Personnel Action Notification concerning Dr. Shirif.
- l. Page 124: October 10, 2000, letter to Dr. Shirif from Richard J. Palahniuk, M.D., Program Director, Department of Anesthesiology, University of Minnesota.
- m. Page 125: September 14, 2000, Letter of Interest from Dr. Shirif to Dr. Palahniuk.
- n. Pages 126-127: August 17, 2000, letter from Dr. McGreevy to Dr. Shirif.
- o. Pages 128-129: Undated letter from Dr. Shirif to Dr. Edward Nelson, Chairman, Department of Surgery, School of Medicine, the University of Utah Medical Center.
- p. Page 130: August 15, 2000, letter from Judith P. Short, Director of Graduate Medical Education, to A. Gary Bowen, Director, Utah Department of Commerce, Division of Occupational and Professional Licensing, concerning Dr. Shirif.
- q. Page 131: Not admitted. See Proffered Exhibits, below.
- r. Page 132: Dr. McGreevy’s August 3, 2000, Summary of a Meeting with Khalid Shirif.
- s. Pages 133-136: August 2, 2000, letter to Dr. McGreevy from Richard G. Barton, M.D., Associate Professor of Surgery and Director of Surgical

Critical Care, the University of Utah School of Medicine, with regard to Dr. Shirif's residency performance.

- t. Pages 137-138: August 2, 2000, letter to Dr. McGreevy from Edward J. Kimball, M.D., Assistant Professor of Surgery and Associate Director of the Surgical Intensive Care Unit, the University of Utah School of Medicine, concerning Dr. Shirif's performance during his rotation through Dr. Kimball's unit.
- u. Pages 139-140: Not admitted. See Proffered Exhibits, below.
- v. Pages 141-142: July 31, 2000, Summary of Discussion with Khalid Shirif, concerning a meeting among Dr. Shirif, Dr. Nelson, and Dr. McGreevy, authored by Dr. McGreevy.
- w. Page 143: July 12, 2000, letter to Graduate Medical Education, the University of Utah, from William C. Mackey, M.D., Program Director of the General Surgery Residency, Tufts-New England Medical Center [NEMC] in Boston, Massachusetts.
- x. Pages 144-146: July 1, 2000, Personnel Action Notification.
- y. Pages 147-150: Dr. Shirif's April 17, 2000, application for appointment as "Housestaff Postgraduate" at the University of Utah.
- z. Pages 152-158: Records from Dr. Shirif's Minnesota misdemeanor criminal action.
- aa. Page 159: Undated letter from Dr. Shirif to Dr. Daniel F. Dedrick, Director of Residency Education, Department of Anesthesia, Brigham and Women's Hospital in Boston, Massachusetts.
- bb. Page 160: July 2, 1999, Memo to Dr. Shirif's personnel file at NEMC.
- cc. Pages 161-163: May 27, 1999, Disciplinary Action Initial Report regarding Dr. Shirif's suspension at NEMC from April 13 to May 27, 1999.
- dd. Page 164: April 27, 1999, letter from Dr. Shirif's physician concerning his need for medical leave.
- ee. Page 165: April 23, 1999, letter to Dr. Shirif from Dr. Mackey.
- ff. Page 166: April 15, 1999, letter to Dr. Shirif from Dr. Mackey concerning Dr. Shirif's medical leave.

gg. Pages 167-169: December 18, 1998, NEMC General Surgery Residency Six Month Evaluation Form concerning Dr. Shirif, and attached Confidential Memo.

2. State's Exhibit 2: Certified copy of Dr. Shirif's application for an Ohio training certificate [Training Application], and related documents.
3. State's Exhibit 3: Not admitted. See Proffered Material, below.
4. State's Exhibit 4: Copy of letter to the Hearing Examiner and Respondent's counsel from the State's Assistant Attorney General concerning the admission of an exhibit and the redaction of an investigative transcript, filed August 30, 2005. [Admitted post hearing. See Procedural Matters 1, below.]

B. Presented by the Respondent

1. Respondent's Exhibit A: Copies of letters of support written on behalf of Dr. Shirif.
2. Respondent's Exhibit B: Copies of Residency Program Director evaluations concerning Dr. Shirif from the State University of New York at Buffalo [SUNY-Buffalo].
3. Respondent's Exhibit C through F: Copies of Dr. Shirif's annual evaluations from SUNY Buffalo.
4. Respondent's Exhibit G: Copy of May 5, 2004, letter to Dr. Shirif from James N. Hassett, M.D., Professor of Surgery, Vice Chair for Education, and Residency Program Director of the Department of Surgery at SUNY Buffalo, appointing Dr. Shirif to be the Administrative Chief Resident for the 2004-2005 academic year.
5. Respondent's Exhibit H: Copies of letters to Dr. Shirif from Dr. Hassett concerning in-service examinations.
6. Respondent's Exhibit I: Copy of a June 18, 2003, letter to Doris A. Stoll, Ph.D., Executive Director of the Residency Review Committee for Surgery [RRC] in Chicago, Illinois, from Dr. Hassett, nominating Dr. Shirif to serve as the RRC Resident Member.
7. Respondent's Exhibit J: Copy of a June 6, 2005, letter from Dr. Hassett recommending Dr. Shirif for a Hand Surgery Fellowship at Millard Fillmore Hospital in Buffalo, New York.

8. Respondent's Exhibit K: Copy of an August 5, 2006, letter to Dr. Shirif's counsel from Eddie L. Hoover, M.D., Professor of Surgery at SUNY Buffalo, concerning Dr. Shirif. [Admitted post hearing. See Procedural Matters 1, below.]
- C. Admitted by the Hearing Examiner Post Hearing
1. Board Exhibit A: Copy of a January 11, 2005, Verification of Limited License from the Commonwealth of Massachusetts Board of Registration in Medicine, received by the Board on January 14, 2005 with regard to Dr. Shirif's application for a training certificate. [See Procedural Matters 3, below.]
 2. Board Exhibit B: Additional procedural document: State Medical Board of Ohio's Appended List of Documents, presented at hearing.
 3. Board Exhibit C: Additional procedural document: copy of a July 14, 2005, State Medical Board of Ohio's List of Witnesses and Documents, presented at hearing.

PROFFERED MATERIAL

The following documents were neither admitted to the record nor considered, but are being sealed and held as proffered material for the State:

- A. State's Exhibit 3: Pages 131 and 139-140 of State's Exhibit 1.
- B. State's Exhibit 5: Unredacted transcript of an April 20, 2005, Board investigative deposition of Dr. Shirif.

PROCEDURAL MATTERS

1. Following the hearing, the record in this matter was held open for redaction by the State of portions of a transcript of a Board investigative deposition, and for the presentation of an additional exhibit by the Respondent. Subsequently, pages 18, 24, 25, 28, 30, 47, 50, and 57 of State's Exhibit 1 were admitted to the record without objection by the Respondent, and Respondent's Exhibit K was admitted to the record without objection from the State. The record closed on August 30, 2005.
2. Per agreement of the parties, telephone numbers were redacted from page 118 of State's Exhibit 1. (See Hearing Transcript at 151-152)
3. At hearing, per agreement of the parties, pages 90 through 102 of State's Exhibit 1, which consisted of Dr. Shirif's application for a training certificate in Ohio, were redacted.

State's Exhibit 2 is a certified copy of that same application and was deemed by the parties to be more complete. However, upon review of the record post hearing, the Hearing Examiner noticed that page 100 of State's Exhibit 1, which is a Verification of Limited License from the Commonwealth of Massachusetts Board of Registration in Medicine received by the Board on January 14, 2005, was not included in State's Exhibit 2. Accordingly, on his own motion, the Hearing Examiner marked that page as Board Exhibit A and admitted it to the record.

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. Khalid Mahmoud Shirif, M.D., testified that he had obtained his medical degree in 1997 from the University of Minnesota with honors. Dr. Shirif then entered a "preliminary position" as an intern in general surgery at Boston University Medical Center where he completed PGY-1. Dr. Shirif stated that, at the end of that year, he had needed to enter a "categorical position" in a general surgery residency program. Dr. Shirif testified that he had entered the general surgery residency program at Tufts-New England Medical Center [NEMC] as a PGY-2 resident on July 1, 1998. (Hearing Transcript [Tr.] at 18-31)

Evidence Concerning Dr. Shirif's NEMC Residency

2. On a December 18, 1998, Six-Month Evaluation Form, William C. Mackey, M.D., Program Director of the General Surgery Residency at NEMC, stated that Dr. Shirif had been placed on probationary status due to performance issues as well as poor interpersonal skills. Under the heading "Recommendation/Plan," Dr. Mackey wrote, "Probationary Status—See attached memo!" Dr. Shirif signed and dated the form on December 18, 1998, with the comment, "I agree." (State's Exhibit [St. Ex.] 1 at 167) (Emphases in original) Moreover, on the Confidential Memo that accompanied the evaluation, Dr. Mackey indicated that he had given Dr. Shirif notice that "[w]ithout a truly dramatic turnaround in his performance, he will not be granted a PGY-3 year" at NEMC. Dr. Mackey further wrote that "Dr. Shirif understands these terms of his probation." (St. Ex. 1 at 168-169)

At hearing, Dr. Shirif acknowledged that he had reviewed and signed the December 18, 1998, Six-Month Evaluation Form., but denied that he had seen the Confidential Memo until a few days before the hearing on this matter. (Tr. at 39-46)

3. Dr. Shirif testified that on April 3, 1999, during his residency at NEMC, he had had a slip-and-fall accident at home and suffered head trauma and facial injury. Dr. Shirif further testified that the head trauma had "resulted in a couple small bleeds and some seizure

activity afterwards” that later resolved, and that he had spent approximately one week in the hospital. Finally, Dr. Shirif testified that he had not participated in the residency program following that injury, but had continued to be paid through June 1999. (Tr. at 31-35)

4. By letter dated April 23, 1999, Dr. Mackey advised Dr. Shirif that he had been suspended from clinical and administrative responsibilities at NEMC effective April 13, 1999, due to “grossly inappropriate[.]” conduct during a January 30, 1999, in-service examination. (St. Ex. 1 at 165)

Dr. Shirif testified that he had never received Dr. Mackey’s April 23, 1999, letter and that he had not seen it prior to the Board’s investigation. Dr. Shirif further testified that he had been aware that his “clinical privileges were gone in April 1999[.]” but expressed his belief that that happened only because of his head injury and not for any disciplinary reason.² (Tr. at 37-38, 143-148, 194, 224-225)

Dr. Shirif testified that, during a meeting with Dr. Mackey, Dr. Mackey had accused him of cheating during a January 30, 1999, in-service examination because his score had been very close to that of another resident. Dr. Shirif emphatically denied that he had ever cheated on any in-service examination, and stated that he does very well on such tests. Dr. Shirif further testified that, during a subsequent residency, he had earned some of the highest scores in the United States on similar in-service examinations. (Tr. at 35-36, 194, 227-229)

5. During an April 20, 2005, Board investigative deposition, Dr. Shirif testified that, in March [1999], Dr. Mackey had informed him that his contract with NEMC would not be renewed. (St. Ex. 1 at 30)

Dr. Shirif acknowledged at hearing that Dr. Mackey had informed him that his contract at NEMC would not be renewed, but Dr. Shirif stated that he had first informed staff at NEMC that he would not return the following year. Dr. Shirif further testified that, by the time Dr. Mackey told him that, NEMC had already started interviewing people to replace him. (Tr. at 99, 105-106, 133-135) Dr. Shirif’s testimony on this issue is confusing because he also testified that Dr. Mackey had *never* told him that his contract with NEMC would not be renewed. (Tr. at 135) In the latter vein, Dr. Shirif testified:

[Y]ou can say that [Dr. Mackey] did not renew my contract, but it wasn’t like he told me ‘I’m not renewing your contract.’ I told him that I wasn’t coming back. I told him that I couldn’t come back. And so to say that, oh, you knew at this time that you—that you weren’t—that you were not going to have your contract renewed was like, yeah, I knew that after I told him that.

(Tr. at 135)

² Later during the hearing, Dr. Shirif testified that he does not believe that a resident actually holds privileges in the same way as a medical staff physician holds privileges. Therefore, Dr. Shirif argued, he had no clinical privileges for the institution to limit. (Tr. at 222-224)

6. Dr. Shirif testified that he had been very unhappy at NEMC, that it was a very small program that had had only three general surgeons, and that dealing with one of those general surgeons had been “torture from day number one[.]” Dr. Shirif testified that that particular surgeon had often addressed him in a derogatory manner, and had spoken of Dr. Shirif to others in a derogatory manner. Dr. Shirif stated that, every day, he had heard from another resident or from an attending physician of something that that surgeon had said about him. Moreover, Dr. Shirif testified:

One-time [that surgeon] finally said—it was in February and it was late at night. I was on call. And one of the medicine residents told me that this physician had said jokingly, while doing a consult for the medicine service, that Shirif—since Shirif has been around that there have been more deaths around here than during the Vietnam War.

So when I heard that I was tired. It was late at night and I was like, you know, that’s it, there was too many times. That was enough. And I did not have the strength to fight back. [I]t was * * * the worst four [or five] months of my life, and that night I [wrote a letter] * * * basically saying, you know, if there is any evidence that you have of me causing deaths or causing damage to any patients, I’d please like to know.

