

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127



Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
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September 10, 2008

Andrew John Castellanos, M.D.  
7314 Euclid Avenue  
Madeira, OH 45243

Dear Doctor Castellanos:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Patricia A. Davidson, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 10, 2008, 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 MD*  
Lance A. Talmage, M.D. *RW*  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3486 2522  
RETURN RECEIPT REQUESTED

Cc: Terri-Lynne B. Smiles, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3934 3486 2539  
RETURN RECEIPT REQUESTED

*Mailed 10-3-08*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 10, 2008, 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 Andrew John Castellanos, 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 MD  
Lance A. Talmage, M.D. RW  
Secretary

September 10, 2008  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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\*

CASE NO. 08-CRF-059

JOHN ANDREW CASTELLANOS, M.D. \*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 10, 2008.

Upon the Report and Recommendation of Patricia A. Davidson, 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:

The application of Andrew John Castellanos, M.D., for a certificate to practice medicine and surgery in Ohio is GRANTED, provided that he otherwise meets all statutory and regulatory requirements, and subject to the following terms, conditions and limitations:

1. **REPRIMAND:** John Andrew Castellanos, M.D., is REPRIMANDED.
2. **PROBATION:** The certificate of Andrew John Castellanos, M.D., to practice allopathic medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years, one year of which must follow completion of post-graduate training, including any fellowships:
  - a. **Obey the Law:** Dr. Castellanos shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  - b. **Declarations of Compliance:** Dr. Castellanos 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 this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

- c. **Personal Appearances:** Dr. Castellanos shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, 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.
- d. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Castellanos 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.
- e. **Personal Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Castellanos 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 of 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. Castellanos 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. **Professional Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Castellanos 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 of 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. Castellanos 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.

- g. **Monitoring Physician:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Castellanos shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this

capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Castellanos and who is engaged in the same or similar practice specialty.

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Castellanos and his medical practice, and on the review of Dr. Castellanos's patient charts. Dr. Castellanos 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. Castellanos's quarterly declaration.

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

- h. **Required Reporting To Employers and Hospitals:** Within thirty days of the effective date of this Order, Dr. Castellanos shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Castellanos shall promptly 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. In the event that Dr. Castellanos provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Order Dr. Castellanos shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Castellanos shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgment of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Order to the person or entity to whom a copy of the Order was emailed.

- i. **Required Reporting To Other State Licensing Authorities:** Within thirty days of the effective date of this Order, Dr. Castellanos shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Castellanos further agrees to provide a copy of this Order at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Castellanos shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgment of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faced, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Order to the person or entity to whom a copy of the Order was emailed.
- j. **Violation Of The Terms Of This Order:** If Dr. Castellanos violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

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

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



Lance A. Talmage MD  
Lance A. Talmage, M.D. RW  
Secretary

September 10, 2008  
Date

2008 AUG 11 P 1:44

**REPORT AND RECOMMENDATION  
IN THE MATTER OF ANDREW JOHN CASTELLANOS, M.D.  
Case No. 08-CRF-059**

The Matter of Andrew John Castellanos, M.D., was heard by Patricia A. Davidson, Hearing Examiner for the State Medical Board of Ohio, on July 28, 2008.

**INTRODUCTION**

Basis for Hearing

In a notice of opportunity for hearing dated May 14, 2007, the State Medical Board of Ohio notified Andrew John Castellanos, M.D., that it intended to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice medicine and surgery in Ohio, or to reprimand him or place him on probation. The Board stated that its proposed action was based on an action taken by the Medical Board of California [California Board], which had allegedly denied Dr. Castellanos' license application for a medical license for reasons set forth in a 2006 decision, including the commission of dishonest, fraudulent, or deceitful acts. The Board identified two certificates at issue: a training certificate granted to Dr. Castellanos in 2007 for a residency program in Cincinnati, and a certificate to practice allopathic medicine and surgery in Ohio, for which he had submitted an application in August 2007. (St. Ex. 1A)

The Board alleged that the action by the California Board constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery \* \* \* in another jurisdiction, for any reason other than the nonpayment of fees: the \* \* \* denial of a license; \* \* \* or issuance of an order of censure or other reprimand" pursuant to Ohio Revised Code Section [R.C.] 4731.22(B)(2). (St. Ex. 1A)

The Board advised Dr. Castellanos of his right to a hearing upon request, and received his request for hearing on May 29, 2008. (St. Ex. 1A, 1B)

Appearances

Nancy H. Rogers, Attorney General, and Barbara J. Pfeiffer, Assistant Attorney General, for the State.

Terri-Lynne Smiles, Esq., for the Respondent.

**EVIDENCE EXAMINED**

Testimony Heard

Andrew John Castellanos, M.D.  
Gregory Scott Nix, M.D.  
Stephen J. Goldberg, M.D.  
Chester Choi, M.D.

Exhibits Examined

A. State's Exhibit 1: Procedural exhibits.

State's Exhibit 2: Documents maintained by the Board regarding Dr. Castellanos, including his application for licensure filed in August 2007.

State's Exhibit 3: Decision issued by the Medical Board of California dated March 3, 2008, including the proposed decision by an administrative law judge.

State's Exhibit 4: Initial notification of training certificate in October 2007 for the period from June 2007 through June 2008.

State's Exhibit 5: Notification of renewal of Dr. Castellanos' training certificate in July 2008.

B. Respondent's Exhibits A through H: Letters in support of Dr. Castellanos.

Respondent's Exhibits I-L: Documents regarding events at Howard University. (Exhibit K was omitted intentionally.)

Respondent's Exhibit M: Curriculum vitae of Dr. Castellanos.

Respondent's Exhibits N-P: Curricula vitae of Stephen J. Goldberg, M.D., Gregory Scott Nix, M.D., and Chester Choi, M.D.

**SUMMARY OF THE EVIDENCE**

The entire transcript and all exhibits were thoroughly reviewed, although some items have been omitted from the following summary.

**Background**

1. Andrew John Castellanos, M.D., was born in California in 1974. Upon graduating from high school in 1992, he joined the U.S. Navy. In 1994, while on shore leave in Long Beach, California, Dr. Castellanos was socializing with childhood friends when they were arrested for defacing property with spray-paint. He pleaded no contest to a charge of vandalism and was found guilty. According to documents from the Municipal Court in Huntington Park, California, Case No. 94-MO-1759, Dr. Castellanos was sentenced to 60 days in jail with credit for one day served, and two years of summary probation, but the imposition of sentence was suspended. The court later removed the sentence of incarceration and probation, and imposed a fine and costs totaling \$810. (St. Ex. 2 at 9-12; St. Ex. 3 at 3-4; Tr. at 51-52, 120-124)
2. Dr. Castellanos testified that the incident had happened when he was only 19 years old. He explained that he had just returned from a six-month tour of duty in the Persian Gulf, and he was happy to be home and eager to see old friends. After he had dinner with several friends, the car

had broken down, and he had left to make phone calls to his family for assistance.

Dr. Castellanos asserted that, when he came back, his friends were spray-painting nearby property and that he had not participated. He said that he had known these friends from childhood, but his life had taken a very different path from theirs. They were all arrested, however. Dr. Castellanos asserted that he had not wanted to testify against them and that his public defender had advised him to plead no contest, which he had done. He said he had not realized the importance of that decision. He testified that he had only been required to pay a fine. (Tr. at 82-84)

3. In September 1994, Dr. Castellanos received an honorable discharge from the U.S. Navy upon completing his active service. During his time in the Navy, he had received several awards and honors, and he remained subject to reserve obligations for five years. (St. Ex. 2 at 13; Tr. at 51-53)
4. In May 1999, Dr. Castellanos graduated from California State University at Long Beach with a double major in chemistry and biochemistry. He testified that he took a year off after college and worked at a laboratory in California until he began medical school. (St. Ex. 2 at 4, 38; Resp. Ex. M; Tr. at 53-55)

#### **Medical School at Howard University**

5. In August 2000, Dr. Castellanos began medical school at Howard University in Washington, D.C. However, in November 2003, during his fourth year, he was formally charged with misconduct committed in July 2003. (St. Ex. 2 at 4, 33-43; Tr. at 69) As explained more fully below, Dr. Castellanos was accused of the following: writing a detailed letter of recommendation for his friend, Yun Cao, as if the letter had been written by a professor at the medical school who had never met Ms. Cao; signing the professor's name to the letter, without the professor's knowledge or permission; and sending the letter, or allowing it to be sent, to a medical school to which Ms. Cao was applying for admission. (Ex. 2 at 53; St. Ex. 3 at 6-12; Resp. Ex. J; Tr. at 55-57, 64-70)
6. Dr. Castellanos admitted that he had written the following letter:

Dear Sir or Madam:

It is my pleasure to write this letter on behalf of Yun Anna Cao. I have known her since fall 2001, and have interacted with her on numerous occasions. She has been assisting us in our office doing volunteer work in preparation for a long cherished opportunity for a career in medicine.

She is courteous, dedicated and very industrious but above all has a strong motivation for a pursuit in medicine. She showed a great deal of initiative in my clinic and her work was of equal caliber to that of my best volunteers. She possesses a solid base in her basic sciences and a great enthusiasm to learn. Her inner quality and intelligence gives her a sense of direction and motivation to succeed in the most precarious of circumstances. I hope that you consider these valuable traits that this young woman possesses, which speaks strongly for her

character and motivation. I also hope you can please assist her in becoming the humane and compassionate physician that she strives to be.

I have had several discussions with Yun regarding her interests in medicine. She is genuinely interested and would like to work in primary care. I recommend Yun for medical school without reservation and with great enthusiasm. I believe she will make a fine doctor.

Sincerely,

*[handwritten signature]*

Christopher N. DeGannes, M.D.  
Assistant Professor  
Dept. of Medicine

(Resp. Ex. J)

7. Dr. Castellanos admitted that, when he wrote this letter, he knew that Dr. DeGannes had never met Ms. Cao. However, he said that he had not signed Dr. DeGannes' name to the letter but had merely given the letter to Dr. DeGannes for his consideration. (Tr. at 99-101)
8. In December 2003, an administrative hearing was held regarding the alleged violation of the medical school's code of conduct, and Dr. Castellanos was found to have engaged in forgery and a pattern of dishonesty. In February 2004, a dean at the medical school issued a notice to Dr. Castellanos that he was expelled. Dr. Castellanos appealed, and the student council of the medical school gave him its strong support. (St. Ex. 3 at 8-9; Resp. Ex. L)
9. In May 2004, Dr. Castellanos was notified that his appeal had been granted and that the sanction had been reduced to the following: a six-month suspension from February through July 2004, 80 hours of community service that would help Dr. Castellanos learn the "detriment caused by lapses of professional ethics," a letter of apology to Dr. DeGannes, and submission of a 25-page research paper exploring "issues of professional ethics." (St. Ex. 3 at 9-10; Tr. at 71-74, 100)
10. After Dr. Castellanos complied with the remediation requirements, he returned to medical school in October 2004. He received his medical degree in December 2004. He then returned to work in California until June 2005, as he had withdrawn from the matching system when charged with misconduct in late 2003 and had been obliged to wait for the next cycle. (St. Ex. 2 at 4, 30, 33, 38, 42-43, 51; Resp. Exs. L-M; Tr. at 73-77)
11. A dean at Howard University College of Medicine subsequently provided the following information to the Federation Credentials Verification Service [FCVS] regarding Dr. Castellanos:

Dr. Andrew Castellanos matriculated in Howard University College of Medicine on August 28, 2000. He successfully completed the first two years and was promoted to the third year. Shortly after successfully completing the academic requirements of the third year, a faculty member filed a complaint that

Dr. Castellanos forged his signature on a letter of recommendation for a student from another school. The matter was referred to the University for investigation. Dr. Castellanos was found guilty of the charge and he was expelled from the University. He appealed the decision to expel him, and his appeal was granted on the grounds that the expulsion was out of proportion to the infraction (“disproportionate sanction”). The decision was then made to suspend him for a finite period (February 6, 2004 – August 1, 2004), in addition to other requirements, and he could then return to school to complete the senior year, providing he satisfied all conditions. Mr. Castellanos satisfied all requirements of the suspension and then proceeded to satisfactorily complete the senior year and graduate with the degree Doctor of Medicine on December 17, 2004.

(Ex. 2 at 53)

### **Dr. Castellanos’ Testimony Regarding the Events at Howard University**

12. Dr. Castellanos testified regarding the events surrounding his writing of the letter in July 2003. He testified that he had met Yun Cao in 2002 or 2003, and that her husband had worked for his (Dr. Castellanos’) wife. He explained that Yun Cao wanted very much to go to medical school but had been rejected twice and was very distraught. She was a friend, and he wanted to help her. He testified that he had given her a lot of advice, and that she had eventually asked him if he could get someone at Howard University to write a letter of recommendation for her. He testified that she had suggested that he could “put in a good word” for her, and then she could talk to the person over the phone, and the person would write a letter for her. (Tr. at 64-69, 95-98)
13. Dr. Castellanos said that the situation was awkward. He testified that he had offered to write a letter for Yun Cao but that she had said that a letter from him would give her no better odds of getting into medical school. Dr. Castellanos stated that he had corresponded by email with Ms. Cao, who lived in California, via emails, and that he had eventually decided to ask Dr. DeGannes, a professor with whom he had a good relationship, to write a letter for her. Dr. Castellanos testified that he had felt a “real necessity” to help his friend. (Tr. at 69, 98-99, 113)
14. Dr. Castellanos stated that he had asked Dr. DeGannes to provide a recommendation letter for his friend, telling Dr. DeGannes that Ms. Cao had been his friend for many years and would be a good physician. He testified that Dr. DeGannes had agreed to do it, but had told him to write the letter: “He asked me—his words specifically were, ‘Draft something up and put it on my desk for me, please.’” (Tr. at 99-100)
15. Dr. Castellanos testified that he was aware that Dr. DeGannes did not know Ms. Cao in any way. He asserted, however, that he had offered to provide Dr. DeGannes with Ms. Cao’s contact information, email address, and every means for Dr. DeGannes to communicate with Ms. Cao. (Tr. at 100)
16. Dr. Castellanos emphasized repeatedly that Dr. DeGannes had not given him instructions regarding what to put in the letter. He stated that Dr. DeGannes “asked me to write a letter of recommendation without any specific outline of what he wanted me to write and what he

wanted me to do with it.” Dr. Castellanos asserted that he had written the letter and put it on letterhead paper thinking that he was doing exactly what Dr. DeGannes had wanted him to do. He insisted that he had written the letter “on behalf of Dr. DeGannes at his request, “ and that he had done it only because “[h]e asked me to.” (Tr. at 66-67, 69-70, 101) Dr. Castellanos’ testimony included the following:

Q. At that point in time, did you think of drafting anything other than the truth?

A. He had asked me to draft the letter of recommendation.

Q. I’m asking you: In your mind, and when you went to draft it, were you thinking of drafting anything other than the truth about Miss Cao?

A. You know, I stood there for hours thinking of what to write about her and what to put in the letter of recommendation. You know, I wanted to sound positive in a way that would reflect her--I mean, her abilities.

(Tr. at 101)

17. Dr. Castellanos testified that he had asked for letterhead paper at Howard University Hospital and printed the letter on it. He stated that he had put the letter in Dr. DeGannes’ mailbox with additional documents: Ms. Cao’s curriculum vitae, a release of information from Ms. Cao, and the address to which the letter must be mailed. In addition, Dr. Castellanos testified that, at the same time he put these materials in Dr. DeGannes’ mailbox, he also submitted two requests for approval of extramural clerkships for Dr. Castellanos in California, which required Dr. DeGannes’ signature. (Tr. at 64-65, 101, 104-106)
18. The recommendation letter was dated July 26, 2003, and Dr. Castellanos stated that he put all the documents into Dr. DeGannes’ mailbox at “the end of July.” He testified that, afterward, he had gone back to see Dr. DeGannes and asked about the recommendation letter and clerkship requests. He stated that Dr. DeGannes had “said he turned them in to the College of Medicine and not to worry about it.” Dr. Castellanos testified that he had gone back to see Dr. DeGannes about two weeks later and had asked the same questions about the letter and clerkship papers. Dr. Castellanos stated that, at the end of September 2003, he had again inquired about the letter and clerkship applications. He asserted that, each time he had inquired, Dr. DeGannes had assured him that he had “taken care of it” and that Dr. Castellanos should not worry about it. Dr. Castellanos testified that he had specifically asked Dr. DeGannes, “How about the letter of recommendation,” and that Dr. DeGannes had answered as follows: “I took care of it. I mailed it for you. It’s not a problem.” (Tr. at 68, 104-105, 108-109, 129)<sup>1</sup>
19. Dr. Castellanos was unaware of any problem regarding the recommendation letter, and he continued with his studies from July 2003 to November 2003, when charges of misconduct were brought against him. Dr. Castellanos learned that the letter had been returned to Dr. DeGannes shortly after July 26, in early August, because the address was faulty. Dr. Castellanos stated

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<sup>1</sup> Although Dr. Castellanos testified that he had submitted the clerkship applications to Dr. DeGannes at the same time as the draft letter, at the end of July 2003, the clerkship applications show a handwritten date of “7-2-03” next to Dr. DeGannes’ signature, and a typewritten date of July 7, 2003, next to Dr. Castellanos’ signature. (Resp. Ex. I)

that he does not know why Dr. DeGannes filed charges against him, and that he had never spoken with Dr. DeGannes again after the charges were brought. (Tr. at 64, 68-69, 108)

20. Dr. Castellanos testified that he has never denied writing the letter. However, he insisted strongly that he had never forged Dr. DeGannes' signature on the letter. He stated that he disagreed with the finding by the medical school that he was guilty of forging Dr. DeGannes' signature, but he could not prove he had not signed the letter. (Tr. at 66-67)

21. Dr. Castellanos testified that he had not tricked Dr. DeGannes into signing the letter:

A. I didn't trick him into signing it, no. I--I had approached him with something that I thought was reasonable. I thought it was a reasonable request.

Q. Why is it reasonable to ask somebody to basically lie by signing this letter saying they know them?

A. I wanted him to--I mean, I don't know what he asked me to do.

Q. You don't know what he asked you to do?

A. He asked me to draft something up, whatever that means, put it up--give it to him and--and, you know, he would handle it.

(Tr. at 109-100)

22. Dr. Castellanos expressed his belief that there had been a misunderstanding. When he wrote the letter of apology, he had said to Dr. DeGannes that he wished that they had communicated exactly what each of them was expected to do and that he was sorry that Dr. DeGannes "had many questions regarding the letter." He again asserted that he had not forged Dr. DeGannes' name and that he was sorry they could no longer be friends because of it. (Tr. at 112-113)

23. When asked whether it had surprised him that Dr. DeGannes was willing to sign the letter knowing that it was mostly false, Dr. Castellanos answered:

I didn't think he was going to sign the letter of recommendation. I wanted him-- And I stated this before in my other testimony, is that he needed to give me some guidance what he wanted from me. I drafted the letter of recommendation based on--based on a big misunderstanding of what he wanted from me. This letter of recommendation, Dr. DeGannes did not have any direct knowledge of it. And I-- And I understand how those statements, you know, can be misleading, especially to my character and also to my ethical ability, you know. I mean, as a person. I never intended for the letter to go out unreviewed to anyone else besides Dr. DeGannes.

(Tr. at 114)

24. Dr. Castellanos stated that, although he had admitted facts that indicated he was a dishonest person, he was "not a dishonest person" when he drafted the letter. He acknowledged, however, that his conduct had been "wrong" when he wrote the letter, and that it was wrong because the letter had false statements in it. (Tr. at 115)

25. When asked how he could assert that he was an honest person when he wrote the letter, he answered:

I mean, I did what was asked of me. I did what was asked of me. I didn't have any ill intention of this letter to go out unreviewed. I didn't have any intention of this letter to go out mailed to anyone else. I had asked Dr. DeGannes for his help in getting approval of a letter of recommendation. I mean, I did what was asked of me. I didn't see the harm in that matter when I wrote the letter of recommendation. I mean – I mean – .