(Tr. at 101-102) Dr. Shirif further testified that he had sent the letter to the surgeon, to the chief of surgery, and to Dr. Mackey. Shortly thereafter, Dr. Shirif had been called into Dr. Mackey’s office to discuss the letter and to discuss Dr. Shirif’s future in the residency program. Dr. Shirif testified that, during that meeting, he had advised Dr. Mackey that he did not intend to continue in the NEMC program. (Tr. at 102-104)

Moreover, Dr. Shirif acknowledged that he had had work issues at NEMC in addition to personal issues; however, taken alone, he could have dealt with either of those issues. He stated that he had not been able to deal with both of them together. (Tr. at 100-101)

Finally, Dr. Shirif testified that, during this period, he had had legal problems and marital difficulty, and his best friend had developed pancreatic cancer. (Tr. at 169-170, 214)

7. A January 11, 2005, Verification of Limited License [Verification], received by the Board on January 14, 2005, from the Commonwealth of Massachusetts Board of Registration in Medicine states, in part, as follows:

This is to certify that Dr. Khalid M. Shirif has been granted a limited license number 5999 to serve as a Resident in General Surgery and authority to practice medicine only at Tufts-New England Medical Center. Service at the hospital began on July 1, 1998, and expired on June 30, 1999.

Our files contain no derogatory information on this physician.

(Board Exhibit A)

Dr. Shirif testified that the Verification is consistent with his understanding of his status and tenure at NEMC. (Tr. at 195-196)

Dr. Shirif's Undated Letter to the Anesthesia Residency Director at Brigham and Women's Hospital

8. In an undated letter to Dr. Daniel F. Dedrick, Director of Residency Education for the Department of Anesthesiology at Brigham and Women's Hospital in Boston, Massachusetts, Dr. Shirif expressed an interest in pursuing a residency in anesthesiology at that institution. Dr. Shirif stated, among other things:

As an undergraduate at the University of Minnesota, I was a physiology honor student and graduated Magna Cum Laude. In medical school, I was recognized on the Dean's "Top 20%" list and completed the final basic science years with the second highest cumulative score in my class. I have further continued this performance during my surgical residency.

(St. Ex. 1 at 159)

9. During his April 20, 2005, investigative deposition, and during the hearing on this matter, Dr. Shirif acknowledged that he had intended to give Dr. Dedrick the false impression that his superlative performance during medical school had continued through his surgical residency at NEMC. Dr. Shirif further testified at hearing that he had sent the letter in February or March 1999. (St. Ex. 1 at 50; Tr. at 126-133)

Evidence Concerning Dr. Shirif's Utah Residency

10. Dr. Shirif testified that in May or June 1999, following his injury, he had begun working at Boston University Medical Center doing research. Dr. Shirif continued in that position through June 30, 2000. Dr. Shirif stated that, sometime during this period, he had been "cleared by the neurologist" to begin looking for another residency program. Dr. Shirif testified that he had searched throughout the country for programs that had second- or third-year positions open, and that one of them had been the general surgery residency program at the University of Utah [Utah residency]. (Tr. at 47-51)
11. By letter dated February 10, 2000, Dr. Shirif advised James McGreevy, M.D., Program Director of the Utah residency, that Dr. Shirif was interested in a "categorical surgical position at the University of Utah." In describing his training history, Dr. Shirif stated, among other things, that the NEMC residency program director had allowed him to "pursue one of several options[.]" and that one of those options had been "to enter the lab for 1-2 years and return into a third-year position." (St. Ex. 1 at 151)

With regard to that statement, Dr. Shirif testified that he had had several discussions with Dr. Mackey during his residency at NEMC and that every discussion had focused on Dr. Shirif's options. Dr. Shirif further testified that one of the options discussed had been for Dr. Shirif to take time off, work in a lab for a while, and then possibly reenter the program as a PGY-3 resident. (Tr. at 134, 217-222)

12. On April 17, 2000, Dr. Shirif signed and submitted an application to the University of Utah. Dr. Shirif answered "No" to a question on that application that asked, "Have you ever had hospital or other health care facility privileges denied, conditioned, curtailed, limited, restricted, suspended, or revoked in any way?" (St. Ex. 1 at 147-150)

Dr. Shirif testified that he had answered "No" to that question because he does not believe that a resident actually holds privileges in the same way as a medical staff physician holds privileges, and that he had not been a member of the medical staff at NEMC. (Tr. at 222-224, 305-311)

13. On July 1, 2000, Dr. Shirif began training at the University of Utah as a PGY-3 general surgery resident. (St. Ex. 1 at 130)
14. In a letter dated July 12, 2000, Dr. Mackey, Program Director of the NEMC residency, addressed the Department of Graduate Medical Education at the University of Utah. In that letter, Dr. Mackey described Dr. Shirif's history at NEMC as follows:

Dr. Shirif began as a resident in the Department of Surgery at New England Medical Center on July 1st, 1998. He was suspended on April 13th, 1999, and was granted a medical leave on April 30th, 1999.

Dr. Shirif did not complete his year of training and therefore was not given credit for a full year of training. He did not receive a certificate for one year of training.

(St. Ex. 1 at 143)

15. By document dated July 31, 2000, Dr. McGreevy summarized a discussion among Dr. Shirif, Dr. McGreevy, and Dr. Edward Nelson, Chairman of the Department of Surgery at the University of Utah Medical Center. Dr. McGreevy wrote that he and Dr. Nelson had discussed with Dr. Shirif the issue of his lack of a Utah medical license, his failure to obtain credit for his second year of residency at NEMC, and his performance deficiencies at the Utah residency in the surgical intensive care unit [SICU]. Dr. McGreevy further wrote that Dr. Shirif had recalled having problems concerning central line access, and that Dr. McGreevy had "told him it went beyond central lines and that another faculty observer thought that he did not have the basic skills to put in a chest tube or tie a knot. Also [Dr. McGreevy] mentioned to him that the SICU nurses have no confidence in his clinical skills and feel that he is at the level of a third-year medical student." In addition, Dr. McGreevy

wrote that Dr. McGreevy had advised Dr. Shirif of possible allegations of sexual harassment and unprofessional behavior. (St. Ex. 1 at 141-142) Furthermore, Dr. McGreevy wrote:

Dr. Nelson tried to put all of the problems in perspective and told Dr. Shirif that if there was a single episode such as performance we might be discussing having him repeat the second year. The fact that there are so many other issues that have been brought up in the four weeks [that Dr. Shirif had been in the Utah residency] leads us to a probationary meeting with the possibility of dismissal at the end of the probationary period.

(St. Ex. 1 at 142)

Dr. Shirif denied at hearing that he had had problems using a scalpel or tying a knot while in the Utah residency. Dr. Shirif further denied ever having received any complaint concerning those issues. However, Dr. Shirif acknowledged that his privileges to place central lines had been limited during the Utah residency. (Tr. at 82-94, 96, 113-115)

16. By document dated August 3, 2000, Dr. McGreevy summarized another discussion with Dr. Shirif. Dr. McGreevy wrote that he and Dr. Nelson had discussed with Dr. Shirif, among other things, Dr. Shirif's performance of an unsupervised procedure in violation of a previous instruction. Dr. McGreevy further wrote that Dr. Nelson had given Dr. Shirif three options. First, Dr. Nelson suggested that Dr. Shirif voluntarily withdraw from the program. The second "would be to fire him now based on the documentation [they had] accumulated." Third, Dr. Shirif could "enter a period of suspension during which he would gain an advocate and address each of the issues" discussed. Dr. McGreevy goes on to state:

Dr. Shirif remarked that none of these seemed to be good options. He asked if he could finish out the day and Dr. Nelson said that he did not want him to go back to clinical duties from this meeting forward. Dr. Shirif then asked if he should just go home and Dr. Nelson indicated that he should. Dr. Shirif then thanked both of us for the opportunity that we gave him. He shook both our hands and he walked out the door.

Both Dr. Nelson and I took this is a voluntary withdrawal from the program.

(St. Ex. 1 at 132)

Further, by undated letter to Dr. Nelson, Dr. Shirif addressed a number of issues, including that he had been placed on probation on August 1 and *dismissed* on August 3. (St. Ex. 1 at 128-129)

17. By letter dated August 15, 2000, Judith P. Short, Director of Graduate Medical Education at the University of Utah, addressed A. Gary Bowen, Director of the Department of Commerce Division of Occupational and Professional Licensing for the State of Utah. In her letter, Ms. Short stated as follows:

On July 1, 2000, Khalid M. Shirif, M.D. became a houseofficer at the University of Utah as a PGY-3 General Surgery resident. He resigned from that program on August 3. It is possible that he had begun the process of obtaining a Utah Medical License, since that is one of our requirements. We were told by his previous program director, after he had begun his training here, that he had not received credit for his second year of training. He is therefore ineligible for a Utah Medical License.

(St. Ex. 1 at 130)

18. Dr. Shirif testified that staff at the Utah residency had not informed him that a Utah medical license would be required to become a PGY-3 resident in that state. Dr. Shirif further testified that he first learned of that when, during the first or second week of his residency, Dr. McGreevy had advised that Dr. Shirif could not work as a PGY-3 resident because he had not gotten credit for his second year at NEMC and could therefore not obtain a Utah license. (Tr. at 211-214)
19. Dr. Shirif testified that, because he had not legally been able to practice as a PGY-3 resident at the University of Utah, in his mind, he “was never there.” (Tr. at 216)

Minnesota Residency

20. Dr. Shirif testified that, after leaving the Utah residency, he had stayed in Utah for a brief period and, in September 2000, moved back with his parents in suburban Minneapolis, Minnesota. (Tr. at 49-51)
21. By letter dated September 14, 2000, Dr. Shirif advised Richard J. Palahniuk, M.D., Professor and Head of the Department of Anesthesiology at the University of Minnesota Medical School in Minneapolis, Minnesota, of the following:

I am currently a general surgery resident and am inquiring about a position in the anesthesiology residency program [Minnesota residency].

I attended The University of Minnesota College of Liberal Arts where I graduated Magna Cum Laude. I then attended The University of Minnesota Medical School. At the completion of second basic science year, I was recognized on the Dean’s “Top 20%” list and finished with the second highest cumulative class score. I have completed two years of surgical residency at Boston University and New England Medical Center. Most recently, I have completed a research project in angiogenesis inhibition at Boston University.

* * *

(St. Ex. 1 at 125)

Dr. Shirif acknowledged that he had been aware at the time he wrote the September 14, 2000, letter that he had not been given credit for the second year of his residency at NEMC. However, he added, “I was still employed there, New England Medical Center, for those whole three years [including the research project]. I was still a resident there for those two years.” (Tr. at 151)

22. By letter dated October 10, 2000, Dr. Palahniuk offered to Dr. Shirif “a CA-1 position in the Department of Anesthesiology beginning January 1, 2001.” Dr. Palahniuk advised Dr. Shirif to sign and date the bottom of the letter in the spaces provided if he wished to accept the offer. On October 14, 2000, Dr. Shirif signed the letter acknowledging his acceptance of the offer. (St. Ex. 1 at 124)
23. On November 13, 2000, Dr. Shirif signed a Graduate Medical Education Program Residency/Fellowship Agreement with the University of Minnesota for the academic year 2000/2001. (St. Ex. 1 at 113-117)

Also on November 13, 2000, Dr. Shirif signed a University of Minnesota Medical School GME Program Human Resource Information Form [Minnesota Application]. In section 27 of that form, Dr. Shirif was asked to “List all Academic/Professional positions (include all residency programs) and other activities since date of medical school graduation. This must be consecutive information without interruption. ALL TIME MUST BE ACCOUNTED FOR.” (St. Ex. 1 at 118-119; Quote at 119) (Emphases in original)
 Dr. Shirif provided the following information (listed below in *italics*):

Institution	State/ County	Resident Program or Other Activity	Begin Date			End Date		
			Month	Day	Year	Month	Day	Year
<i>Boston U Med Ctr</i>	<i>Boston MA</i>	<i>Surgery</i>	<i>06</i>	<i>27</i>	<i>97</i>	<i>06</i>	<i>30</i>	<i>98</i>
<i>[NEMC]</i>	<i>Mas.</i>	<i>Surgery</i>	<i>07</i>	<i>01</i>	<i>98</i>	<i>06</i>	<i>30</i>	<i>99</i>
<i>Boston U Med Ctr</i>	<i>Mas.</i>	<i>Surgery Research</i>	<i>07</i>	<i>01</i>	<i>99</i>	<i>06</i>	<i>24</i>	<i>00</i>

(St. Ex. 1 at 119) Dr. Shirif provided no further information on that form concerning his residency at NEMC or his Utah residency. (St. Ex. 1 at 118-119)

24. Dr. Shirif began work at the Minnesota residency on January 1, 2001. (St. Ex. 1 at 121)
25. Dr. Shirif acknowledged that he had not disclosed any information concerning his Utah residency on his Minnesota Application. (Tr. at 153)

Later in the hearing, however, Dr. Shirif testified that staff at the Minnesota residency program had been aware that Dr. Shirif had been “at Utah.” Dr. Shirif further testified that he had received several calls from the director of the program while he was still in Utah, but after he had left the Utah residency. Dr. Shirif further testified that the residency program director “knew the circumstances that I was under and why I had—was looking for a spot in the middle of August of my—of the year.” Moreover, Dr. Shirif also testified

that he had first considered entering the internal medicine residency program, and that the head of the internal medicine program had called him several times while he was in Utah. (Tr. at 236-237)

26. In an undated letter, Dr. Shirif advised the Director of the Department of Anesthesiology at the Minnesota residency that he was resigning his position in the anesthesiology residency program. Handwritten notations at the bottom of the letter indicate that the letter had been received on March 19, 2001, and that Dr. Shirif's resignation had become effective on March 16, 2001. (St. Ex. 1 at 112, 117)