(Tr. at 115-116)

26. Dr. Castellanos testified that it was his belief that Dr. DeGannes must have signed the letter inadvertently, and he claimed that Dr. DeGannes had said so in the hearing at the medical school. (Tr. at 116-117)
27. Dr. Castellanos testified that, if he could go back in time, he would do things differently. He would give Dr. DeGannes' telephone number to Yun Cao and tell her: "You work it out. You deal with it. It's not my responsibility." He added that, in addition, he would "have Dr. DeGannes understand what was expected of him and what he expected of me." (Tr. at 70-71)

### **Examination History**

28. In June 2002, Dr. Castellanos passed Step 1 of the United States Medical Licensing Examination (USMLE) on the first attempt with a score of 88. In October 2003, Dr. Castellanos passed Step 2 of the USMLE with a score of 82 on his first attempt. In June 2006, he passed Step 3 with a score of 84 on his first attempt. The passing score on each test was 75. (St. Ex. 2 at 19, 26; Tr. at 57)

### **Residency Training in California – 2005 to 2007**

29. In June 2005, Dr. Castellanos entered the residency program in internal medicine at St. Mary Medical Center in Long Beach, California [St. Mary's]. He testified that, before making him an offer, St. Mary's had received the dean's letter from his medical school, outlining the events surrounding his suspension. He stated that he had also disclosed the matter to the program director. As of June 2007, Dr. Castellanos had successfully completed two years of postgraduate training at St. Mary's. (St. Ex. 2 at 24-25, 27, 30-31, 61-65; Tr. at 58, 78-81)
30. Chester Choi, M.D., the director of the program, confirmed to FCVS that Dr. Castellanos had successfully completed his PGY-1 and PGY-2 and that there had been no discipline, probation, negative reports, limitations or special requirements for Dr. Castellanos. (St. Ex. 2 at 61)
31. At the hearing, Dr. Choi testified by telephone on Dr. Castellanos' behalf. Prior to the hearing, he had submitted a copy of his curriculum vitae, which provided a review of his background, education, employment, and professional accomplishments. (Resp. Ex. P) Dr. Choi stated that

- the residency program in internal medicine at St. Mary's has 30 residents and that he was involved in the decision whether to offer Dr. Castellanos a position. (Tr. at 153-154)
32. Dr. Choi testified that, during the interview process, Dr. Castellanos had disclosed the disciplinary problem he had encountered at Howard University, as well as the fact that he had been suspended and reinstated. Dr. Choi related the facts of the incident as described to him by Dr. Castellanos, stating his understanding that Dr. Castellanos had been asked by a faculty member to draft a letter of recommendation for a third party at Dr. Castellanos' suggestion, and that the letter had been drafted and submitted to the faculty member, but that there was a subsequent dispute over whether the faculty member had actually signed the letter. Dr. Choi testified that Dr. Castellanos had also disclosed to him that this letter has stated that the faculty member knew the person being recommended when in fact he did not. Dr. Choi testified that he had decided to admit Dr. Castellanos to the residency program because he found that Dr. Castellanos had been "very forthcoming and honest" about the incident. He acknowledged that he had no direct knowledge regarding the recommendation letter at issue, but he stated that Dr. Castellanos' explanation had "sounded like it could happen, that it was plausible." (Tr. at 154-157)
33. Dr. Choi further testified that he had never had any concerns with Dr. Castellanos during the two years of his residency training and that he has no reservations about Dr. Castellanos' functioning as a fully-licensed physician. He testified that, when he had learned that Dr. Castellanos was encountering difficulty becoming licensed in California, he had written a letter to the California Board, telling about his experience with Dr. Castellanos at St. Mary's, in hope of assisting Dr. Castellanos in obtaining a license. (Tr. at 157-158; Resp. Ex. H)
34. On cross-examination, Dr. Choi admitted that he was aware of the disciplinary action at Howard University only through what Dr. Castellanos had told him and that he had not done any independent investigation into the circumstances. He said that he had received the dean's letter from the medical school with some details but not a full explanation. Dr. Choi stated: "I certainly did not ask for, or in any other way investigate, the circumstances at Howard in terms of the evidence that was presented." (Tr. at 159-160)
35. Dr. Choi further acknowledged that he had not read the letter at issue in the disciplinary problem at Howard University until about a week prior to the present hearing, and that he did not know whether or not the "faculty member" (Dr. DeGannes) had ever known Ms. Cao or had any relationship with her. He stated that he did not know whether Dr. Castellanos had initiated the discussion with the faculty member about the recommendation. He further stated that he had not spoken to Dr. DeGannes about the matter. (Tr. at 161-164)
36. Dr. Choi testified that, even accepting that the contents of the letter were completely false and that Dr. Castellanos had admitted to drafting the letter, those facts would not necessary change his opinion regarding Dr. Castellanos' ethics and character. He explained: "\*\*\* I would just say that if this is a draft of a letter that the faculty member is asked to look at, you know, I cannot comment more, other than, if it's a draft, then it's up to the faculty member to decide whether or not that's what they would sign or not." When asked whether he was not troubled by the fact that Dr. Castellanos had drafted a letter that was completely false in content, Dr. Choi answered:

“I think that there are things that may be drafted which may need correction, may need alteration.” (Tr. at 162-163)

### **Dr. Castellanos’ Application for California Medical License - 2006**

37. Dr. Castellanos explained that, in California, residents are not required to obtain a training certificate for the first two years of residency but are required to be fully licensed by the start of the third year. Accordingly, he had applied for a California license in September 2006. (St. Ex. 3 at 1, 3; Tr. at 80, 91)

38. The California application included the following question:

Have you ever been convicted of, or pled guilty or nolo contendere to ANY offense in any state in the United States or foreign country? This includes a citation, infraction, misdemeanor and/or felony, etc.”

(St. Ex. 3 at 4-5) In response, Dr. Castellanos answered “No.” He did not disclose his misdemeanor conviction for vandalism. (Tr. at 80-81; St. Ex. 3 at 4-5)

39. Dr. Castellanos testified that he was not trying to hide anything but had simply forgotten the conviction. He stated that he had “just never looked back at it and thought it would be a problem.” He explained that the incident had occurred in 1994, and he had completed the application in 2006, many years later. In addition, he said that the conviction had happened at a point in his life when he was “a different person.” He testified that he had had several jobs during the intervening years that involved background checks, and the misdemeanor “was never brought to [his] attention.” He stated: “In fact, I didn’t know it was part of my record. I mean, I paid a fine and then I moved on.” Dr. Castellanos testified that he had been focusing on the suspension at Howard University and had been very worried about that, and that he had “honestly and truthfully” not remembered the misdemeanor conviction. (Tr. at 82-85)

40. Dr. Castellanos testified that, in March 2007, the California Board had denied his application, subject to a hearing. (St. Ex. 3 at 2; Tr. at 80, 91-92)

41. Dr. Castellanos said that the California Board had estimated that his case might not be resolved for up to two years. In the meantime, he could not continue into his third year at St. Mary’s in July 2007 without being licensed. He testified that he had decided that it was in his best interests to continue his training in another state during the pendency of the proceedings before the California Board. Dr. Castellanos testified that Dr. Choi had assisted him in securing another residency position. (Tr. at 80-81, 91-92)

### **Residency Training in Ohio**

42. Dr. Castellanos transferred to the residency program in internal medicine at Jewish Hospital in Cincinnati, Ohio, where he began his third year of training in July 2007 and completed it successfully in June 2008. (St. Ex. 2 at 26-27, 32, 39, 66; Tr. at 46-47, 58-59)

43. The Board had issued a training certificate to Dr. Castellanos, certificate number 57-014014, allowing him to participate in the residency program at Jewish Hospital from June 29, 2007, through June 28, 2008, as set forth in a letter from the Board dated October 24, 2007. (St. Ex. 4)
44. In May 2008, the Board notified Dr. Castellanos that his training certificate had been renewed and would be effective through June 28, 2009. The Board stated that the certificate “may be revoked by the Board” upon proof that the certificate-holder has “engaged in unethical conduct or that there are grounds for action against [him] under Section 4731.22, Ohio Revised Code.” (St. Ex. 5)
45. Stephen J. Goldberg, M.D., the director of the program, testified at the Board’s July 2008 hearing, as did Gregory S. Nix, M.D., the associate program director. They praised Dr. Castellanos’ abilities and testified that he had been chosen to serve as the chief resident during his fourth year of residency. Dr. Goldberg explained that Dr. Castellanos had been chosen because he was “unquestionably the one that was best qualified for it – best qualified to be a leader, an academic leader, as well as a role model, and also a hard worker.” Dr. Nix testified that Dr. Castellanos had performed “exceptionally well” during his third year of residency and that, although the program had had a very, very good class of third-year residents, Dr. Castellanos had excelled in leadership. (Tr. at 24, 141)
46. Dr. Castellanos noted that he had also been selected to serve on the ethics committee at Jewish Hospital. He stated that, during his third year, he had requested an ethics consult regarding a patient and had actively advocated for the patient. In doing so, he had interacted with the committee chairperson, who felt that Dr. Castellanos would be an asset to the committee. (Tr. at 61-62)
47. Dr. Castellanos began his PGY-4 as chief resident on July 1, 2008. (Tr. at 46-47, 59-62)

### **Ohio Application - 2007**

48. On August 30, 2007, Dr. Castellanos filed an application for a certificate to practice medicine and surgery in Ohio. He answered “yes” when asked in Question 4 whether he had ever been disciplined by or expelled from a medical school, and also answered “yes” when asked in Question 5 whether he had ever transferred from one graduate medical-education program to another. In addition, he answered “yes” when asked in Question 15 whether he had ever pleaded guilty to or been found guilty of a violation of any law other than a minor traffic violation. (St. Ex. 2 at 5-6)
49. Dr. Castellanos provided the following narrative explanations to the Board:

For question 4, I was expelled from Howard University College of Medicine on January 2004 [sic] during my senior year secondary to a complaint filed by a faculty member that I forged his signature on a letter of recommendation for a student from another school. The matter was referred to the University for Investigation [sic] where I was found guilty. Upon appeal I was granted limited term suspension on the grounds that the expulsion was out of proportion to the

infarction [sic]. The decision for limited term suspension was granted provided I met conditions that included 80 hours of community service, attend American Medical Association Washington, DC chapter meeting concerning ethics, a term paper exploring professional ethics, and communicate in writing an understanding of the charges made, the verdict rendered, the conditions imposed, and the lessons learned. The limited term suspension ended on October 13, 2004 at which time I had met all conditions of the suspensions and then proceed to successfully complete my senior year and graduated with the degree Doctor of Medicine on December 17, 2004.