Dr. Shirif's Residency at SUNY Buffalo

27. Dr. Shirif testified that, following his brief tenure at the University of Minnesota, he had become very discouraged and "was done with medicine." However, Dr. Shirif testified that he had later learned of an opening in the general surgery residency program at SUNY Buffalo, and that his brother strongly encouraged him to apply. Dr. Shirif further testified that he had applied and interviewed for the position, was offered a position the day of the interview, and, on July 1, 2001, entered the program as a PGY-2 resident. (Tr. at 54-57)
28. Dr. Shirif presented copies of his resident evaluation forms from SUNY Buffalo for PGY years 2 through 5. These evaluations present a very favorable picture of Dr. Shirif's performance as a resident. (Respondent's Exhibits [Resp. Exs.] B through G)
29. Dr. Shirif testified that, as a fourth-year resident at SUNY Buffalo, he had served as administrative chief resident. Dr. Shirif testified that it had been an honor to have been selected for that position out of 60 residents. (Tr. at 196-198)
30. By letter dated June 18, 2003, James M. Hassett, M.D., Program Director, Department of Surgery, SUNY Buffalo, addressed Doris A. Stoll, Ph.D., Executive Director of the Residency Review Committee for Surgery [RRC] in Chicago, Illinois, and nominated Dr. Shirif to be the resident member. In that letter, Dr. Hassett praised Dr. Shirif extensively, and spoke highly of Dr. Shirif's academic and clinical accomplishments. (Resp. Ex. I)

Dr. Shirif testified that it had been a great honor to be nominated as a resident member of the RRC. Dr. Shirif testified that there is only one resident member of the RRC who is selected from among "the 30 or 40,000 residents in the country[.]" Dr. Shirif further testified that he had been told that, in Dr. Hassett's 20 or 25 years at the SUNY Buffalo residency program, Dr. Shirif had been the first resident that Dr. Hassett had recommended for that position. (Tr. at 258-260)

31. Dr. Shirif testified that he had completed the program at SUNY Buffalo in June 2005 at the PGY-5 level. (Tr. at 54-59, 251-252)

Dr. Shirif's Application to the Plastic Surgery Central Application Service

32. Dr. Shirif testified that the process for finding a plastic surgery fellowship entails sending applications to central application services located throughout the United States. Dr. Shirif stated that the centers compile information and send it to programs the applicants are interested in. Dr. Shirif further testified that the Plastic Surgery Application relevant to this matter was sent to the center in Phoenix, Arizona. (Tr. at 154-156)

33. Pages 103 through 111 of State's Exhibit 1 were presented by the State as Dr. Shirif's "January 5, 2004, Application for Plastic Surgery Residency Program through Central Application Service in Phoenix [Plastic Surgery Application]." (St. Ex. 1 at 103-111; Board Exhibit A) However, these pages are very disorganized and confusing, and it is difficult to ascertain with confidence that they all came from the same application. A description of each page follows:

- State's Exhibit 1 at page 103: Document marked "Page 1" of an Application for Plastic Surgery Residency Program. It asks for personal data, information concerning education, and information concerning internship, residency, and fellowship. It also asks a series of four questions. (St. Ex. 1 at 103)

With regard to the questions on this page, Dr. Shirif answered "No" to question 3, which asked, "Have you ever been discharged (terminated) by a training program? * * *" Dr. Shirif also answered "No" to question 4, which asked, "Have you ever failed to have a contract with a training program renewed? * * *" (St. Ex. 1 at 103) (Emphasis in original)

- State's Exhibit 1 at pages 104 and 105: Document entitled "Plastic Surgery Central Application Service," and labeled as an "Applicant Profile" of Dr. Shirif. Page 105 appears to be a continuation of the Applicant Profile. Neither page is marked with a page number (other than the exhibit page numbers). (St. Ex. 1 at 104-105)
- State's Exhibit 1 at page 106: Title page of an Application for Plastic Surgery Residency Program from the Association of Academic Chairmen of Plastic Surgery, listing the following address: Maricopa County Medical Society's Greater Arizona Central Credentialing Program, 326 East Coronado Road, Phoenix, Arizona. A date stamp on the form indicates October 2, 2003. (St. Ex. 1 at 106)
- State's Exhibit 1 at page 107: Document requesting graduate medical education and fellowship information. The document is unpaginated (except for the exhibit page number). (St. Ex. 1 at 107)
- State's Exhibit 1 at page 108: Document marked "Page 2," which requests information concerning medical licensing examination scores, honors, licensure information, and references. (St. Ex. 1 at 108)

- State's Exhibit 1 at page 109: Document entitled "Goal Statement" which asks a series of questions requesting narrative answers. The document is unpaginated (except for the exhibit page number). (St. Ex. 1 at 109)
- State's Exhibit 1 at page 110: Document marked "Page 4," which states, "THIS FORM MUST BE SENT BACK WITH YOUR APPLICATION." Among other things, the document asked three questions. Dr. Shirif answered "No" to question 2 which asked,

Have you ever been convicted of, or entered a plea of guilty, nolo contendere, or no contest to, a crime in any jurisdiction other than a minor traffic offense? You must include all misdemeanors and felonies, even if adjudication was withheld by the court so that you would not have a record of conviction. Driving under the influence or driving while impaired is not a minor traffic offense for purposes of this question.

(St. Ex. 1 at 110) (Emphasis in original)

- State's Exhibit 1 at page 111: A second document marked "Page 4" entitled, "Statement of Applicant," signed by Dr. Shirif on September 29, 2003. (St. Ex. 1 at 111)

With regard to the apparent disarray of the Plastic Surgery Application pages in State's Exhibit 1, Dr. Shirif stated that it appears to him that they are two different applications combined together. Nevertheless, Dr. Shirif testified that, as far as he knows, the pages of the application from pages 106 through 111 of State's Exhibit 1 had been sent to the plastic surgery fellowship program at the Cleveland Clinic. (Tr. at 157)

34. Dr. Shirif acknowledged that he had answered "No" to question 2 on the first page 4 of the Plastic Surgery Application that asked if he had ever been convicted of or pled guilty to a criminal violation. Dr. Shirif testified that that answer had not been correct. (St. Ex. 1 at 110; Tr. at 160-161)

Records from the District Court of Minnesota, 10th Judicial District, Washington County, indicate that Dr. Shirif had been charged with a "NonTrafficMisdemeanor" that had occurred on October 16, 1998, in Cottage Grove, Minnesota. A plea hearing took place on July 21, 1999, during which Dr. Shirif was found guilty; a presentence investigation was ordered, and a sentencing date was scheduled. On September 28, 1999, Dr. Shirif was fined and placed on probation for one year. Curiously, although the court documents describe in detail various elements of the proceedings and the dates on which they occurred, they do not describe the name or the nature of the offense beyond stating that it was a non-traffic misdemeanor. (St. Ex. 2 at 11-17)

With regard to his Plastic Surgery Application, Dr. Shirif testified that he had subsequently caught the error and called the application service. He told them he had made a mistake, asked if he could send in a corrected questionnaire, and was told that he could not. However, Dr. Shirif said that the application service had advised him to write a letter to each program to which he had applied and advise them of the error. Dr. Shirif testified that he had taken that advice, and either faxed the correction or hand-delivered it to prospective programs prior to each interview. (Tr. at 244-246)

35. Dr. Shirif further acknowledged that he had answered “No” to question 3 on the document marked “Page 1” that asked whether he had ever been discharged from a training program but stated that it had been the correct answer. Dr. Shirif denied that he had been discharged from the Utah residency program. As support for his argument, Dr. Shirif testified that Dr. McGreevy had stated his opinion in an August 17, 2000, letter that Dr. Shirif had voluntarily resigned from the program. (St. Ex. 1 at 103, 126-127; Tr. at 172-173)

At hearing, Dr. Shirif was asked about his undated letter to staff at the Utah residency in which he stated, “I am writing regarding my dismissal from the general surgery residency program.” (St. Ex. 1 at 128) Dr. Shirif responded that he had written that letter on the advice, and with the assistance, of an attorney, and that it had been written in anticipation of litigation. (Tr. at 173-175)

Moreover, Dr. Shirif testified that he had appropriately answered “No” to question 3 because he had deemed himself to have been ineligible for the Utah residency program rather than having been dismissed from the program. Finally, Dr. Shirif testified that he does not believe that the page on which question 3 appears was actually part of the Plastic Surgery Central Application Service application. (Tr. at 247)

36. Dr. Shirif acknowledged that he had answered “No” to question 4 on the document numbered “Page 1” that asked whether he had ever failed to have a training contract renewed, and denied that the answer had been false. He stated that he had known that his contract at NEMC would not have been renewed but, before he had been advised of that, he had informed staff at NEMC that he would not return to the program. Dr. Shirif stated that, accordingly, staff at NEMC had never told him that his contract with NEMC would not be renewed. Moreover, Dr. Shirif testified he does not believe that the page on which question 4 appears was actually part of the Plastic Surgery Central Application Service application. (St. Ex. 1 at 103; Tr. at 175-180, 247-249)

Training Certificate Application

37. On or about February 7, 2005, Dr. Shirif submitted to the Board an Application for Training Certificate [Training Application]. By signing the Training Application, Dr. Shirif certified that the information provided therein was true. (St. Ex. 2 at 20)

Dr. Shirif testified that he had applied for a training certificate in Ohio because he had obtained a position in the plastic surgery fellowship program at the Cleveland Clinic. (Tr. at 61-63)

38. The section of the Training Application entitled “Resume of Activities” instructed Dr. Shirif to “[l]ist ALL activities in chronological order from the date of medical school graduation to the PRESENT time, using **MONTH** and **YEAR**. For any non-working time, you **MUST** state on the resume exactly what your activities were, such as ‘vacation’ or ‘seeking employment,’ as well as your permanent address.” (St. Ex. 2 at 4) (Emphases in original)

Among his other responses, Dr. Shirif listed for the period July 2000 through June 2001 that he had been “unemployed[,]” “seeking surgical residency position[,]” and had had “0%” clinical and/or administrative duties. (St. Ex. 2 at 4)

Dr. Shirif acknowledged that he had not included on his Training Application any information concerning his Utah residency or his Minnesota residency. He explained that he had interpreted the questions concerning his training background to mean, “what are you taking credit for?” Dr. Shirif testified that he had not listed the residencies in Utah or Minnesota because he was not taking credit for those programs. (Tr. at 78, 185-188, 238-239)

Dr. Shirif also testified that he had verbally advised Board staff about his Utah residency, and had volunteered information concerning the Minnesota residency during the Board’s investigative deposition. (Tr. at 241-243)

39. In the section of the Training Application entitled “Additional Information,” Dr. Shirif answered “NO” to question 2, which asked:

Have you ever been warned, censured, disciplined, had admissions monitored, had privileges limited, had privileges suspended or terminated, been put on probation, or been requested to withdraw from or resign privileges at any hospital, nursing home, clinic, health maintenance organization, or other similar institution in which you have trained, been a staff member, or held privileges, for reasons other than failure to maintain records on a timely basis, or failure to attend staff or section meetings?

(St. Ex. 2 at 6)

At hearing, with regard to question 2 on his Training Application, Dr. Shirif denied that he had been informed of any limitation of his privileges at NEMC. Dr. Shirif was then asked to read an excerpt from the transcript of his April 20, 2005, deposition. This excerpt appears to concern an April 23, 1999, letter to Dr. Shirif from Dr. Mackey regarding the suspension of Dr. Shirif’s clinical and administrative responsibilities at NEMC for allegedly cheating on an in-service examination. Further, the excerpt indicates that, although Dr. Shirif denied having received the letter, he acknowledged having had a conversation with Dr. Mackey in March 1999 as referenced in that letter. However, at hearing, Dr. Shirif

testified that that conversation had concerned only the in-service examination itself, and did not concern the suspension of Dr. Shirif's clinical and administrative responsibilities. (St. Ex. 1 at 47, 165; Tr. at 79-82)

40. In the section of the Training Application entitled "Additional Information," Dr. Shirif answered "NO" to question 4, which asked:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

(St. Ex. 2 at 6)

Dr. Shirif testified as follows concerning his answer to question 4:

- Dr. Shirif does not believe that his probation at NEMC had been an "official" probation. Dr. Shirif further testified that, prior to completing his Training Application, he had contacted several offices at NEMC, including the Office of Graduate Medical Education, the Dean's office, and the Human Resources office, to ask if they had any derogatory information concerning him. Dr. Shirif testified that, in each case, he had been told that no administrative action had been taken against him. Accordingly, Dr. Shirif testified that he had answered "No" to question 4 because it had been his understanding that the probation had not been official. (Tr. at 198-201)
- With regard to whether he had ever received a warning, he testified that, although he had received only outstanding evaluations at SUNY Buffalo, he frequently received warnings that he had to pick an adviser by a certain date, that he had not picked an adviser, that he had to do dictations, etc. Dr. Shirif further testified, "If a resident goes through a program without a warning, for five years or six years, that's an impossibility, so when they ask have you ever been warned I probably should have said yes to several different instances. Did I ever consider those like an official warning, absolutely not." (Tr. at 201)
- Dr. Shirif testified that he does not believe that NEMC had failed to renew his contract; rather, he had made a decision not to go back to that program. (Tr. at 202-203)
- With regard to his exit from the Utah residency, and despite his undated letter characterizing that exit as a dismissal, Dr. Shirif testified that his exit had been voluntary. Dr. Shirif further testified, "I never considered myself dismissed." (Tr. at 205-206)

When asked why he had not responded affirmatively with regard to his *resignation* from the Utah residency, Dr. Shirif replied, “I don’t know. I can’t explain it.” He then testified that he believes he had been focused on the issue of being fired, and thought of it as addressing the issue of being “pulled out of a program because you are going to be fired[.]” (Tr. at 207)

- Later during the hearing Dr. Shirif acknowledged that he had incorrectly answered “No” to question 4 on his Training Application, and that he should have answered “Yes” because he had withdrawn from a residency program. (Tr. at 284-285)

41. With regard to his application for an Ohio training certificate, Dr. Shirif acknowledged that there are some things in his application that are “[b]latently wrong.” Dr. Shirif testified that he had filled out the training certificate application hurriedly because he was close to a deadline, he had been extremely busy in his residency, and had had a lot of paperwork to fill out for the Cleveland Clinic and the Board. (Tr. at 73-77)

Additional Information

42. Dr. Shirif testified that, ordinarily, he is a “happy, content person.” Dr. Shirif further testified that he had felt that way throughout medical school and during his first year of residency at Boston University. Moreover, Dr. Shirif testified that he had felt that way during his residency at SUNY Buffalo. He attributed his poor performance at NEMC, Utah, and Minnesota to depression. He stated, “I had such a significant depression that work wasn’t even a top ten[on a scale of importance]. Surviving was number one through ten on [importance].” (Tr. at 252)
43. Dr. Shirif testified that he had discussed the Board matter with Dr. Hassett at SUNY-Buffalo, and had disclosed it to the Cleveland Clinic. (Tr. at 261)

Dr. Shirif testified that the plastic surgery fellowship at the Cleveland Clinic lasts for two years. Dr. Shirif further testified that, when he disclosed his legal problems to the Cleveland Clinic, he had offered to resign from the fellowship out of concern that, should he fail to obtain his training certificate, the Cleveland Clinic would be “one resident down for two years[.]” However, Dr. Shirif testified that the program director at the Cleveland Clinic, Dr. Yetman, had declined to accept his resignation. (Tr. at 261-264)

44. Dr. Shirif testified that he had elected to pursue his Ohio training certificate and remain in the Cleveland Clinic fellowship for several reasons. Dr. Shirif testified that plastic surgery is the most competitive fellowship in all of medicine, and that the Cleveland Clinic is one of the most competitive fellowships in that field. Further, Dr. Shirif testified that he wants to be a plastic surgeon to do reconstructive surgery. Moreover, Dr. Shirif testified that he is interested in taking those skills to Egypt where “the level of health care * * * is abysmal.” Furthermore, Dr. Shirif testified that a large hospital in Cairo has an affiliation with the Cleveland Clinic. Finally, Dr. Shirif testified that he and his family members who live in

Egypt have secured space in Cairo to set up a clinic for the purpose of making reconstructive plastic surgery available to those who could not otherwise financially afford it.
(Tr. at 268-275)

45. Dr. Shirif presented letters written by medical colleagues in support of his application for an Ohio training certificate. All of these letters describe Dr. Shirif as a compassionate and dedicated surgeon. (Resp. Exs. A and K) (Note that the State did not have an opportunity to cross-examine the authors of these letters.)
46. Jeffrey Visco, M.D., testified on behalf of Dr. Shirif. Dr. Visco testified that he is a colorectal surgeon who practices in Buffalo, New York. (Tr. at 316)

Dr. Visco testified that he is familiar with Dr. Shirif, and had been two or three years ahead of him in the residency program at SUNY Buffalo. Dr. Visco further testified that he had been Dr. Shirif's senior resident; later, as a fellow, he had also worked with Dr. Shirif, and has since worked as one of his attending physicians. Finally, Dr. Visco testified that he and Dr. Shirif are friends. (Tr. at 316-318, 325-326)

Moreover, Dr. Visco testified that he is familiar with some of the details of the allegations against Dr. Shirif, and is aware that they concern Dr. Shirif's truthfulness and good moral character. Finally, Dr. Visco testified that he believes himself able to testify concerning Dr. Shirif's character. (Tr. at 316-318)

Dr. Visco testified that, in his experience, "Dr. Shirif's character has always been exemplary," and that Dr. Shirif has "never come across as being untruthful[.]" Dr. Visco further testified that everyone in the program at SUNY Buffalo had been aware of Dr. Shirif's background, including his problems during the programs at NEMC, Utah, and Minnesota. Moreover, Dr. Visco testified that there was never an issue at SUNY Buffalo concerning any failure on the part of Dr. Shirif to disclose prior residencies.
(Tr. at 319-321)

47. Dr. Visco testified that he had applied for New York licensure about a year prior to Dr. Shirif applying for Ohio licensure. Dr. Visco further testified that, at the time Dr. Shirif was completing his Training Application, Dr. Shirif had contacted him for his opinion concerning questions on that application. Specifically, Dr. Shirif asked whether he should list the Minnesota and Utah residencies given the fact that he had not received credit for those residencies. Dr. Visco testified that he had believed the question to concern only residencies where Dr. Shirif had obtained his specialty training, and had given Dr. Shirif his opinion that Dr. Shirif should not list those two residencies. (Tr. at 321-324)

With regard to Dr. Shirif's performance at SUNY Buffalo, Dr. Visco testified that Dr. Shirif's performance had been "stellar" and that "[t]here was never a problem with Dr. Shirif." Dr. Visco further testified that Dr. Shirif had been selected to serve as one of the administrative chief residents, which was an honor, and which "speaks to his character." Moreover, Dr. Visco testified that Dr. Shirif had always been held up as an

example for the other residents, not only for his performance, “but also [for] his dealings with patients, with his peers, [and] his inferiors as well as his attendings and superiors.” (Tr. at 324-325)

FINDINGS OF FACT

1. On or about February 7, 2005, Khalid Mahmoud Shirif, M.D., submitted an Application for Training Certificate [Training Application] to the State Medical Board of Ohio [Board]. By signing the Training Application, Dr. Shirif certified that the information provided therein was true. His Training Application is currently pending.
2. The Resume of Activities section of Dr. Shirif’s Training Application required him to “[l]ist ALL activities in chronological order from the date of medical school graduation to the PRESENT time, using **MONTH** and **YEAR**. *For any non-working time, you MUST state on the resume exactly what your activities were, such as ‘vacation’ or ‘seeking employment,’ as well as your permanent address.*” Among his other responses, Dr. Shirif listed for the period July 2000 through June 2001 that he had been “unemployed[,]” “seeking surgical residency position[,]” and had had “0%” clinical and/or administrative duties.

In fact, Dr. Shirif had been a resident in the general surgery residency program at the University of Utah [Utah residency] from July 1, 2000, through August 3, 2000. In addition, Dr. Shirif had been a resident in the anesthesiology residency program at the University of Minnesota [Minnesota residency] from January 1, 2001, through March 16, 2001.

Dr. Shirif testified that he had not listed the Utah or Minnesota residencies because he did not claim credit for them. This testimony is not persuasive. The directions for the Resume of Activities clearly stated that he was to list “ALL activities” including non-working time such as vacation or seeking employment. The directions make clear what information the Board expects applicants to provide. It should be quite obvious to any reasonable person that, if the Board expects an applicant to list time spent on vacation, it also expects the applicant to list time spent in residencies, however brief. Accordingly, Dr. Shirif’s explanation is rejected.

3. In the “Additional Information” section of his Training Application Dr. Shirif answered “NO” to question 2, which asked the following:

Have you ever been warned, censured, disciplined, had admissions monitored, had privileges limited, had privileges suspended or terminated, been put on probation, or been requested to withdraw from or resign privileges at any hospital, nursing home, clinic, health maintenance organization, or other similar institution in which you have trained, been a staff member, or held privileges, for reasons other than

failure to maintain records on a timely basis, or failure to attend staff or section meetings?

- a. In fact, in or about March 1999, Dr. Shirif was advised by the residency program director at the Tufts-New England Medical Center General Surgery Residency Program [NEMC residency], located in Boston, Massachusetts, that his privileges had been limited.
- b. In fact, on or about July 31, 2000, Dr. Shirif was advised that his privileges to place central lines at the Utah residency had been limited.

With regard to Findings of Fact 3.a and 3.b., above, Dr. Shirif testified that residents do not actually hold privileges, essentially arguing that “privileges” is a term of art that relates to staff physicians and attending physicians, but not to physicians in training. However, Dr. Shirif’s testimony was inconsistent concerning that term, and he testified at hearing on at least two occasions that he had had privileges limited at his NEMC residency and his Utah residency. Accordingly, Dr. Shirif’s argument that residents do not hold privileges is rejected.

4. In the “Additional Information” section of his Training Application Dr. Shirif answered “NO” to question 4, which asked the following:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

- a. In fact, on December 18, 1998, Dr. Shirif was placed on probation at the NEMC residency.

Dr. Shirif testified that he does not believe that his NEMC probation had been an “official” probation. Dr. Shirif testified that he believes this because, during the process of completing the Training Application, he had contacted staff at the NEMC residency program and been advised that no administrative action had been taken against him. However, the evaluation form and attached memorandum that memorialized Dr. Shirif’s probation made it clear that his continued participation in the residency depended on him improving his performance while on probation. Accordingly, Dr. Shirif’s position that the probation had not been “official” is rejected.

- b. In fact, in or about March 1999, Dr. Shirif was advised by the NEMC residency program director that NEMC would not renew Dr. Shirif’s residency contract.

Dr. Shirif testified that the NEMC residency program director had not informed him that his residency contract would not be renewed until after Dr. Shirif had stated that

he would not return to the program. However, Dr. Shirif also testified that the NEMC program director had never told him that his contract would not be renewed. The latter is rejected as not credible, based on the amount of testimony to the contrary, including Dr. Shirif's testimony during a Board investigative deposition.

Further, even if Dr. Shirif *had* first advised the NEMC program director of his intention not to return, he should have answered "Yes" to question 4 because the event in question *did* occur. Moreover, it is significant because, had Dr. Shirif *not* been advised that his contract would not be renewed, he could have unilaterally decided to return to the program the following year. The determination by NEMC that his contract would not be renewed eliminated that choice. Finally, had Dr. Shirif answered "Yes" to question 4, he could have apprised the Board of the circumstances in a written explanation.

- c. In fact, on or about July 31, 2000, Dr. Shirif had been placed on probation at the Utah residency, in part due to concerns about serious performance deficits, including lacking the basic skills to insert a chest tube or tie a knot.
 - d. In fact, on August 3, 2000, Dr. Shirif was dismissed, asked to withdraw, and/or resigned from the Utah residency.
5. In February or March 1999, Dr. Shirif submitted a letter to the Director of Residency Education in the Department of Anesthesia at Brigham and Women's Hospital, located in Boston, Massachusetts, expressing interest in pursuing a residency in anesthesiology at that institution. In that letter, Dr. Shirif stated that he had graduated *magna cum laude* from the University of Minnesota and that he had been on the "Dean's 'Top 20%' list" in medical school. Dr. Shirif further represented that he had "continued this performance during [his NEMC] residency." In fact, Dr. Shirif was warned and placed on probation at the NEMC residency.

Dr. Shirif admitted under oath in a deposition with Board staff that he had intended this statement to convey the false impression that his performance at the NEMC residency had been superlative.

6. On or about February 10, 2000, Dr. Shirif submitted to the Utah residency a letter of interest in which he indicated that the NEMC residency program director had allowed him to "pursue one of several options[,] and that one of those options had been "to enter the lab for 1-2 years and return into a third-year position."

In fact, Dr. Shirif admitted under oath in a deposition with Board staff that, in or about March 1999, he had been advised by the NEMC residency program director that NEMC would not renew his residency contract.

Dr. Shirif testified at hearing that he had had several discussions with the NEMC residency program director, that each discussion had focused on Dr. Shirif's options, and that one

option had been to take time off and then reenter the program as a PGY-3 resident. This testimony is not deemed credible. Based on the evidence, it is extremely unlikely that NEMC would have let Dr. Shirif return as a PGY-3 resident after they had told him that they would not renew his residency contract, especially in light of the fact that he had not yet completed PGY-2.

7. On April 17, 2000, Dr. Shirif signed and submitted an application to the Utah residency. In that application, Dr. Shirif answered "No" to a question asking whether he "ever had hospital or other health care facility privileges denied, conditioned, curtailed, limited, restricted, suspended, or revoked in any way."

In fact, in or about March 1999, Dr. Shirif was advised by the NEMC residency program director that his privileges had been limited.

As discussed above with regard to Findings of Fact 3.a and 3.b, Dr. Shirif testified that residents do not hold privileges; nevertheless, for the reasons set forth in the aforementioned Findings of Fact, this argument is rejected.

8. On September 14, 2000, Dr. Shirif submitted to the Professor and Head of the Minnesota residency a letter of interest in which he indicated that he was "currently a general surgery resident[,] had "completed two years of surgical residency at Boston University and [NEMC]," and had "[m]ost recently * * * completed a research project in angiogenesis inhibition at Boston University."

In fact, as of September 14, 2000, Dr. Shirif was not a general surgery resident. He attended the NEMC residency from July 1, 1998, to April 1999, and was not awarded any credit for that residency. Moreover, he had most recently been enrolled at the Utah residency for a period of approximately one month, and had been dismissed, asked to withdraw, and/or resigned from that residency.

9. On November 13, 2000, Dr. Shirif signed and submitted to the Minnesota residency a University of Minnesota Medical School GME Program Human Resource Information Form. Among other things, Dr. Shirif was required to "List all Academic/Professional positions (include all residency programs) and other activities since [the] date of medical school graduation. This must be consecutive information without interruption. ALL TIME MUST BE ACCOUNTED FOR." In response, Dr. Shirif listed positions at Boston University for the period 06/27/97 to 06/30/98, at NEMC for the period 07/01/98 to 06/30/99 and at Boston University for the period 07/01/99 to 06/24/00.

However, Dr. Shirif failed to disclose that he had attended the NEMC residency only from July 1, 1998, to April 1999, and that he had attended the Utah residency from July 1, 2000, to August 3, 2000.

With regard to the NEMC residency, Dr. Shirif testified that he could legitimately claim participation in the NEMC residency through June 30, 1998, because they had continued to

pay him through that date. This contention is deemed unpersuasive because, without further explanation of his circumstances at the NEMC residency—which Dr. Shirif did not provide—his response would lead a reasonable person to believe that Dr. Shirif had completed his second year of residency at NEMC.

10. The evidence is sufficient to support a finding that, on or about September 29, 2003, Dr. Shirif completed and submitted an application to the Plastic Surgery Central Application Service, located in Phoenix, Arizona. However, the exhibit pages presented at hearing as being a copy of that application are in such disarray as to diminish their evidentiary value. For example, it includes several unpaginated sheets, a sheet marked “Page 1,” a sheet marked “Page 2,” nothing marked page 3, and two sheets marked “Page 4” that appear sequentially. In addition, the cover sheet for the application appears in the middle of the series of pages. It is impossible to ascertain if all of the pages are from the same application or, if not, which pages came from Dr. Shirif’s application to the Plastic Surgery Central Application Service. Accordingly, without some additional evidence to identify them, these exhibit pages are deemed too unreliable to support any findings against Dr. Shirif.