For question 15, I plead nolo contendere to misdemeanor vandalism in Vernon, California on April 29, 1994 for which I was fine \$800 and placed on two-years of probation. I had gone out with some friends while on break from the United States Navy while stationed in Long Beach, California, and some of these friends were involved in spray painting property. As a group we all were charged and I plead nolo contendere to these charges under the advice of my attorney in order to avoid civil damages stemming from property damage. I did not participate in the vandalism but I was a witness. I have attached a certified court record of this conviction.

For questions 5 and 9, I transferred from St. Mary Medical Center in Long Beach, CA where I successfully completed my first two years of residency in Internal Medicine to the Jewish Hospital of Cincinnati, Ohio to complete my third year of residency in Internal Medicine because my Medical Board of California application for licensure was denied on March 30, 2007. The application for licensure pursuant to Sections 480(a)(1), (2), (3), and (c) of the California Business and Professions Code Section 480 of the Business and Profession Code was denied secondary to: (a)(1) been convicted of a crime; (2) done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, (3) done any act which if done by a licentiate of the business and profession in question would be grounds for discipline or revocation of a license; and (c) knowingly made a false statement of fact required to be revealed in the application for licensure. For (c) I did not reveal my misdemeanor vandalism conviction on my licensure application because I did not remember it, it was discovered on my background check, it happened a long time ago. I was a different person back then and do not associate with any of those friends any longer. I am in the process of appealing my application denial with the Medical Board of California.

(St. Ex. 2 at 9-10)

50. In September 2007, Dr. Choi, the residency program director at St. Mary's, submitted a certificate of recommendation certificate, describing Dr. Castellanos as "excellent" in his medical knowledge, technique, and relationship with patients. Dr. Choi added this comment: "I believe him to be an ethical and honest physician." (St. Ex. 2 at 14, 61)

51. Dr. Castellanos also completed an FCVS application, in which he provided accurate information regarding the suspension imposed by Howard University Medical School. (St. Ex. at 54, 67)

### **Hearing and Decision by the California Board**

52. In January 2008, the administrative hearing was held in California with regard to the denial of his license application by the California Board, Case No. 20-2007-183369. He was represented by counsel. (St. Ex. 3 at 1-2)
53. A number of attending physicians at St. Mary's and professors at the UCLA School of Medicine wrote letters in support of Dr. Castellanos, including the following: Angela Tang, M.D., Associate Professor; Joyce Yeh, M.D., Assistant Professor; James A. Jengo, M.D., Associate Clinical Professor; Richard A. Berkson, M.D., Associate Clinical Professor; and Chester Choi, M.D., Residency Program Director. (Resp. Exs. A-D, H)

Dr. Tang stated, for example, that Dr. Castellanos "was a consistently superb resident" whom she supported "wholeheartedly and without reservation." She stated that Dr. Castellanos was "100% professional, absolutely reliable, and completely honest in every way." Dr. Tang commented that she never had any reason to doubt his "ethics or decision making," and that "patients thrived under his care." She stated that, before Dr. Castellanos went to Cincinnati, the faculty had discussed him as a candidate for chief resident, and had even discussed bringing him back as chief resident after he finished his training in Cincinnati. (Resp. Ex. A)

Dr. Yeh stated that Dr. Castellanos had "always demonstrated the utmost integrity, professionalism, work ethic and dedication." She stated that "not once" during his two years of training had there been a concern regarding his integrity, and that, to the contrary, he had been a role model for other residents. (Resp. Ex. B)

Dr. Choi stated that Dr. Castellanos had been honest and straightforward in reapplying to the St. Mary's program after withdrawing his initial application due the suspension and remediation requirements imposed by Howard University. Dr. Choi stated that Dr. Castellanos' explanations "about the incident in medical school seemed quite plausible, and his willingness to undergo the remediation process in order to clarify any issues regarding his honesty or integrity seemed to me to be reasonable and open-minded." He noted that Dr. Castellanos, during his residency, had received scores in the "outstanding" range in all categories of competency and had been "communicative, compassionate, ethical, and compulsive in his patient care and honest, helpful, and respectful in his interactions with physician, other healthcare professionals, families, and patients. Dr. Choi stated that the program administrators "would have been pleased" to have Dr. Castellanos remain as the chief resident and that Dr. Castellanos "is the type of physician we would love to recruit to practice at our institution and to continue to be involved in resident and student education." (Resp. Ex. H)

54. In addition, letters of support were written by the director and associate director of the residency program in Cincinnati. In January 2008, Dr. Goldberg wrote that he had known Dr. Castellanos since July 2007 and had found him to be an "outstanding physician, possessing an excellent fund of knowledge and superb clinical skills." Dr. Goldberg opined that Dr. Castellanos

“exceeds all standards of ethics and honesty.” Moreover, he stated that there “is no other resident in our program at this time who better personifies the type of practitioner we try to produce.” (Resp. Ex. G)

Gregory S. Nix, M.D., the associate program director, praised Dr. Castellanos as an “outstanding” senior resident who “excelled in every phase of his training” and “is extremely well liked and respected by his peers and hospital staff.” Dr. Nix stated that he would feel “very comfortable” in hiring Dr. Castellanos. (Resp. Ex. F)

55. In February 2008, the administrative law judge in California issued a Proposed Decision, as follows, denying Dr. Castellanos’ application:

### FACTUAL FINDINGS

\* \* \*

The Administrative Law Judge makes the following Factual Findings:

#### The Criminal Conviction

3. On April 29, 1994, in the Municipal Court \* \* \* in Case No. 94M01759, Respondent pled nolo contendere and was convicted of violating Penal Code section 594, subdivision (a) (Vandalism), a misdemeanor.

4. Imposition of sentence was suspended, and Respondent was placed on summary probation for a period of two years subject to various terms and conditions including incarceration for 60 days with credit for one day served. Commitment was stayed until July 13, 1994. On July 13, 1994, Respondent reported for commitment. At that time, the court deleted his jail sentence and imposed a fine and assessment totaling \$810.

5. The facts and circumstances underlying the conviction are that, while on a brief shore leave from the United States Navy, Respondent encountered some childhood friends. After dining with them, Respondent agreed to drive one of his friends home. Some of the other friends accompanied them in Respondent’s car. They encountered car trouble enroute and, while they were awaiting assistance, Respondent and some of his friends spray-painted some nearby train boxcars.

6. Respondent denies having taken part in the vandalism. However, his nolo contendere plea constitutes conclusive evidence of his guilt of the crime charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449)

7. Respondent’s conviction was not substantially related to the qualifications, functions or duties of a physician and surgeon. (Cal. Code Regs., tit. 16 § 1360)

#### The Failure to Disclose the Conviction on Respondent’s License Application

8. Question No. 23 on the Application read as follows:

Have you ever been convicted of, or pled guilty or nolo contendere to ANY offense in any state in the United States or foreign country?

**This includes a citation, infraction, misdemeanor and/or felony, etc.**

If “YES” attach a list of each offense by arrest and conviction dates, violation, and court of jurisdiction (name and address). Matters in which you were diverted, deferred, pardoned, pled nolo contendere, or if the conviction was later expunged from the record of the court or set aside under Penal Code Section 1203.4 MUST be disclosed. If you are awaiting judgment and sentencing following entry of a plea or jury verdict, you MUST disclose the conviction; you are entitled to submit evidence that you have been rehabilitated. Serious traffic convictions such as reckless driving, driving under the influence of alcohol and/or drugs, hit and run, evading a peace officer, failure to appear, driving while the license is suspended or revoked MUST be reported. This list is not all-inclusive. If in doubt as to whether a conviction should be disclosed, it is better to disclose the conviction on the application.

For each conviction disclosed, you must submit with the application certified copies of the arresting agency report, certified copies of the court documents, and a descriptive explanation of the circumstances surrounding the conviction of disciplinary action (i.e., dates and location of incident and all circumstances surrounding the incident). This letter must accompany the application. If documents were purged by arresting agency and/or court, a letter of explanation from these agencies is required.

**Applicants who answer “NO” to the question but have a previous conviction or plea, may have their application denied or license revoked for knowingly falsifying the application.** (Emphasis in text)

9. Respondent marked the check box labeled “NO” in response to Question No. 23 on the application. As referenced in paragraph 3, that answer was not true.

10. Respondent testified at the administrative hearing that he answered Question No. 23 in the negative because he was so concerned about making a full disclosure of the discipline he suffered in medical school that he forgot about his 1994 conviction for Vandalism. That testimony was not credible for the following reasons.

a. In a January 17, 2007 letter to the Board, Respondent explained his failure to disclose his 1994 conviction. In that letter, he made no reference to the disciplinary action at his medical school. Instead, he wrote:

When I submitted this application in response to question number twenty-three I did not recall any prior convictions. I did not intentionally exclude this misdemeanor conviction because the truth is I had completely forgotten it. During this same period of time I had several motor vehicle traffic violations that have been resolved for failure to have current vehicle registration while driving, speeding, and a motor vehicle accident involving a hit-and-run where the other party fled the scene. These events came to mind in

answering questions twenty-three in which I had answered no, all of which were not serious in nature.

b. At the administrative hearing, Respondent testified that the 1994 vandalism conviction significantly affected his life in that (1) he faced the threat of jail time up until the day of his commitment; (2) he was on active duty with the United States Navy at the time of his arrest and conviction, and the conviction could have adversely affected his naval career; and (3) he would have been convicted of a crime he had not committed. To believe Respondent would have forgotten such a traumatic event in his life, but remembered a few traffic violations which he described to the Board as “not serious in nature,” defies both logic and reason.