However, based upon Dr. Shirif’s testimony that identified some of the pages as having come from his September 29, 2003, application to the Plastic Surgery Central Application Service, the evidence is sufficient to support a finding that he had answered “No” to question 2 on that application, which asked:

Have you ever been convicted of, or entered a plea of guilty, nolo contendere, or no contest to, a crime in any jurisdiction other than a minor traffic offense? You must include all misdemeanors and felonies, even if adjudication was withheld by the court so that you would not have a record of conviction. Driving under the influence or driving while impaired is not a minor traffic offense for purposes of this question.

In fact, on or about September 28, 1999, in the District Court of Minnesota, Tenth Judicial District, Washington County, located in Cottage Grove, Minnesota, Dr. Shirif entered a plea of no contest to and was found guilty of a non-traffic misdemeanor.

11. The evidence is not sufficient to support the following allegations as set forth in the Board’s May 18, 2005, notice of opportunity for hearing issued to Dr. Shirif:

(10)(b) [Dr. Shirif] answered ‘NO’ to question number 3, which asks, ‘Have you ever been discharged (terminated) by a training program?’

In fact, in or about August 2000, [Dr. Shirif] advised the Utah residency that [he] considered [himself] to have been dismissed from that program.

(10)(c) [Dr. Shirif] answered ‘NO’ to question number 4, which asks ‘Have you ever failed to have a contract with a training program renewed?’

In fact, in or about 1999, [Dr. Shirif's] residency contract at NEMC was not renewed.

Although Dr. Shirif acknowledged that he had answered the above questions as alleged, he disputed that these questions had been part of his September 29, 2003, application to the Plastic Surgery Central Application Service. Moreover, as set forth in Findings of Fact 10, above, there is no reliable evidence that these questions *had* been part of that application. Accordingly, the evidence is insufficient to support these allegations.

CONCLUSIONS OF LAW

1. The conduct of Khalid Mahmoud Shirif, M.D., as set forth in Findings of Fact 1 through 10 constitutes "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.
2. The conduct of Dr. Shirif as set forth in Findings of Fact 1 through 10 constitutes "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
3. The conduct set forth in Findings of Fact 1 through 10 constitutes a failure by Dr. Shirif to furnish satisfactory proof of good moral character as required by Sections 4731.29 and 4731.08, Ohio Revised Code.

* * * * *

Dr. Shirif presented credible evidence that, after having experienced some difficulty in residencies at NEMC, Utah, and Minnesota, he excelled at a general surgery residency at SUNY Buffalo. He did well enough that he was accepted into a prestigious fellowship in plastic surgery at The Cleveland Clinic Foundation. It would thus appear that Dr. Shirif has developed into a highly skilled physician and surgeon. Moreover, his colleagues praise both his skill and his character.

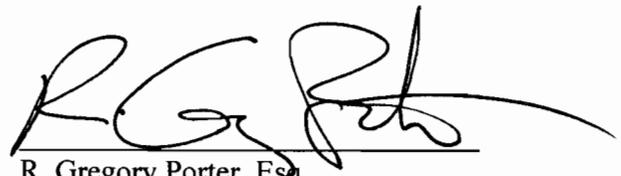
On the other hand, the evidence makes it equally clear that on some occasions Dr. Shirif is unfettered by the truth when the truth is inconvenient. The number of Dr. Shirif's misrepresentations is alarming, and he made them over a period extending from 1999 through 2005. Therefore, Dr. Shirif lacks the moral character and integrity required to practice medicine and surgery in Ohio.

PROPOSED ORDER

It is hereby ORDERED that:

The application for a training certificate for Khalid Mahmoud Shirif, to practice medicine and surgery in Ohio is PERMANENTLY DENIED. Further, Dr. Shirif is advised that application for any other certificate is not encouraged, as the grounds for permanent denial found herein may be considered as grounds for permanent denial of any future applications he may submit.

This Order shall become effective thirty days from the date of mailing of notification of approval by the Board.

A handwritten signature in black ink, appearing to read 'R. Gregory Porter', written over a horizontal line.

R. Gregory Porter, Esq.
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF JUNE 14, 2006

REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He noted that the cases of Mitchell Edward Simons, M.D., and Frank Murray Strasek, D.P.M., which were scheduled for this meeting, would be considered at a later time due to the unavailability of their attorneys to accompany them to the meeting.

Dr. Robbins 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 Brian Applegate, M.D.; Janice E. Green Douglas, M.D.; Khalid Mahmoud Shirif, M.D.; ; and Cynthia Diane Wester-Broner, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- 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	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- 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.

.....
KHALID MAHMOUD SHIRIF, M.D.

Dr. Robbins directed the Board's attention to the matter of Khalid Mahmoud Shirif, 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. Shirif. Five minutes would be allowed for that address.

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

Mr. Plinke stated that this is a case involving a first-time applicant to this Board for a training certificate to participate in the plastic surgery program at the Cleveland Clinic. In completing his application to the Board, Dr. Shirif made disclosures about events in his past that probably would have led, and ultimately did lead, to Board investigation. However, this is a young physician who, through a series of events that are well chronicled by his testimony at hearing, took almost ten years to complete a residency program. Because of that passage of time, and because of a lack of understanding by Dr. Shirif concerning some of the information the Board was seeking in its application, "there was probably a poor recollection of the events that had occurred, and there's a matter of perception, he thinks, on both sides as to what actually had occurred."

Mr. Plinke stated that he wants to leave the Board with two points before he turns the presentation over to Dr. Shirif. The first is that the allegation here is of fraudulent disclosures in the application. Mr. Plinke stated that Dr. Shirif has acknowledged that this information is false and he is not arguing that there should be no discipline for that. The reason Dr. Shirif asked for the hearing was to answer the question of whether he was trying to dupe the Board or fraudulently conceal information to try to get his training certificate.

Mr. Plinke stated that, if that had been the case, Dr. Shirif wouldn't have made the disclosures he made, and he wouldn't have volunteered information to Barb Sibla, when she called regarding other matters. He wouldn't have volunteered other information to Mr. Katko in a deposition. Mr. Plinke stated that Dr. Shirif disclosed information that the Board, at that point, did not know.

Mr. Plinke stated that the other point he wants to make is really a practical point. Dr. Shirif had completed about eight months of his fellowship program when they put him on administrative leave. He disclosed this matter to the Board on the day he was deposed by Mr. Katko. Dr. Shirif disclosed to the Cleveland Clinic that the Board had issues with his license application. Even knowing that, the Cleveland Clinic asked him to continue on. So there's a practicality here. There was a hearing that was held last July. Dr. Shirif has done eight months in the program. Dr. Shirif has told Mr. Plinke, and this isn't in the record, because it involves things that have occurred since then, he has only 30 to complete to meet his case requirements. It is a 24-month program and he's completed eight months.

Mr. Plinke stated that the Board certainly has the right to discipline Dr. Shirif. Mr. Plinke added that he's not recommending that the Board not discipline Dr. Shirif. What he has put forth in his objections is that there are mitigating factors. Dr. Shirif is a young man who salvaged a career that at one point looked lost, and he intends to pursue altruistic purposes in practicing medicine. Mr. Plinke commented that all physicians begin on the path to pursue altruistic purposes; he's not saying that Dr. Shirif is different from any of the Board members. Mr. Plinke stated that he thinks that Dr. Shirif's testimony in that regard is rather telling. In light of all those circumstances, if the Board just concludes that this is false and misleading but not fraudulent, it is consistent with the Board's disciplinary guidelines to take another course of action: One that does not include permanent denial; one that would grant the training certificate and revoke it and stay the revocation. The Board could do something that is sufficient to protect the public and punish Dr. Shirif for what he has done, and at the same time not throw away what is promising.

Dr. Shirif stated that he is here today because of the mistakes he's made. The answers he provided for his training certificate were both misleading and false. However, this was never his intent. The time in question, six years ago, was, indeed, the most difficult period in his life, but it was a time that helped define him as the person he is today. Merely surviving this period and later thriving has been his greatest accomplishment.

Dr. Shirif stated that he would not deny this period of time, nor has he ever attempted to hide it from anyone, including this Board. Dr. Shirif advised that five years ago he applied for a residency position at State University in Buffalo (SUNY). He spoke with the chairman in great detail about his problems during the previous years at the New England Medical Center (NEMC), in Minnesota, and in Utah, as he attested in his letter to the Board. The Chair indicated that he was offering Dr. Shirif the position, in part, because he was so forthcoming and open with him. Dr. Shirif stated that if there was one person or one organization from whom he would have withheld his past, it would have been when applying to SUNY when the problems were still fresh and relevant.

Dr. Shirif stated that he was obviously aware of the difficulty he had at NEMC and in Utah when he

applied for the training certificate in Ohio. He therefore took great effort to find out exactly what disciplinary action was taken against him and what he should report to this Board. Dr. Shirif stated that he called the offices of the coordinators of both programs, who informed him that his records were no longer present and that the GME offices would have any information of disciplinary actions. Both offices told him that it was official written policy that any disciplinary action must be reported to the GME offices and also to the state boards. He contacted the GME offices, as well as the human resources offices and the Boards for Utah and Massachusetts over a dozen times. In both Massachusetts and Utah the state law is that a negative action taken against a resident while in training, including warnings, probations, suspensions or non-renewals, must be filed within 30 days, which is also the institutional policy at NEMC and Utah. Although both state boards informed him that there were no actions taken against him in any way, he was still unsatisfied until he received verbal verification from a state board attorney, as well as written verification. Dr. Shirif continued that the Human Resources office, the GME offices, and both state boards indicated to him that they have no record of any disciplinary action against him. This is the information he provided to the Ohio Board.

Dr. Shirif stated that he by no means disagrees with the opinion that he was, in fact, disciplined and that he should have reported this to the Board. However, if his intention was to deceive the Board, why would he have made so many inquiries, including over a dozen phone calls to NEMC and Utah alone? He asked why, if he had intended to deceive the Board, he would have made even one phone call.

Dr. Shirif stated that this is his first application for any license, and he did have trouble deciding what he needed to include. At about the same time he filed an application for the American Board of Surgery exam. That application was originally rejected and sent back to him because he added the one-month rotation in Utah. He wasn't allowed to add this or take credit for that period. He had reported this as "vacation time." Dr. Shirif stated that he asked his attending physician if he should add the University of Utah and Minnesota experience to his Ohio training certificate application. The attending physician felt, as did Dr. Shirif, that since he could not take credit for this on the ABS application, he should not attempt to take credit for this on the training certificate application.

Dr. Shirif stated that it is painfully ironic that he had so much trouble for adding that time and even greater trouble for not adding it now. Later he was contacted by Ms. Sibla to discuss his affirmative responses to his application. Toward the end of the conversation, they began casually discussing his volunteering at a humane shelter and their mutual admirations of dogs, and how he had to leave his dog in Boston to move to Utah. He told her how painful it was for only training in Utah a month and then be told that he had not met the requirements to train there, and then to come to the realization that he'd left his dog for three weeks of training.

Dr. Shirif stated that, finally, in his interview with Mr. Katko, Mr. Katko asked where Dr. Shirif had trained. He advised Mr. Katko that he trained in Boston, Utah, Minnesota and Buffalo. After meeting with Mr. Katko last May he immediately called his program director at the Cleveland Clinic and informed him of the allegations. Dr. Shirif stated that he offered to resign his appointment at that point. He told the program director that he did not want the appointment on false terms, and he felt he did not deserve it if it

was obtained fraudulently. The program director refused to accept Dr. Shirif's resignation. Dr. Shirif stated that he was adamant that the program director be fully aware of everything the Board had alleged, so he called Mr. Katko on two separate occasions for copies of the transcript, to provide to his program director.

Dr. Shirif stated that it wasn't until he read Mr. Katko's opinion that he began to realize how badly he misled the Board. At that time he offered to withdraw his application to the Board. It was the toughest decision that he ever had to make. He stated that he knew at that point that he would never again be able to obtain a plastic surgery fellowship. Dr. Shirif stated that he told Mr. Katko that he would withdraw his application in lieu of action. He also admitted providing misleading and false statements. Dr. Shirif stated that he wants to take full responsibility for his actions. Dr. Shirif advised that Mr. Katko indicated to him at that time that he would have to admit to intentionally attempting to mislead the Board. Dr. Shirif stated that he could not do that at that time, and he felt in his heart of hearts that he was not intending to mislead the Board in any way. Dr. Shirif stated that Mr. Katko explained to him that this would be on the internet and would be public for the whole world to see; however, he could still not admit to this.

Dr. Robbins asked Dr. Shirif to conclude his statement.

Dr. Shirif stated that he's here because he's made mistakes and because of the problems he created. He's learned from these mistakes. When he applied for a medical license in Arizona recently, he took no chances in making such poor decisions. Dr. Shirif stated that he forwarded every letter, every correspondence and every document from this Board to the Arizona Board.

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

Mr. Clifford stated that he thinks that this is a case that demonstrates a repeated pattern of lies and fraud. Some of the aggravating factors for providing permanent denial are a dishonest or selfish motive and a pattern of misconduct. Mr. Clifford stated that he thinks these two factors are present in this matter.

Mr. Clifford referred to Dr. Shirif's interpretation of the question regarding the residency programs. Mr. Clifford stated that the application couldn't be any clearer; it requires the applicant to provide any and all activities from the date of medical school graduation to the present. Dr. Shirif interpreted this to mean just the times for which he sought credit. Mr. Clifford stated that nowhere in the application does it say anything along those lines. Instead of just leaving it blank, Dr. Shirif indicated that he was seeking residency. Mr. Clifford stated that Dr. Shirif was in a residency; he was in two residencies during that timeframe. Yet, he didn't disclose those. He had trouble in the Utah program, and he resigned from the Minnesota program.

Mr. Clifford stated that in a communication between Utah personnel and Dr. Shirif, James McGreevy, M.D., Program Director of the Utah residency, told Dr. Shirif that the problems went beyond central lines, and that another faculty observer thought that Dr. Shirif did not have the basic skills to put in a chest tube or tie a knot. Also, Dr. McGreevy advised Dr. Shirif that the SICU nurses had no confidence

in his clinical skills, and felt that he was at the level of a third-year medical student. Mr. Clifford stated that this isn't a case of simple fraud. There was even a lack of basic medical skills that eventually led to his dismissal from the Utah program. Dr. Shirif did not disclose the Utah program or the Minnesota program to the Board.

Mr. Clifford stated that Dr. Shirif's comments about settlement negotiations are not before the Board at this time and are not proper for the Board to consider. He added that he believes that the Board might hear a different story as to what conversations may have occurred between Ms. Sibla, Mr. Katko and Dr. Shirif.

Mr. Clifford stated that at the hearing there were some really bizarre comments about what truly occurred. Dr. Shirif claimed at hearing that, since he was not legally able to practice as a PGY 3 at the Utah residency program, in his mind he was never there. Also, regarding the programs in Boston, Utah and Minnesota, Dr. Shirif stated that the probation at the Boston residency was not an official probation; the warnings he received while at SUNY were not official warnings; and the NEMC residency in Boston did not refuse to renew his contract, he just simply decided not to go back. With regard to the Utah residency, the removal from which he characterized as a dismissal, Dr. Shirif indicated that he never considered himself as being dismissed. With regard to failure to affirmatively answer regarding his resignation from the Utah program, he interpreted the question as whether he was being fired, something which may have occurred had he not been dismissed.

Mr. Clifford stated that Dr. Shirif has an excuse for everything. This is an opportunity, which the Board has discussed in the past, to say they're only going to license physicians who make full and frank disclosure at the initial application period, not ones who are cornered by an investigator or enforcement attorney with the information in front of them. This is an opportunity for this Board to tell Dr. Shirif that he lacks the moral character and truthfulness to be a licensed physician in the State of Ohio.

Mr. Clifford stated that Mr. Porter's Report and Recommendation does an excellent job of summarizing all of Dr. Shirif's lies and presenting them to the Board so that it has the ability to affirm or support the permanent denial.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF KHALID MAHMOUD SHIRIF, 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 disagrees with the Hearing Examiner's recommendation in this case. In this case, there is an individual who has been less than truthful on various occasions throughout his career. Dr. Kumar stated that he will address three of those situations, one at a time.

Dr. Kumar stated that he would first start by chronicling Dr. Shirif's history. He advised that Dr. Shirif graduated from the University of Minnesota in the top ten percent of the Dean's class. He had no problems

in the first year of his residency at Boston University Medical Center. Dr. Shirif had to have a surgical residency, so he looks for it and he finds it at NEMC, a small program with only about four surgeons in the whole program. Obviously somewhere around six months into the program there was a probationary hearing – no question about it. Dr. Kumar stated that he couldn't see any real reason why that hearing was held. This wasn't a matter of Dr. Shirif's being on drugs, on alcohol, derelict in his duty, or not being present someplace when he was asked to be there.

Dr. Kumar commented that there is evidence that Dr. Shirif had a personality conflict with one of the attendings, and those conflicts can occur. Dr. Kumar stated that it became very clear that one of the attendings would make comments like, "we have had more deaths in the hospital since Dr. Shirif came to work here than we had in Vietnam." Dr. Kumar stated that, when that kind of comment is made by an attending, anybody would break. Dr. Shirif wrote a letter and there was another meeting. Dr. Kumar stated that he can imagine what happened in the meeting: The attending said he would not renew the contract, and Dr. Shirif said to heck with it, he's not going to come if they had that attitude. Who said what became murky.

Dr. Kumar continued that as things happened, Dr. Shirif got into a freak accident and was put on medical leave for the rest of the year. After that, he left and did one year of some sort of research, and then he made a big mistake; i.e., when he applied for a program in Utah, he did not check if he was going to get full credit for the year at NEMC. Within a month of his starting in Utah, the program director told him that he did not get credit for that year. There was mutual agreement at that point to let him resign from the position. Dr. Kumar stated that Dr. Shirif should not even have gone for PGY-3 at that time because, obviously, he was not able to start central lines, which is a lower-level function. He was not qualified to be PGY-3. Dr. Shirif resigned from there by mutual agreement. The record is clear that Dr. Shirif was allowed to resign from that position.

Dr. Kumar stated that this is the first time he made a false statement. When he sent letters to other anesthesia residency programs and other programs, he was inflating his CV. He talked about what a great person he was, what he did and what he didn't do. He didn't disclose the problems he had. Dr. Kumar asked who, when writing his or her own CV, will say, "I was a CFO of a \$100 million dollar company, and by the way, a year ago I was CFO of a company that went bankrupt." When one is writing a CV, he or she is really expanding your background. Dr. Kumar stated that he doesn't see that as a lie.

Dr. Kumar continued that, essentially, Dr. Shirif comes out of there, goes to an anesthesia program, doesn't like the anesthesia program, he resigns from there, and then he goes to Buffalo, where for year 2, 3 & 4 he excels. There were no complaints of any kind. Not only that, in his fourth year, he's made the chief administrative resident, which is a big thing. Nobody with a checkered past or any problem will get to that level. Dr. Kumar stated that Dr. Shirif was then nominated for national honors by SUNY, even though he didn't get it. He's recommended for everything: Hand surgery, plastic surgery, etc.

Dr. Kumar advised that now comes Dr. Shirif's problem with the second place where he was not truthful, and that is in his application for the plastic surgery residency. He obviously did not answer the questions

very well; however, he recognized that and he called the plastic surgery people and told them that he needed to modify the application, that there were some issues here. He was told he could not do that. He would have to disclose this information when he goes for an interview. That's what he did and he got a plastic surgery residency in Ohio.

Dr. Kumar stated that Dr. Shirif made his second mistake. When he filled out the application for Ohio, he obviously answered two questions incorrectly. Dr. Kumar stated that he'd like to look at what Dr. Shirif did disclose. In the same application, without being prompted, he disclosed two things: First, he was transferred from one place to another. If you read Dr. Shirif's statement, he somewhat talks about what happened there. Dr. Kumar advised that the second thing Dr. Shirif disclosed was the misdemeanor conviction, of which even the court couldn't find a record, which was in Minnesota when he was a young person. It had something to do with a salon. If someone was totally intending to defraud someone else, he would not disclose his misdemeanor conviction, which did not exist on any radar screen.

Dr. Kumar stated that he does believe that Dr. Shirif made a lot of mistakes. When he applied for the program, he had disclosed information to the plastic surgery residency people. They knew about it, and that's why they allowed him to continue. Dr. Kumar stated that Dr. Shirif does have to pay the price for what he did, and therefore he would like to propose an alternative order.

DR. KUMAR MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF KHALID MAHMOUD SHIRIF, M.D. BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

- A. **GRANT OF PHYSICIAN TRAINING CERTIFICATE SUBJECT TO CONDITIONS SPECIFIED IN THIS ORDER:** The application of Khalid Mahmoud Shirif, M.D., for a physician training certificate in the State of Ohio for the period July 1, 2005 to June 30, 2006, is GRANTED, provided that he otherwise meets all statutory and regulatory requirements, and subject to all of the terms, conditions, and limitations set forth in this Order:
- B. **APPLICATION FOR FULL LICENSE WILL NOT BE CONSIDERED UNTIL AFTER RELEASE ISSUED BY BOARD:** The Board shall not consider any application submitted to the Board by Dr. Shirif for a full medical license until after Dr. Shirif has been released from the terms of this Order as set forth in section F, below.
- C. **SUSPENSION OF CERTIFICATE:** The training certificate of Dr. Shirif in the State of Ohio shall be SUSPENDED for a period of one year.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. Shirif's certificate shall be

subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:

1. **Obey the Law**: Dr. Shirif shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
2. **Declarations of Compliance**: Dr. Shirif 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. Shirif's training certificate is restored or reinstated. 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. Shirif 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. Shirif's training certificate is restored or reinstated, 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. **Noncompliance Will Not Reduce Probationary Period**: In the event Dr. Shirif is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
5. **Professional Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Shirif shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

6. **Personal Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Shirif shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

- E. **DURATION/MODIFICATION OF TERMS**: All subsequent training certificates or other certificates that may be granted by the Board to Dr. Shirif shall be subject to the same terms, conditions and limitations, unless otherwise determined by the Board, until Dr. Shirif has completed at least a two year probationary period with the Board. Moreover, the term of probation shall be tolled during any period in which Dr. Shirif's training certificate has lapsed and no other certificate has been issued by the Board.
- F. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Shirif's certificate will be fully restored.
- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Shirif 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. Shirif 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. Shirif receives from the Board written notification of his successful completion of probation.
- H. **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. Shirif 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. Shirif 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 of any professional license. Further, Dr. Shirif 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. Shirif receives from the Board written notification of his successful completion of probation.

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

Dr. Kumar asked to point out that earlier this afternoon the Board saw the case of Dr. Applegate, who also was fraudulent. The Board suspended Dr. Applegate's license; it did not give Dr. Applegate a death sentence. The Board did not take Dr. Applegate out permanently. The Hearing Examiner's Proposed Order in this case is for permanent denial. Dr. Kumar asked the Board to remember that it is only granting Dr. Shirif a training certificate under his alternate order, not an unrestricted license. His proposed order has three or four components: 1. To grant the training certificate; 2. To suspend that certificate; 3. To impose a probationary period for about two years; and 4. To not consider an application for full licensure until after he is released from the probationary conditions. Dr. Kumar noted that he hadn't put a specific time for the suspension in his motion; but, for purposes of discussion, he will suggest a suspension of one year.

DR. STEINBERGH SECONDED THE MOTION, FOR DISCUSSION PURPOSES.

Dr. Steinbergh stated that she thought that the Report itself and the Conclusions of Law were appropriate. She also agreed with the comments Mr. Porter made in the paragraphs that follow the five stars after the Conclusions of Law; i.e., that Dr. Shirif currently does lack the moral character and integrity required for a training certificate. Dr. Steinbergh stated that when Dr. Shirif applied for his training certificate in Ohio, the application form says: "List all activities in chronologic order from the date of medical school graduation to the present time, using month and year. For any non-working time, you must state on the résumé exactly what your activities were, such as vacation, seeking employment, as well as your permanent address." Dr. Steinbergh stated that the application asks the applicant to tell exactly what his activities were. The Board isn't passing judgment at that time. So in the application from July 2000 to June 2001 Dr. Shirif gives the explanation that he was seeking a surgical residency, which the Board knows is not true. He was, in fact, in programs, and he lists one address. The Board knows that he's had more than one address.

Dr. Steinbergh stated that, when Dr. Shirif did that, he lied. Dr. Steinbergh added that, when she looks back at the record, Dr. Shirif has lied many times. The only reason he confesses is because he's been caught in his lies. Dr. Steinbergh stated that, as far as she's concerned, this is intentional. You do not lie on an application just for the fun of it. None of what Dr. Shirif says today changes her mind about the fact

that he lied. It is what it is. The application is very clear about what he has to state. What he thinks he was doing at that time really doesn't enter into this. He was in Utah, he was in Minnesota, he had two different addresses, he did two different things, and he didn't fill that out properly. He had to have known that he didn't get credit from NEMC. He writes in his application that he was there from July 1998 to June 1999. He left the program in April 1999, and it should say that. After that, what he did between April and July must also appear on the application. Concerning Dr. Shirif's response about getting a paycheck, Dr. Steinbergh stated that Dr. Shirif did get a paycheck, apparently, but he wasn't performing residency duties. He was released from that program. She stated that Dr. Shirif knew what he did, he knew that he didn't get the credit for that program. Dr. Steinbergh commented that she thinks that Dr. Shirif thinks too much of himself.

Dr. Steinbergh stated that she's not saying that physicians don't "fluff" their CVs, but this is not something for which the Board should admire Dr. Shirif. Presenting himself as something that he is not is not a good message to give this young physician. He got caught in his lies.

Dr. Steinbergh stated that she has two takes on this case. She does agree that, beyond the lies, he has been performing appropriately as a resident. He's a young person, and she's never in favor of stopping young people in their careers. She added that she feels there is no question that Dr. Shirif will have learned from this experience. She stated that Dr. Shirif does have to be punished for this, but she wrestled with whether a permanent denial is the appropriate punishment. She stated that if the Board isn't going to permanently deny Dr. Shirif a training certificate, the Board should grant it, suspend it for a year, put him on probation for two to three years, and require successful completion of ethics courses.

Dr. Steinbergh stated that Dr. Shirif did a terrible thing; on the other hand, he's a young man who has worked very hard, and she would be in favor of this amended order for those reasons. Dr. Steinbergh stated that she would not, in any way, think that any of this was justifiable. She has no justification for what he did. He got caught in his lies.

Dr. Egner stated that she agreed with the Report and Recommendation. She looks at Dr. Shirif through the hearing record and here today, and it is very serious: A young man, applying for a training certificate to do a fellowship. But his medical career is riddled with lies and misrepresentations and clinical failures. Every letter, application and the hearing record has lies or evasive answers to misrepresent reality. Dr. Egner stated that she was surprised as she read through the chronology of his life since medical school that he gets to SUNY and is successful. She stated that she thought that he must have changed, and she wouldn't have bet that he could have after what he had been through previously. Dr. Egner continued that the Board then gets to Dr. Shirif's application for a fellowship for plastic surgery and he goes right back to lying. His application for his training certificate goes right back to lying. Dr. Shirif does have a brief period of time in his life, in New York, when he seemed to do okay; but when it comes down to being truthful about the parts of his life that aren't good to talk about, he just cannot be truthful about it.