#### The Disciplinary Action at Howard University

11. Respondent attended medical school at Howard University in Washington, D.C. In 2003, when Respondent was in his fourth year of medical school, he was accused of dishonesty and forgery by one of his professors, Dr. DeGannes. Dr. DeGannes filed a complaint with the University on November 3, 2003. Until Dr. DeGannes filed the complaint, Respondent considered him to be both a mentor and a friend.

12. The nature of the complaint was that Respondent drafted a letter of recommendation for a friend (Ms. Cao), a student of Brandeis University who was seeking admittance into the Howard University School of Medicine, and that he forged Dr. DeGannes’s signature on the letter and on the back of envelope.<sup>2</sup> [Footnote text: It was Dr. DeGannes’s custom and practice to sign the back of every envelope he sent through the mail.] Dr. DeGannes and Ms. Cao had neither met nor spoken, Respondent wrote the following in the letter of recommendation:

[text of letter omitted – quoted above at pages 3-4]

13. Dr. DeGannes became aware of the letter and the forgery when the letter was returned to him because of a faulty address. He became suspicious because (1) he did not know Ms. Cao. (2) He did not recall writing or seeing the letter. (3) The signature on the letter and on the back of the envelope did not appear to be his. (4) The letter had been addressed on a typewriter. Dr. DeGannes did not have a secretary, and he addressed all of his own envelopes using a computer. (5) The letter was on Howard University letterhead, but not on Dr. DeGannes’s individualized letterhead which contained his specific address, telephone number, etc. (6) Although Dr. DeGannes had a private medical office practice, he did not have a clinic. (7) The envelope bore a postmark from the State of Maryland rather from Washington, D.C., where Howard University was located.

14. Respondent did not dispute that he had written the letter, but contended that he had done so upon Dr. DeGannes’s request, and that Dr. DeGannes had signed the letter inadvertently, along with two applications for extra-mural clerkships Respondent submitted to him for signature. The two applications were unrelated to the letter of recommendation for Ms. Cao. Dr. DeGannes recalled the two clerkship

applications but did not recall ever seeing the letter of recommendation for Ms. Cao before it was returned to him.

15. On December 23, 2003, following an administrative hearing (Hearing No. 1), the hearing officer found that the charges had been substantiated, and that Respondent was guilty of forgery and a pattern of dishonesty. He ordered that Respondent be suspended from the university from January 1, 2004, through the end of the Fall 2004 semester, and that Respondent be required to perform 800 hours of uncompensated community service during the period of suspension.

16. On February 6, 2004, having rejected the hearing officer's sanction, Barbara W. Williams, Ph.D., Dean of the Office of Special Student Services of the Howard University Medical School, wrote to Respondent. Her letter stated in part:

This letter comes to apprise you of the outcome of the hearing held on December 19, 2003 in which you were charged with violating the Howard University *Student Code of Conduct* Section VIII, #12, Forgery, Fraud, and Dishonesty. This adjudication was the result of an allegation by Prof. Christopher N. DeGannes, M.D., that you forged his name on a letter of recommendation [for] Yun Anna Cao.

This is always a very serious charge, but it is especially troubling since it is leveled against a fourth year medical student; someone that will shortly be leaving this University certified to practice the healing arts. Someone that carries on their shoulders the history and legacy of a medical school founded in 1868. The role of physician is arguably the most trusted of any other profession in virtually every society on earth. A physician's ability through training and experience to make life and death decisions for people is a power that must also be grounded in ethics that are beyond reproach. The importance of ethics in the field you seek to enter cannot be overstated. Clearly our College of Medicine admitted you trusting that you had the capability to successfully complete the required training *and* to live up to the ethical requirements and core values of the profession.

Having heard your case and having reviewed the information in the case file, the Administrative hearing Officer has found you "Guilty" of the charge.

You have acted in a manner that shows a blatant disregard for the faith and trust of the faculty of the college of Medicine and of Howard University. The sanction levied in this case must be reflective of the gravity of this matter.

I have given this matter a lot of very, very serious thought and have consulted with several key individuals as part of my deliberations. I have taken into account the many years of hard work and the expense of your education to date. I do not take this step lightly, but in good conscience I cannot shrink from it either. Given the stunningly unethical

nature of your infraction, especially considering the field you have trained for, I feel the only appropriate sanction in this matter is Expulsion.

17. Respondent appealed the Dean's order of expulsion from the university. An appeal board was convened and the matter proceeded to hearing on the single issue of disproportionate sanction (Hearing No. 2). On May 17, 2004, Respondent was notified by letter that his appeal had been granted and that the sanction had been reduced to the following:

1. Suspension from the university from February 6, 2004 to August 1, 2004.
2. Participation in 80 hours of community service "that would expose [Respondent] to the detriment caused by lapses of professional ethics."
3. A requirement that Respondent write and send letters of apology to Dr. DeGannes.
4. Submission of a research paper, at least 25 pages in length, "which explores the issues of professional ethics."

18. Respondent successfully completed the sanction and was permitted to graduate from the Howard University School of Medicine.

19. The "Analysis and Conclusions Based Upon the Findings" section of the hearing officer's decision following Hearing No. 1 was well-analyzed and reasoned. Although lengthy, it provides an important understanding of the hearing officer's evaluation of the evidence presented by the two sides during the hearing, and it is therefore repeated verbatim below:

The Accused was given a full opportunity to respond to the claims in this matter, including the opportunity to appear at the hearing, the opportunity to call witnesses on his behalf, and the opportunity to cross-examine witnesses called by the Complainant. The Accused appeared at the hearing at 12:15 PM, having been given adequate prior notice that the hearing was scheduled to begin at 11:30 AM. The Accused, at the time that he was notified by the Office of the Dean of Special Student Services, gave no notice that he would not be able to be at the hearing at 11:30 AM as scheduled. Once at the hearing, the Accused stated that he was completing an examination that had started later than he had anticipated. The hearing had begun *ex parte*. The hearing was re-started when the Accused arrived, and he fully participated in the entire proceeding. The Accused asked questions of Dr. DeGannes. The Accused declined to call any witness to testify on his behalf. The Accused offered no documents in the record.

The documentary evidence and the testimony of the witnesses – including the admission of the Accused – support the conclusion that the Accused drafted the letter of recommendation, dated July 26, 2003. The evidence further supports the conclusion that the Accused drafted the

letter in Dr. DeGannes' name and on behalf of Ms. Cao knowing that Dr. DeGannes had never met her. Knowing that Dr. DeGannes had never met Ms. Cao, the Accused knew or should have known that the contents of the letter of recommendation were false if represented, as they were in this matter, to be the statements of Dr. DeGannes. The Accused admitted to having caused the letter to be delivered to Ms. Cao for the purpose of her including it as a part of her application for medical school.

The Accused admitted to engaging in some part of the pattern of dishonesty demonstrated by the documentary evidence and the testimony of Dr. DeGannes. The Accused acknowledges that it was dishonest for him to have produced the letter in the manner that he did. He then furthered the dishonesty by delivering the letter to Ms. Cao for the purpose that he knew that Ms. Cao would use it. Even under the version of the story that the Accused tells, he did not take reasonable care to ensure that Dr. DeGannes had consented to write a letter of recommendation for Ms. Cao. Instead, and again under his version of the events, the Accused submitted the letter in a manner that the Accused reasonably knew or should have known would lead to confusion rather than clarity and informed consent on the part of Dr. DeGannes. Hence, what the Accused admits to having done is sufficient to find that he has violated the *Code*, Section VIII, Sub-Section 12.

The evidence in this record, however, leads to conclusions and inferences of a more nefarious pattern of behavior on the part of the Accused. This Hearing Officer does not credit the Accused's claim that he spoke to Dr. DeGannes about the letter of recommendation. Nor does the Hearing Officer credit the theory of the Accused that Dr. DeGannes inadvertently signed the letter of recommendation. Dr. DeGannes denies that the conversation, on which the Accused relies, took place. On the other hand, Dr. DeGannes does recall the Accused asking Dr. DeGannes about the clerkship application. It is more likely than not that, had the conversation included anything about the letter of recommendation, Dr. DeGannes would have recalled that as well. In addition, Dr. DeGannes has no motive to fabricate his testimony. The Accused, on the other hand, has every reason to present his pattern of behavior in the best light possible under the facts.

The Accused's claim that he submitted an unsigned letter of recommendation to Dr. DeGannes for his approval and signature along with the clerkship application forms is unsupported by the weight of the credible evidence. The clerkship application forms are dated July 7, 2003 and were signed by the Accused on that date. The letter of recommendation is dated July 26, 2003. The instructions for Letters of Recommendation form is dated July 23, 2003. The Accused's explanation of how they came to be allegedly submitted at the same

time, the different dates on the documents notwithstanding, is simply not credible.

First, the Accused claims that he initially sought to submit the clerkship forms in early July, having been anxious to get the application process completed. Inexplicably, the Accused seeks the approval of the forms by Dr. Hassan instead of Dr. DeGannes on July 7<sup>th</sup>. The Accused offers no credible reason for him to have gone to Dr. Hassan about the clerkship application when it was Dr. DeGannes with whom he had spoken about the application. Be that as it may, the Accused would have this Hearing Officer believe that the Accused, upon learning on July 7<sup>th</sup> that he needed Dr. DeGannes' signature on the forms, the Accused did not submit the forms to Dr. DeGannes until mid-July – around July 26<sup>th</sup>.

The Accused's story with regard to the submission of the clerkship forms is internally inconsistent and not credible. When juxtaposed with Dr. DeGannes' testimony on this point, the story told by the Accused, completely lacks credibility. Dr. DeGannes explained that he recalled getting the forms in early July and without any letter of recommendation included with them. Dr. DeGannes testified credibly as to why he recalled his receipt of the forms and the manner of their processing. Again, this Hearing Officer finds no basis on which to discount Dr. DeGannes's version of the events. By the Accused's own admission, Dr. DeGannes has no personal animus against the Accused; therefore, no motive to craft a story that would hurt the Accused. On the other hand, the Accused is attempting to avoid sanctions for a serious violation of the *Code*.