Dr. Egner stated that to her, the problem is that Dr. Shirif lacks the moral character and integrity required to practice medicine and surgery in Ohio, as Mr. Porter indicated in his Report and Recommendation.

Dr. Egner stated that she believes that. Dr. Shirif wants to be a plastic surgeon. Plastic surgeons mainly do elective surgery. Dr. Egner stated that she doesn't want to say that insurance gives physicians a second look at what they do, but in a sense, it does. Insurance companies make sure that when the physician calls them up to pre-certify a surgery, it's covered, that the physician has gone through the necessary workup to say that this is an indicated surgery. Plastic surgeons don't really face that often because these are non-covered expenses. They have to be very above-board. They have to be so ethical, that the surgery that they're recommending to you is in your best interest, and that they can fulfill pretty much what that surgery is expected to do. There's nobody double-checking them, like exists in traditional cases.

Dr. Egner stated that Dr. Shirif is a physician who is very unethical, who cannot tell the truth. Dr. Egner stated that Dr. Shirif says that his privileges really weren't restricted because residents don't really have privileges. She stated that not one of the Board members sitting at the table believes that to be a truthful answer. Dr. Shirif claims that since he didn't get credit for a residency, he wasn't really there. This is Dr. Shirif's reasoning at this point in his life. She finds that he is not trustworthy enough to practice medicine. Dr. Egner stated that doctors face ethical and moral decisions every single day, and she doesn't see that Dr. Shirif has shown that he can practice in an ethical and moral way.

Dr. Kumar stated that he's not trying to minimize any of the less-than-truthful answers and some of the evasive answers he gave in his deposition, and so on and so forth. He will address two issues. Earlier that afternoon the Board saw a physician who lied, who had a problem with prescribing drugs to his wife, had a big malpractice case, and the Board did not permanently revoke his license. Here, essentially, the Board is looking at a physician who has done similar things, but in some aspects, less, and proposing to give him a permanent revocation.

Dr. Steinbergh stated that the Proposed Order is for permanent denial.

Dr. Kumar stated that he feels that a permanent denial essentially gets to the same level. Now the Board should recognize the things Dr. Shirif did disclose. The Board is talking about Dr. Shirif not having the moral, ethical character to be a physician. If someone was morally or ethically compromised, he would not disclose the misdemeanor conviction. The issue of his lying on his plastic surgery application about the misdemeanor conviction came from this Board when he reported it on the Board's application. When he answered the questions wrong on the plastic surgery application, he recognized that and he called to try to correct that. Also, in the record, there is evidence that there is a physician who is willing to put his neck on the line and say that he did discuss with Dr. Shirif how to address this, and they advised that that's how to fill out the application. On the record a physician testified to that fact.

Dr. Kumar acknowledged that Dr. Shirif made a lot of mistakes, but he doesn't believe that they rise to the level of a permanent denial. For the last four years, Dr. Shirif has been exemplary; there have been no problems of any kind, except for filling out the applications. There has not been any issue pertaining to his clinical care. Dr. Shirif has excelled, and was named for a national award by the SUNY program. Dr. Kumar commented that the SUNY program is not a small program.

Dr. Steinbergh stated that she doesn't disagree with Dr. Egner in any way. She added that her only take on this is that if the Board has some level of compassion in this, the Board is, in fact, granting a training certificate that will allow him at some point to complete training. The Board doesn't know that he will. He'd have a year of suspension, and the Board doesn't know that he would be able to continue in this residency program. He may very well have to look somewhere else for training. Dr. Steinbergh stated that the Board is concerned enough to ask for a professional ethics course and a personal ethics course. She added that the Board will have to approve these courses, and Board members know what they will approve. Dr. Shirif will have to take these courses to address the issues of the Board's concerns. If he were coming for full licensure, at this stage, she would have even more difficulty.

Dr. Kumar stated that he would have a problem with that.

Dr. Steinbergh stated that this is a tough case. It's a matter of compassion for a young physician she personally thinks is salvageable. There's no question that he has just lied tremendously. Dr. Steinbergh stated that she does not disagree with anything Dr. Egner has said. She added that over the years she's felt the same way. The Board has to trust that physicians will make moral and ethical decisions when it comes to patient care, and Dr. Shirif has to learn from this. Dr. Steinbergh stated that she just feels that, if the Board is going to have compassion, it ought to have it now and that the Board ought to accept the alternative order. Dr. Steinbergh stated that she thinks that, after Dr. Shirif's experience with this Board, if he hasn't learned about those mistakes, the compassion won't be justified.

Dr. Kumar indicated that Dr. Shirif has already said that when he applied to Arizona he made certain all the letters and activities were included.

Dr. Steinbergh stated that at this point she has a question about that. When a person lies to this degree, she almost doesn't believe what he or she is saying. She stated that what she's saying is that after this experience and the Board's requirements, if Dr. Shirif can't learn, this is a real important piece of his education, in becoming a physician, it's just as important as all of those academic courses that he's had. This one's critical.

Dr. Kumar agreed.

Dr. Steinbergh stated that the Board can look at Dr. Shirif and make sure that he gets a course that's appropriate for him and that's the best the Board can do. But that is being compassionate.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- nay

Dr. Davidson - aye
Dr. Madia - aye
Dr. Steinbergh - aye

The motion carried.

Mr. Browning asked whether he could offer another amendment. He stated that there is a whole pattern of behavior here that's causing a lot of concern for the Board members. Mr. Browning stated that he questions the psychological stability of a person who continually lies on significant issues. Mr. Browning stated that he thinks it would be appropriate to require a psychological assessment/evaluation of some sort, coming out of the suspension. Mr. Browning expressed concern about Dr. Shirif coming back without some analysis by an appropriate professional.

Dr. Kumar stated that he thinks that's a very good point, and he would agree with that.

Dr. Egner asked whether the Board can do that. She noted that the charges against Dr. Shirif involve fraud in applying, misrepresentation and deception. She stated that the Board has not charged Dr. Shirif with having a psychological problem. She added that she'll go back to what she said in a previous case: There's nothing in the hearing record that says that Dr. Shirif has a psychological problem. That's part of her issue. She doesn't know if it's appropriate for the Board to send him to a psychologist.

Mr. Browning stated that the Board can make that decision. He added that he's not saying that Dr. Shirif does have a psychological problem. He's saying that there's a legitimate question, when you see someone with this pattern of behavior. Mr. Browning stated that the Board might have a clearer sense of who Dr. Shirif is with that kind of independent assessment. If the Board got a really bad report back, the Board could act on that.

Dr. Kumar agreed with Mr. Browning.

Mr. Whitehouse stated that he doesn't think that Mr. Browning's idea is a bad one. He's not aware of any precedent as to whether the Board has ever done this.

Board members asked Ms. Thompson whether she could answer that question.

Ms. Thompson stated that the staff calls this the "Eastway" situation. She explained that, in the case of Dr. Eastway, issues concerning his possible chemical dependency came up in hearing. The Order included conditions addressing that. However, the Board hadn't charged Dr. Eastway with being impaired. The Court said that the Board can't put conditions on a physician that don't relate to the charges that you have before you. If Board members think that they have enough information here to order Dr. Shirif to an evaluation, the Board could do that through the regular process of ordering an evaluation. If Dr. Shirif and his attorney want to agree that an evaluation would be an appropriate condition and would agree to including it in the Board's Order, that's another way the Board has dealt with the "Eastway" issue in the

past.

Ms. Thompson stated that, aside from whether the Board can do it or not, the current amended Order calls for a definite suspension. What she hears Mr. Browning saying is that he also wants a condition for reinstatement. The Order would have to be changed to an indefinite suspension for a minimum of one year, with a psychological assessment as a condition for reinstatement. Ms. Thompson again stated that she doesn't think the Board could use this as a condition unless Dr. Shirif was willing to agree to that.

Mr. Whitehouse stated that he agrees, based on what Mr. Browning has said, that there's a question as to whether there's a chronic issue here, but he thinks that the Board will over-complicate the matter if they try to do this.

Dr. Steinbergh stated that she agrees that Mr. Browning's amendment to require an assessment is a good one, and she does believe that they would agree to that. She thinks that if Dr. Shirif gets a favorable assessment, that goes on historically for him in a positive way. Dr. Steinbergh stated that were she in Dr. Shirif's shoes, she would do anything to allow her to continue her career in some fashion without a permanent denial of a training certificate. He understands the problem and these are the concerns the Board members have.

Dr. Kumar asked whether the Board could ask Dr. Shirif and his attorney whether they would be agreeable to this.

Ms. Pfeiffer advised that she thinks that the Board could ask Dr. Shirif whether he would care to respond to the question.

Mr. Plinke states that he hasn't had a chance to discuss the proposed psychological assessment with Dr. Shirif, but his position has been that he wants to be able to complete his training. If the Board wants him to jump through three hoops, he'll do that. If the Board wants him to jump through five hoops, he'll do that. Mr. Plinke stated that he doesn't know what the term of suspension is in this proposed order; he would just add that he would imagine that it would render his ability to do the training at the Cleveland Clinic moot if the Board suspends his license for a year and asks him to do the psychiatric evaluation at the end of the year. There won't be a training program for Dr. Shirif to enter. That's the realistic situation.

Dr. Kumar stated that that's beside the point.

Mr. Browning suggested tabling this matter to come up with some language.

Dr. Robbins asked how many votes were needed to ratify this.

Ms. Schmidt advised that the Board needs a majority vote to amend a proposed order and six votes to adopt an amended order.

Mr. Browning asked how many votes were needed to table.

Ms. Schmidt advised that a majority is needed.

**DR. KUMAR MOVED TO TABLE THE MATTER OF KHALID MAHMOUD SHIRIF, M.D.
MR. BROWNING SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

The motion carried.

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Mr. Browning left the meeting during the previous discussion.

Dr. Robbins removed the matter of Dr. Shirif from the table.

Ms. Pfeiffer stated that while the Board was meeting, she, Ms. Thompson, and Mr. Plinke were discussing the possibility of crafting a proposal that Dr. Shirif would be amenable to and that the Board would also sanction. There's a possibility of a resolution that Ms. Thompson can articulate to the Board for its consideration. It relates to the imposition of a psychiatric evaluation and follow up treatment which, as Ms. Thompson indicated, without the approval or consent of Dr. Shirif, the Board shouldn't and couldn't do in this case. There is a possible way to incorporate that into an order with Dr. Shirif's agreement.

Ms. Thompson stated that, as previously discussed, Dr. Shirif was not charged with having any mental illness or psychiatric disorder. Therefore, imposing a term that concerns such issues in this order would not be appropriate unless Dr. Shirif and his attorney would agree to that since the issue has been raised. In their discussions, they talked about the Order as crafted. At the present time it consists of a definite suspension of one year. The Board is granting the certificate, suspending it for one year, and at the end of that one year, he automatically goes into probation. In trying to figure out where to put the psychiatric evaluation, ordinarily what would be done is to have an indefinite suspension and a psychiatric evaluation would be a part of the conditions for reinstatement, with the typical language that if treatment is recommended, it becomes part of the probationary terms and conditions.

Ms. Thompson stated that in their talks, it was indicated that Dr. Shirif and Mr. Plinke would be amenable to the evaluation as part of reinstatement conditions, if the indefinite suspension had no minimum term on it. She stated that the Order would have an indefinite suspension with no minimum, and then a condition for reinstatement would be applied, and have the psychiatric evaluation done by someone approved by the Board. The probationary terms would stay the same. If treatment is recommended, it would be put into the probationary terms.

Ms. Thompson stated that part of the problem with a definite suspension that automatically reinstates his training certificate and puts him on probation is that Dr. Shirif may or may not at that time even be in Ohio. He can't have an active training certificate unless he's in a training program in Ohio. The Board doesn't have any assurance that he would be here at that time. Ms. Thompson stated that if the Board wants to order an indefinite suspension with no minimum period and a psychiatric evaluation as a condition for reinstatement, the staff can draft the language.

Dr. Kumar stated that he is uncomfortable with not having a minimum suspension. Enough happened that there has to be a definite minimum suspension. He stated that there is no way he would accept that.

Dr. Robbins advised that the Board did approve one amendment to the Proposed Order. Now the Board will have to go back to vote on the Order as amended.

Dr. Davidson asked about a second amendment.

Dr. Robbins stated that he didn't think the Board was going to do that.

Dr. Davidson asked what the vote was on the motion to amend.

Ms. Schmidt advised that it was five aye, two nay, one abstention.

Dr. Davidson stated that it wasn't clear that the two nay votes would be swayed by the addition of the psychological evaluation.

DR. KUMAR MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF KHALID MAHMOUD SHIRIF, M.D. DR. VARYANI SECONDED THE MOTION.

Dr. Robbins asked for a clarification on what the Board is currently voting.

Ms. Schmidt advised that the motion is to approve and confirm the Proposed Order, as amended by Dr. Kumar.

A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- nay

Needing six votes to pass, the motion failed.

Mr. Browning returned to the meeting at this time.

Dr. Kumar related to Mr. Browning the information that Ms. Thompson and Ms. Pfeiffer earlier related. He indicated that Dr. Shirif and Mr. Plinke have indicated that they will not agree to the psychiatric evaluation unless the Board makes the suspension period indefinite with no minimum suspension period. Dr. Kumar stated that, under that scenario, Dr. Shirif could meet the requirements next week.

DR. STEINBERGH MOVED TO RECONSIDER THE MOTION TO APPROVE AND CONFIRM AS AMENDED. DR. DAVIDSON SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

The motion carried.

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

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

Mr. Browning	- nay
Dr. Davidson	- aye
Dr. Madia	- aye
Dr. Steinbergh	- aye
Dr. Robbins	- nay

The motion failed.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS, AND ORIGINAL PROPOSED ORDER IN THE MATTER OF KHALID MAHMOUD SHIRIF, M.D. DR. VARYANI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Kumar	- nay
	Mr. Browning	- aye
	Dr. Davidson	- nay
	Dr. Madia	- abstain
	Dr. Steinbergh	- aye

The motion failed.