Given the weight of the credible evidence in this record, there is no basis to credit the Accused's claim that he submitted the letter of recommendation along with the clerkship forms. There, moreover, is no evidence to support an inference that Dr. DeGannes, having allegedly received the forms and the letter in the same packet, *inadvertently* signed the letter of recommendation. To credit this story, the Hearing Officer would have to infer that Dr. DeGannes did not read the letter, which would have placed him on notice, that he was writing a letter of recommendation for a person he had never met. In the alternative, the Accused would have the Hearing Officer infer that Dr. DeGannes did read the letter, and even though he had never met Ms. Cao, nonetheless would make representations in the letter of Dr. DeGannes having "...interacted with her on numerous occasions." Under either of these circumstances, the Accused would have this Hearing Officer infer that Dr. DeGannes signed the letter of recommendation. There is no evidence in this record to support such inferences, and the Hearing Officer makes none of the kind.

The denial of the Accused to the contrary, notwithstanding, the evidence supports the inference that the Accused did in fact deliberately place

Dr. DeGannes['] signature on the letter without Dr. DeGannes' knowledge or permission. The Accused then caused the letter to be delivered by [*sic*] Ms. Cao for the purposes already stated. The evidence in this record supports only one conclusion – the Accused engaged in a pattern of dishonesty in creating the letter of recommendation including the forging of the signature of a faculty member, Dr. DeGannes. He is found guilty of having violated the *Code*, Section VIII, Sub-Section 12.

20. At the administrative hearing in the instant matter, Respondent made many of the same assertions he did during Hearing No. 1. Those assertions were found not credible for the same reasons set forth in paragraph 19, above.

21. Respondent also testified in the instant matter that he had been deprived of due process in connection with Hearing No. 1 in that he had been unable to review his file before the hearing, and that Hearing No. 1 began in his absence while he was taking a final examination. That testimony was unconvincing. Respondent was offered the opportunity to review his file in advance of the hearing, but he was in California at the time and was unable to do so. He did not request that a copy of the file be sent to him in California, and he did not review the file upon his return to Washington, D.C. Hearing No. 1 was initially scheduled for a date on which Respondent was unavailable. On his request, it was re-scheduled. After an additional brief continuance, the hearing began on a date that was agreeable to Respondent. Although he arrived at the hearing 45 minutes late because of his final examination, the hearing officer began the hearing again upon Respondent's arrival. Both Respondent and Dr. DeGannes testified and were subjected to cross-examination. At the hearing on the instant matter, Respondent claimed that the lack of due process prevented him from offering witnesses and/or documentary evidence at Hearing No. 1. However, he failed to elaborate on the identities of the witnesses he would have called, the documentary evidence he would have offered, or how such witnesses and/or documentary evidence may have changed the outcome of Hearing No. 1. He also did not explain why he failed to request or subpoena the presence of witnesses and why he did not have or request documents to offer into evidence. Thus, the evidence was devoid of any indication that the outcome of Hearing No. 1 may have been any different under other circumstances.

22. Respondent testified in the administrative hearing in the instant case that he submitted the Cao letter of recommendation to Dr. DeGannes because he had heard from other students that Dr. DeGannes had previously signed recommendation letters for individuals he did not know, and that he was still willing to do so. However, Respondent lacked any first-hand knowledge of Dr. DeGannes actually having signed such a letter. If Respondent submitted the Cao recommendation letter to Dr. DeGannes for that reason, Respondent's conduct was even more egregious than it would otherwise have been because he was submitting a completely false letter to someone he knew would perpetuate the fraud. Respondent's testimony does not adversely reflect on Dr. DeGannes's character; it adversely reflects on his own.

23. However, Respondent's testimony regarding why he chose Dr. DeGannes as the purported author of the letter was inconsistent with an October 26, 2003 letter he

wrote as an explanation of his conduct. In that letter, Respondent wrote in part:

Making the decision about which faculty member to ask was difficult, during my stay at Howard University there are [sic] few members I felt comfortable approaching with such a request. I choose [sic] Dr. DeGannes because he seemed like an open faculty member to me, someone I knew was a Howard Alumni [sic], someone I have had the opportunity to discuss my own career aspirations with and someone I felt comfortable [sic], much like a mentor to me.

24. Respondent made a similar statement during his testimony in Hearing No. 2:

If I had a second chance and I would do that over again and with the knowledge I have today, I would have submitted that letter of recommendation from my behalf, no other – no one else. Those statements in that letter of recommendation were from my own – my own personal experience and – and interactions with that student and I would have submitted them on my behalf and no other.

25. Respondent also wrote the following in his letter of October 26, 2003:

I wrote Mrs. Caos [sic] letter, and used a couple of years of personal interactions with her to incorporate them into my own recommendations. Mrs. Cao has visited the University a couple of times with me and some of the items I include [sic] into my letter are from those accounts and through our own conversations regarding her career ambitions. The letter was intended to introduce Dr. DeGannes to Mrs. Cao and hopefully to stir interest from Dr. DeGannes to write his own letter of recommendation. I did not intended [sic] for my letter to serve as the sole letter to be forwarded to anyone else or to be used in anyway [sic] besides by Dr. DeGannes.

26. If what Respondent wrote in the letter quoted in paragraph 25, above, is true, it belies his testimony. However, it is unlikely that it is true since (1) Respondent wrote the letter on university letterhead indicating an intent that the letter be signed and mailed; (2) Respondent completed the letter with a signature block for Dr. DeGannes's signature; and (3) the letter included false statements concerning actual interactions between Ms. Cao and Dr. DeGannes, including Ms. Cao's work in Dr. DeGannes's "clinic."

27. During the hearing in the instant action, Respondent testified that he was not accused of forging Dr. DeGannes signature but only his "name." That testimony was not credible. The record is rife with Respondent's references to the fact that he was not accused of forging Dr. DeGannes's signature. Further, it is illogical that Respondent would have been accused of forging Dr. DeGannes's "name." If the name was something other than the signature, it would have been part of the printed letter, either in the text, letterhead or signature block, and would therefore have been part of the overall falsity of the letter rather than a specific "forgery."

28. Rather than fully appreciating the extent and egregious nature of his dishonesty, Respondent seems to feel that Dr. DeGannes betrayed him by entering into an agreement with him to sign the letter of recommendation for Ms. Cao and then denying any knowledge of it. During Hearing No. 2, Respondent was asked what lesson he had learned from the experience involving the Cao recommendation letter. Respondent answered:

As to what I've learned? I've learned that you have to be very, very, very wary of the people that you trust because they have a great deal of influence and a great deal of power over you that you're not aware of at that time. Yes, I – I – I – I was found guilty of something. Today before you, I – I – I still plead my innocence. I mean, it's unfortunate that it has gone to – I mean – I mean – I mean it has come to this point, but I have learned that you have to be very critical of gray areas and areas that could be viewed as very – as be – be viewed as, you know, inappropriate. I stay away from those areas. If – if all possible, do not lend yourself to any areas of – of – of scrutiny. Do not stick your head on the line if you're not willing to – you know, I guess to fulfill something. I – I should have been more diligent with the faculty member that brought these charges against me so we had a clear understanding of things. I guess I was a little bit – I guess I – I – I let things run its – its course and I – I should have followed through with our agreement. I should have been more diligent to make sure we had a clear understanding of what I wanted from him and what was expected from his and what he was willing to, I guess, to provide me with. And unfortunately, I – I – you know, I wish I would have done that. It would have made things a lot easier for both of us. And some of the choices that I made were – I mean, I guess I would – I would not make them again.

29. When asked during the administrative hearing in the instant case what he had learned from the experience, Respondent's initial answer was not that he should have been more honest, but that he learned not to trust people. He claimed he had placed his faith in someone he trusted and "only got remorse for it." He then acknowledged that he had made mistakes, but that he would not make them on his patients or compromise patient safety.

#### Mitigation

30. Respondent is a veteran of the United States Navy from which he was granted an honorable discharge in July 1994. [Footnote omitted]

31. During medical school, Respondent volunteered in a program designed to assist physicians who were training to serve underserved populations. Respondent also trained for that service and treated patients through the program.

32. Respondent is one of six children. He grew up in a single family home. He has been married for 10 years and has three children. Respondent and his family reside

in Madera, Ohio. He and his wife are in the process of adopting another child, and are attempting to gain custody of one of their minor relatives.

33. Respondent's application for a physician's license is pending in Ohio. He has been granted an MD Training Certificate in Ohio which has enabled him to practice medicine in that state in a training capacity. Respondent is presently a third year resident at Jewish Hospital in Cincinnati, Ohio. He has seen and treated thousands of patients without incident or complaint.

34. Respondent offered several character reference letters which were admitted into evidence as "administrative hearsay" pursuant to Government Code section 11513, subdivision (d). The consensus of the letters' authors is that Respondent is a skilled, ethical and caring physician. One author corroborated Respondent's testimony that Respondent would have been offered a chief residency position had he been granted licensure in California. Few of the authors, if any, referred to the discipline he suffered at Howard University for his dishonest acts. Therefore, references to Respondent's honesty and/or integrity contained in the letters are given minimal weight.

#### **LEGAL CONCLUSIONS**

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following Legal Conclusions:

1. Cause does not exist to deny Respondent's application pursuant to Business and Professions Code sections 475, subdivision (a)(2) and 480, subdivision (a)(1), for conviction of a crime, as set forth in Findings 3, 4, 5, 6 and 7. The crime of which Respondent was convicted is not substantially related to the qualifications, functions or duties of a physician and surgeon. (Cal. Code Regs., tit. 16, § 1360)

2. Cause exists to deny Respondent's application pursuant to Business and Professions Code sections 475, subdivision (a)(1) and 480, subdivision (c), for making a false statement on an application for physician's and surgeon's license, as set forth in Findings 3, 4, 5, 6, 7, 8, 9 and 10.

3. Cause exists to deny Respondent's application pursuant to Business and Professions Code sections 475, Subdivision (a)(3) and 480, subdivisions (a)(2) and (3), for commissions of dishonest, fraudulent or deceitful acts, as set forth in Findings 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29.

4. While he was a fourth-year medical student, Respondent engaged in an egregious pattern of dishonesty designed to mislead personnel from two medical schools. He conceived of the idea of a false letter of recommendation for his friend that he would write, sign and send. He then acted on his idea by taking Howard University School of Medicine letterhead, writing the letter under that letterhead in a manner that would lead the reader to believe it had been written by a professor from that medical school, forging the professor's signature both on the letter and, as was the professor's custom and practice, on the back of the envelope, and then mailing the letter, all without the professor's knowledge and consent. Neither Dr. DeGannes nor anyone else

at the medical school would have become aware of Respondent's dishonest acts had the letter not been returned to Dr. DeGannes because of a faulty address.

5. As indicated above, Respondent claimed Dr. DeGannes was aware of the plan and agreed to sign the letter of recommendation even though he had never met or spoken with the individual on whose behalf the letter was drafted. Respondent further claimed that he chose Dr. DeGannes for the task because he had learned from other students that Dr. DeGannes had signed, and was still willing to sign, such letters. If his testimony was true, Respondent's conduct was even more egregious than it would otherwise have been and adds an additional layer to his dishonesty by virtue of his exploitation of another's willingness to engage in dishonest and fraudulent conduct.

6. However, simple logic belies Respondent's claims. Had Dr. DeGannes known about the letter and either signed it or permitted Respondent to forge his signature on it, when it was returned to him, Dr. DeGannes would have prepared another envelope, this time with a proper address, and mailed the letter again. If he had been aware of the plan for the letter but signed the draft inadvertently, upon its return, he would have made any needed corrections, printed the letter on his individual letterhead, and re-mailed it. No one else at the medical school would have learned of the plan for the fraudulent letter.

7. But Dr. DeGannes did neither. Upon discovering that a letter bearing his purported signature had been sent without his knowledge or consent, he confronted Respondent and then filed a formal complaint against him. He then testified against Respondent at Hearing No. 1, thereby exposing himself to possible sanctions by the university if the hearing officer believed Respondent's story over his. The fact that Dr. DeGannes stepped forward, exposed the fraud, and risked his academic career and his professional reputation, evinces the accuracy of his version of events.

8. Both during the disciplinary action at Howard University School of Medicine, and during the administrative hearing in the instant matter, much was said about whether Respondent forged Dr. DeGannes's signature on the letter, whether Dr. DeGannes inadvertently signed the letter, or whether Dr. DeGannes intentionally signed the letter. The hearing officer in the former hearing, and the Administrative Law Judge in the latter, both found that Respondent forged Dr. DeGannes's signatures. However, the finding that he did so does nothing more than add another layer to Respondent's dishonesty. Even if Respondent had not signed the letter, he committed dishonest acts writing a letter he knew to be completely false and submitting it to Dr. DeGannes for his signature.

9. Approximately three years after he was disciplined for dishonesty by his medical school, Respondent filled out an application for licensure as a physician and surgeon in California. He again committed a dishonest act by omitting a criminal conviction he was required to disclose. He subsequently offered to the Board at least one untrue reason for his failure to disclose the conviction.

10. Respondent's claim that he has never placed a patient at risk and would never jeopardize a patient through an act of dishonesty, albeit laudable does not warrant the

issuance of a physician's and surgeon's license in light of the factual findings in this case. A physician's dishonesty need not be related to patient care to render him/her unfit for medical practice. In *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, the court stated:

First of all, we find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government out of \$65,000 in taxes may yet be considered honest in his dealings with his patients. In this connection, however, we should point out that today's doctor deals financially with the government – state, local and federal – in many ways that have nothing to do with his own personal tax obligation. Above, all, however, there is the relation between doctor and patient. It is unnecessary to describe the extent to which that particular relationship is based on utmost trust and confidence in the doctor's honesty and integrity. (*Id.* at 470)

11. In *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578 [146 Cal.Rptr. 653], the court stated:

There is no other profession in which one passes so completely within the power and control of another as does the medical patient.

12. Those words were cogently interpreted by Dean of Special Student Services at Respondent's medical school when she wrote to Respondent:

The role of physician is arguably the most trusted of any other profession in virtually every society on earth. A physician's ability through training and experience to make life and death decisions for people is a power that must also be grounded in ethics that are beyond reproach. The importance of ethics in the field you seek to enter cannot be overstated.

13. Respondent has been well-trained to be a conscientious, skilled and caring physician. However, he has demonstrated a penchant toward dishonesty and a willingness to use dishonest methods to achieve his desired goals. Such are characteristics antithetical to those sought by the Board for its licensed physicians. Perhaps time and effort will enable Respondent to rehabilitate himself and overcome these negative characteristics, but for now, Respondent is not a suitable candidate for medical licensure in California.

### **ORDER**

WHEREFORE THE FOLLOWING ORDER is hereby made:

The application of Respondent, Andrew J. Castellanos, for a Physician's and Surgeon's license, is denied.

(St. Ex. 3 at 2-21)

56. In a Decision dated March 3, 2008, which was effective on April 2, 2008, the California Board accepted and adopted the Proposed Decision, thus denying Dr. Castellanos' application for a physician's and surgeon's license in California. (St. Ex. 3 at 1)

**Additional Evidence Regarding the Ohio Residency**

57. Dr. Goldberg, the director of the residency program in internal medicine at Jewish Hospital in Cincinnati, testified on behalf of Dr. Castellanos. A copy of his curriculum vitae was admitted to provide information regarding his education, professional experience, honors and awards, publications, research studies, and similar matters. (Resp. Ex. N)
58. Dr. Goldberg testified that the program has 32 residents plus a chief resident, and that he had been part of the interview team that decided to offer a third-year position to Dr. Castellanos. Dr. Goldberg testified that, during this process, Dr. Castellanos had disclosed the fact that, on his California application, he had failed to disclose a conviction for vandalism in 1994. Dr. Goldberg stated that Dr. Castellanos had explained that the vandalism conviction had not been of great concern at the time of completing the application because he had believed it did not have any bearing on his ethics and professionalism as a physician. (Tr. at 136-140)
59. Dr. Goldberg further testified that Dr. Castellanos had also disclosed his disciplinary problem at Howard University during the interview process. (Tr. at 136-137) Dr. Goldberg related the circumstances surrounding that incident, as told to him by Dr. Castellanos:

He had an advisor that he had a fairly close relationship with. He asked the advisor if he could write a letter on behalf of a friend of his who was applying, I think, for medical school, and really didn't have anybody to write a letter of recommendation for. The advisor said, 'Fine. Just' –This is my recollection. 'You can write it and I'll sign it.'

And as far as I recall, he gave it to the advisor to sign, and then who actually signed it is a point of contention, but for some reason the letter got returned. And when it got returned, somebody else opened it, and then the advisor said 'Well, I never signed this. You know, I don't know anything about this letter.' That's pretty much the essence of the story.

(Tr. at 136-137)

60. Dr. Goldberg stated that, during the interview process with Dr. Castellanos, he had telephoned Dr. Choi in California and had a "fairly lengthy" conversation with him. He said that Dr. Choi had been "extremely positive" about Dr. Castellanos. In addition, Dr. Goldberg testified that Dr. Choi had stated that he "had actually gone to the trouble of verifying a lot of the information," and that Dr. Choi had said, "It's all pretty much, you know, the way you see it on paper." Dr. Goldberg stated that Dr. Choi had expressed to him the belief that Dr. Castellanos' suspension during medical school had stemmed from "immaturity and lack of judgment, rather than something that would predict a problem in the future." (Tr. at 138-139)

61. Dr. Goldberg testified that Dr. Castellanos had been an outstanding resident and had been selected to be the chief resident. He said he would feel good about Dr. Castellanos' treating him or his family. Further, Dr. Goldberg stated that he had no ethical concerns in the 12 to 13 months that he had worked with Dr. Castellanos and that he knew of nothing that would cause him to question Dr. Castellanos' ethics or professionalism. (Tr. at 136, 140-142, Resp. Ex. G)
62. On cross-examination, Dr. Goldberg stated that he had understood that Dr. Castellanos had approached a professor to ask him for the letter and that he was "fairly certain" that Dr. Castellanos had told him that the professor had not known the student being recommended. However, Dr. Goldberg acknowledged that he did not know what the discussion was between Dr. Castellanos and his professor concerning what to write in the letter. According to Dr. Goldberg, the "basic thing" that Dr. Castellanos did wrong, the act that showed immaturity and lack of judgment, was to ask his professor to write a letter for someone he did not know, and that, from that point on, the professor's judgment was just as poor as Dr. Castellanos' judgment. Dr. Goldberg added that the act of writing the letter was the second thing that demonstrated poor judgment on the part of Dr. Castellanos. (Tr. at 144-145, 148-149)
63. Dr. Nix, an associate director, also testified on behalf of Dr. Castellanos. His curriculum vitae, which was admitted as an exhibit, sets forth information regarding his education, professional experience, publications, and general background. (Resp. Ex. O)
64. Dr. Nix stated that he had met Dr. Castellanos during the interview for a third-year residency position and that he had interacted daily with Dr. Castellanos since he joined the program in July 2007. Dr. Nix noted that Dr. Castellanos had been chosen to be the chief resident because he performed "exceptionally well" during his PGY-3, particularly with regard to leadership. He said that Dr. Castellanos is a very hard worker, very ambitious, and a good communicator who is always very positive and eager to teach the medical students and interns. (Tr. at 20-25)
65. Dr. Nix testified that, in contrast to other residents, who may have problems such as being late or complaining about workload, he never had one problem with Dr. Castellanos. He described Dr. Castellanos as a humble person who has been disappointed and distraught over the way things happened early in his career but is willing to work hard to make up for the things that had happened. He stated that he has heard nothing but "glowing remarks" about Dr. Castellanos from the seven other physicians in his group and that he knows of numerous practices that would love to have Dr. Castellanos because he is an excellent physician. When asked whether he believes Dr. Castellanos is honest, Dr. Nix answered, "I absolutely do." When told that the California Board had found that Dr. Castellanos "demonstrated a penchant towards dishonesty and willingness to use dishonest methods to achieve his goal," Dr. Nix stated that he disagreed with that assessment. He testified that he has never had any reason whatsoever to question Dr. Castellanos' ethics in the past year. (Tr. at 25-30, Resp. Ex. F)
66. Dr. Nix stated that, during the interview process, Dr. Castellanos had disclosed his disciplinary problem at Howard University as well as the issue with the California license. (Tr. at 23) With regard to their program's consideration of these problems, Dr. Nix stated that he and Dr. Goldberg "actually had quite a bit of experience in dealing with residents who are applying

for third-year positions who may have had a problem at another residency program, \* \* \* and we usually are pretty good at judging character and being able to weed out those residents that we think will be a major problem and those that we think may have had kind of a minor hiccup along the way.” (Tr. at 23-24)

67. Dr. Nix described his understanding of Dr. Castellanos’ problem during medical school:

It’s my understanding that he had asked one of his teaching attendings or program directors, someone in a position, I believe, similar to mine, for a letter of recommendation either for himself or for another individual, I’m not sure which exactly, and that in doing so that physician had relayed to him, “Put something together for me and I’ll look it over and sign it.”