Ms. Thompson stated that Mr. Plinke has another proposal to make. She asked that the Board table this matter again at this time.

DR. VARYANI MOVED TO TABLE THE MATTER OF KHALID MAHMOUD SHIRIF, M.D.

Dr. Varyani stated that the Board has discussed this case enough.

Dr. Shirif asked to clarify one part of the negotiation they had.

Dr. Varyani stated that Dr. Shirif can do whatever he likes. He was just addressing the Board.

Dr. Robbins told Dr. Shirif to go ahead.

Dr. Shirif stated that his only concern with the year of suspension was that he obviously would not be allowed to go back, and he would not have a job here. He would not be able to stay here without a job. Even if the suspension was three or four months, he wouldn't be able to re-enter the residency program at the Cleveland Clinic.

Dr. Egner stated that the Board understands that.

Dr. Shirif stated that that's the only concern he has. He added that he would be willing to do what he needs to do. He added that he just doesn't know how he can do it without a job. That's the only concern he has. He'd be willing to do anything the Board asks, he just needs to work.

Dr. Robbins stated that Dr. Shirif is not going to get anything better than a one-year suspension.

Dr. Kumar stated that, based on his history, he's going to get a minimum one-year suspension, have a psychiatric evaluation, professional courses, and so on and so forth.

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

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

The motion carried.

.....
MR. BROWNING MOVED TO REMOVE THE MATTER OF KHALID MAHMOUD SHIRIF, M.D. FROM THE TABLE. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Dr. Robbins asked Ms. Thompson to explain the new proposal.

Ms. Thompson stated that the new Proposed Order contains an indefinite suspension, minimum of one year; the conditions for reinstatement are that he must apply and undergo a psychiatric assessment. A probationary period follows. If the psychiatric assessment indicates that treatment is recommended, part of the probationary terms would be that he follow the treatment plan.

Copies of the new proposed order were distributed to Board members for review.

MR. BROWNING MOVED TO APPROVE AND CONFIRM THE HEARING EXAMINER'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND TO ENTER THE FOLLOWING ORDER IN THE MATTER OF KHALID MAHMOUD SHIRIF, M.D.

It is hereby ORDERED that:

- A. **GRANT OF PHYSICIAN TRAINING CERTIFICATE SUBJECT TO CONDITIONS SPECIFIED IN THIS ORDER:** The application of Khalid Mahmoud Shirif, M.D., for a physician training certificate in the State of Ohio for the period July 1, 2005 to June 30, 2006, is GRANTED, provided that he otherwise meets all statutory and regulatory requirements, and subject to all of the terms, conditions, and limitations set forth in this Order:
- B. **APPLICATION FOR FULL LICENSE WILL NOT BE CONSIDERED UNTIL AFTER RELEASE ISSUED BY BOARD:** The Board shall not consider any application submitted to the Board by Dr. Shirif for a full medical license until after Dr. Shirif has been released from the terms of this Order as set forth in section G, below.
- C. **SUSPENSION OF CERTIFICATE:** The training certificate of Dr. Shirif in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than one year.
- D. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Shirif's certificate to practice medicine and surgery until all of the following conditions have been met:
 1. **Application for Reinstatement or Restoration:** Dr. Shirif shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Psychiatric Assessment:** Prior to submitting his application for reinstatement or restoration, Dr. Shirif shall submit to the Board for its prior approval the name

and curriculum vitae of a psychiatrist of Dr. Shirif's choice.

Upon approval by the Board, Dr. Shirif shall obtain from the approved psychiatrist an assessment of Dr. Shirif's current psychiatric status. The assessment shall take place no more than sixty days prior to the submission of Dr. Shirif's application for reinstatement, unless otherwise approved by the Board. Prior to the initial assessment, Dr. Shirif shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

Upon completion of the initial assessment, Dr. Shirif shall cause a written report to be submitted to the Board from the approved psychiatrist. The written report shall include:

- a. A detailed report of the evaluation of Dr. Shirif's current psychiatric status and condition;
 - b. A detailed plan of recommended psychiatric treatment, if any, based upon the psychiatrist's informed assessment of Dr. Shirif's current needs;
 - c. A statement regarding any recommended limitations upon his practice, and
 - d. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.
3. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Shirif has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his/her fitness to resume practice.

E. **PROBATION:** Upon reinstatement or restoration, Dr. Shirif's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:

1. **Obey the Law:** Dr. Shirif shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
2. **Declarations of Compliance:** Dr. Shirif 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. Shirif's training certificate is restored or reinstated. 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. Shirif 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. Shirif's training certificate is restored or reinstated, 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. **Continue Psychiatric Treatment:** If the psychiatrist approved by the Board prior to Dr. Shirif's reinstatement or restoration recommended that Dr. Shirif undergo psychiatric treatment, Dr. Shirif shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved treating psychiatrist. The psychiatric reports shall contain information describing Dr. Shirif's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Shirif's compliance with the treatment plan; Dr. Shirif's psychiatric status; Dr. Shirif's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Shirif 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. Shirif's quarterly declaration.

In addition, Dr. Shirif shall ensure that his treating psychiatrist immediately notifies the Board of Dr. Shirif's failure to comply with his psychiatric treatment plan and/or any determination that Dr. Shirif is unable to practice due to his psychiatric disorder.

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

5. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Shirif is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of

noncompliance will not apply to the reduction of the probationary period under this Order.

6. **Professional Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Shirif shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed. In addition, at the time Dr. Shirif submits the documentation of successful completion of the course or courses dealing with professional ethics, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.
 7. **Personal Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Shirif shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed. In addition, at the time Dr. Shirif submits the documentation of successful completion of the course or courses dealing with personal ethics, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.
- F. **DURATION/MODIFICATION OF TERMS**: All subsequent training certificates or other certificates that may be granted by the Board to Dr. Shirif shall be subject to the same terms, conditions and limitations, unless otherwise determined by the Board, until Dr. Shirif has completed at least a two year probationary period with the Board. Moreover, the term of probation shall be tolled during any period in which Dr. Shirif's training certificate has lapsed and no other certificate has been issued by the Board.
- G. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Shirif's certificate will be fully restored.

H. REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Shirif 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. Shirif 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. Shirif receives from the Board written notification of his successful completion of probation.

I. 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. Shirif 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. Shirif 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 of any professional license. Further, Dr. Shirif 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. Shirif receives from the Board written notification of his successful completion of probation.

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

DR. STEINBERGH SECONDED THE MOTION.

Dr. Robbins asked whether there is any more discussion on this matter.

Ms. Pfeiffer stated that the Board may want to clarify that Dr. Shirif and Mr. Plinke, who are in the room, are amenable and agreeable to the proposed terms.

A vote was taken on Mr. Browning's motion:

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

Mr. Browning	- 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

May 18, 2005

Khalid Mahmoud Shirif, M.D.
Cleveland Clinic Foundation
C/O GME-NA23
9500 Euclid Avenue
Cleveland, OH 44195

Dear Doctor Shirif:

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

- (1) On or about February 7, 2005, you submitted an Application for Training Certificate [Training Application] to the State Medical Board of Ohio. Your Training Application is currently pending. By signing the Training Application, you certified that the information provided therein was true.
- (2) The Resume of Activities section of your Training Application required you to “[l]ist ALL activities in chronological order from the date of medical school graduation to the PRESENT time, using MONTH and YEAR. *For any non-working time, you MUST state on the resume exactly what your activities were, such as ‘vacation’ or ‘seeking employment’, as well as your permanent address.*” You indicated in the Resume of Activities section of your Training Application that, from July 2000 through June 2001, you were “seeking surgical residency position,” that you were “unemployed” and that you were engaged in “0%” clinical duties.

In fact, you were a resident in the surgical residency program at the University of Utah [Utah residency] located in Salt Lake City, Utah, from on or about July 1, 2000, through on or about August 3, 2000. In addition, you were a resident in the anesthesiology residency program at the University of Minnesota [Minnesota residency], located in Minneapolis, Minnesota, from on or about January 1, 2001, through on or about March 16, 2001.

MAILED 5-19-05

- (3) In the “Additional Information” section of your Training Application you answered “NO” to question number 2, which asks the following:

Have you ever been warned, censured, disciplined, had admissions monitored, had privileges limited, had privileges suspended or terminated, been put on probation, or been requested to withdraw from or resign privileges at any hospital, nursing home, clinic, health maintenance organization, or other similar institution in which you have trained, been a staff member, or held privileges, for reasons other than failure to maintain records on a timely basis, or failure to attend staff or section meetings?

- (a) In fact, in or about March 1999, you were advised by the residency program director at the Tufts-New England Medical Center General Surgery Residency Program [NEMC residency], located in Boston, Massachusetts, that your privileges were limited.
- (b) In fact, on or about July 31, 2000, you were advised that your privileges to place central lines at the Utah residency were limited.

- (4) In the “Additional Information” section of your Training Application you answered “NO” to question number 4, which asks the following:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

- (a) In fact, on or about December 18, 1998, you were issued a warning and placed on probation at the NEMC residency.
- (b) In fact, in or about March 1999, you were advised by the NEMC residency program director that NEMC would not renew your residency contract.
- (c) In fact, on or about July 31, 2000, you were issued a warning advising that “your service at the University of Utah will be terminated if allegations of sexual harassment continue and are verified and determined to be unprofessional.” In addition, you were placed on probation in part due to concerns about serious performance deficits, e.g., “an inability to use the scalpel when making an incision to put in a chest

tube” and your failure to demonstrate an “ability to tie a proper square knot[.]”

- (d) In fact, or about August 3, 2000, you were dismissed from, were requested to withdraw from and/or resigned from the Utah residency.
- (5) In or about February 1999, you caused to be submitted to the director of residency education in the Department of Anesthesia at the Brigham and Women’s Hospital, located in Boston, Massachusetts, a letter of interest in which you represented that you graduated *magna cum laude* from the University of Minnesota and that you had been on the “Dean’s ‘Top 20%’ list” in medical school. You further represented that you “continued this performance during [your] [NEMC] residency.” You admitted under oath in a deposition with Board staff that you intended this statement to convey the false impression that your performance at the NEMC residency was superlative. In fact, you were warned and placed on probation at the NEMC residency.
- (6) On or about February 10, 2000, you caused to be submitted to the Utah residency a letter of interest in which you indicated that the NEMC residency program director “allowed you to pursue one of several options[.]” and that one of those options included returning to NEMC in a third year position.

In fact, you admitted under oath in a deposition with Board staff that, in or about March 1999, you were advised by the NEMC residency program director that NEMC would not renew your residency contract.

- (7) On or about April 17, 2000, you caused to be submitted to the Utah residency an application in which you answered “NO” to a question asking whether you “ever had hospital or other health care facility privileges denied, conditioned, curtailed, limited, restricted, suspended, or revoked in any way.”

In fact, in or about March 1999, you were advised by the residency program director at the NEMC residency that your privileges were limited.

- (8) On or about September 14, 2000, you caused to be submitted to the “Professor and Head” of the Minnesota residency a letter of interest in which you indicated that you were “currently a general surgery resident[;]” had “completed two years of surgical residency at Boston University and [NEMC];” and “[m]ost recently [you] ha[d] completed a research project in angiogenesis inhibition at Boston University.”

In fact, as of September 14, 2000, you were not a general surgery resident; you only attended the NEMC residency from July 1, 1998, to April 1999 and were not awarded any credit for the NEMC residency; and you had “most recently”

been enrolled at the Utah residency for a period of approximately one month and had been dismissed, asked to resign and/or resigned from the Utah residency.

- (9) On or about November 13, 2000, you caused to be submitted a University of Minnesota Medical School GME Program Human Resource Information Form to the Minnesota residency in which you were required to "List all Academic/Professional positions (include all residency programs) and other activities since [the] date of medical school graduation. This must be consecutive information without interruption. ALL TIME MUST BE ACCOUNTED FOR." In response you listed positions at Boston University for the period 06/27/97 to 06/30/98, at NEMC for the period 07/01/98 to 06/30/99 and at Boston University for the period 07/01/99 to 06/24/00.

However, you failed to disclose that you attended the Utah residency from on or about July 1, 2000, to on or about August 3, 2000, and that you only attended the NEMC residency from July 1, 1998, to April 1999.

- (10) On or about September 29, 2003, you completed and submitted an application to the Plastic Surgery Central Application Service, located in Phoenix, Arizona.

- (a) You answered "NO" to question number 2, which asks "Have you ever been convicted of, or entered a plea of guilty, nolo contendere, or no contest to, a crime in any jurisdiction other than a minor traffic offense? You must include all misdemeanors and felonies, even if adjudication was withheld by the court so that you would not have a record of conviction. Driving under the influence or driving while impaired is not a minor traffic offense for purposes of this question."

In fact, on or about September 28, 1999, in the District Court of Minnesota, Tenth Judicial District, Washington County, located in Cottage Grove, Minnesota, you entered a plea of no contest to and were found guilty of indecent exposure.

- (b) You answered "NO" to question number 3, which asks, "Have you ever been discharged (terminated) by a training program?"

In fact, in or about August 2000, you advised the Utah residency that you considered yourself to have been dismissed from that program.

- (c) You answered "NO" to question number 4, which asks "Have you ever failed to have a contract with a training program renewed?"

In fact, in or about 1999, your residency contract at NEMC was not renewed.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (10) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (10) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (10) above, individually and/or collectively, constitute a failure to furnish satisfactory proof of good moral character as required by Sections 4731.29 and 4731.08, 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.

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 4340 6769
RETURN RECEIPT REQUESTED

Duplicate mailing to: 487 Delaware Avenue
Buffalo, NY 14202

CERTIFIED MAIL # 7003 0500 0002 4340 6752
RETURN RECEIPT REQUESTED