\* \* \* It’s my understanding that based on that the powers that be at Howard University, whether it be the program director or someone in administration at the university, had come to understand that this had happened, felt that it was an unethical practice, and that he was to be punished for it.

(Tr. at 32) Dr. Nix later clarified that it was his understanding that Dr. Castellanos had drafted a reference letter that was signed by the professor, Dr. DeGannes. (Tr. at 33)

68. Dr. Nix acknowledged that he had not been given Dr. DeGannes’ version of the incident, and had received his information only from Dr. Castellanos:

Certainly, I have no judgment as to exactly what happened. I wasn’t there. Andrew was very good at thoroughly explaining it right away, as far as his take on what happened. He was, I think, very disappointed in the way things went, but the way he explained it to me it seemed to be maybe just poor judgment, but nothing that I felt was intentionally unethical.

(Tr. at 23-24)

69. At one point Dr. Nix testified that Dr. Castellanos had disclosed to him that the person for whom the reference letter was written had never met the professor. However, he later stated: “I actually did not know that they had never met. I did know that they had no significant training under that physician.” When asked whether Dr. Castellanos’ conduct was troubling or disturbing, Dr. Castellanos responded that “it was very poor judgment.” (Tr. at 33-34) He explained:

I understand that we, as physicians, oftentimes want to help people. He wanted to help a friend, I assume. It’s poor judgment in the sense that the friend should have met the physician, should have met the attending, should have had some interaction with him before asking anyone to do that. So I think it was incredibly poor judgment.

Whether the physician actually agreed to do it or not, I have no idea, but that's the way it was explained to me, that the physician understood what he was asking for, and that's my understanding of it.

(Tr. at 33-34)

70. When asked whether it sounded reasonable that a professor would be willing to sign a recommendation letter for someone he had never met, Dr. Nix testified:

It's not always an ethical practice, absolutely. Sometimes physicians, if they have a very good working relationship with a fellow resident, and the fellow resident tells them, "I have this really, really good medical student" or "really good resident, I think he would be great for the program," or whatever, there are times when we'll try to meet that person and maybe give them the benefit of the doubt, but this [a medical-school professor signing a recommendation later for someone he had never met] is a bit unusual.

(Tr. at 36-37)

71. Dr. Nix testified that he had not been aware that the letter had been returned to Dr. DeGannes because of a bad address nor did he know what had prompted Dr. DeGannes to file the complaint against Dr. Castellanos. (Tr. at 37-40) Dr. Nix further acknowledged that he had not seen a copy of the California Board's decision. However, he said that Dr. Castellanos had told him that the California decision had been based in part on a vandalism conviction for a graffiti incident when he was a teenager. (Tr. at 39-40)

72. Dr. Nix was asked whether he considered the incident at Howard University to be a "minor hiccup," and he conceded that, if Dr. DeGannes did not sign the letter and had no knowledge of it, then that would be "intentionally unethical conduct." However, he stated that, in his experience interacting with Dr. Castellanos over 18 months, this kind of conduct is something that he would never think Dr. Castellanos would be capable of doing. However, Dr. Nix noted that, during a residency, there were really "not a lot of ways to judge absolute honesty." He explained that residents are given instructions when they appear for their rotations and that he had based his opinion on Dr. Castellanos reliability, in that he adhered to everything he was asked to do. (Tr. at 42) Dr. Nix explained that, during the residency program, there "wouldn't really be an instance where there would be a dishonesty issue." (Tr. at 40-43)

73. Asad Ali, M.D., who was also an associate director of the residency program at Jewish Hospital, endorsed Dr. Castellanos as follows in a letter dated July 9, 2008:

\* \* \* I feel Dr. Castellanos is unquestionably one of the best residents to have ever rotated through our residency program. Andrew transferred into our program as a third year resident. I am well aware of the unfortunate incidents which prompted his transfer to our program. Despite this, Andrew quickly distinguished himself from his colleagues with his incredible work ethic and ability to work well with others. He has become a model resident – hard working, courteous and displaying

a proclivity for teaching. Unlike any other resident, Andrew would go to incredible lengths to teach residents and was a fixture at our “whiteboard” going over talks and cases.

Andrew has demonstrated outstanding leadership qualities and genuine compassion for his patients. These model attributes led to his selection as our chief resident, which has traditionally been extremely coveted and competitive position to attain. As a chief, Dr. Castellanos has helped innovate our curriculum and framework of our residency. He has been extremely popular and well liked by both residents and attendings. Additionally, Dr. Castellanos has cared for and managed many of my private patients and has completely earned the trust of myself and that of my patients. Andrew clearly has a bright future in internal medicine and has exemplary character and compassion for his colleagues and patients. He will make an outstanding clinician. I am honored to have worked with this fine physician. Dr. Castellanos has only my highest endorsement.

Please do not hesitate to contact me if you have any questions regarding his excellent moral character or qualifications.

(Resp Ex. E)

#### **Additional Testimony by Dr. Castellanos**

74. With regard to the impact that the suspension at Howard University in 2003 has had on his life, and how it has changed him, Dr. Castellanos testified as follows:

\* \* \* I’m a totally different person than I was five years ago. Five years ago, I was really--really thought--I mean, I thought I was invincible. I thought I had the world in front of me. I had a life ahead of me. I had my career written in stone for me.

Five years later, I’ve had to deal with answering for mistakes that I made. I’m sorry, you know, that I made them. It’s changed me inside who I am. Of course, I’m very worried what I do. I don’t want to have--I don’t want to--I don’t want to make the same mistakes again.

Then, for my family, it’s changed, you know, who we are and--you know, we moved from California to Ohio.

But most of all, it’s taught me to be stronger, to really appreciate what I have, you know, to make decisions and really stand by your decisions, make sure they’re 100 percent without any gray area in them at all. That anything I do in medicine or anything in my life has--you know, can affect my life, you know, can affect my career.

It's taught me to be more honest with myself and honest with my, you know, family. Taught me to be more truthful in every aspect of my life. You know, it's also motivated me to be a better physician and also a better person.

(Tr. at 74-75)

75. Dr. Castellanos testified that he understood why the Board might be concerned about granting his an Ohio license:

I--I understand. One is my failure to disclose my misdemeanor conviction. The other one happened at Howard. I understand, you know. I mean, I'm thankful-- I'm thankful to Ohio to be given the opportunity to finish my training and to be allowed to start my chief residency here. It's been a privilege being--working here in Ohio. You know, those--It seems like it's a pattern, but it's not a pattern. It just seems like, you know, I'm trying--I'm just not being honest with everyone who-- you know, who--I mean, I'm not being honest, but that's not who I am.

(Tr. at 85)

76. When asked whether there was anything he would be willing to do to alleviate the Board's concerns, he answered:

Yes, of course, there is. I mean, they've given me the opportunity to practice here in Ohio. I'm the chief resident this year. I don't have any clinical responsibilities this year. I supervise the residents and I also do a lot of administrative work.

If I was granted full licensure, I would--I mean, I would--I would participate in an ethics course. I also would want to reassure Ohio that I can practice medicine in a supervised setting to give me an opportunity to prove myself.

(Tr. at 86)

77. Finally, Dr. Castellanos asked the Board to understand that he is essentially a good person and to give him a chance:

Yes. I know these facts, they--they show me as a bad person. They show me as-- I mean, as--as a dishonest person. That's not who I am. I am a good person. I worked hard for who I am today.

You know, I come--I mean, I come from a single family--or, a single parent all my life. I was raised that way. I have good values and good morals that were given to me from my--I mean, from my mother.

Medicine means a lot to me. It's--It's all I ever dreamed of doing and it's all I ever wanted to do. I mean, I want to make a difference for my community.

I am an honest person. These--These two incidents paint me as a very bad person. They show me--They show that I made some mistakes in my life. I'm not going to repeat those mistakes again. I'm a hardworking, caring physician. I mean, I don't--I mean, I think I'm a very competent physician when it comes to taking care of patients.

I mean, medicine is something I've worked hard for with great sacrifice and great--sacrifice, I mean, in my life with myself and also my family.

You know, I've--I've had the opportunity, I mean, to be given a second chance, to be able to graduate, you know, from medical school. I'm very grateful for that. I'm very grateful for the opportunity to attend two excellent residency programs and given a chance to complete my training. I'm very thankful for that.

I'm not the person I was five years ago. Dr. Gregory Nix today said some very kind words about me, you know, very kind words about me that I'm very humbled to hear him say about me, because, I mean, I am that person. I mean, I can't say it to you, I can't show you it. Those letters of recommendation show you who I am outside of what this shows.

I mean, I want a chance to prove to you all that I am--that I am a good physician, that I'm an honest physician, that I'm--that I'm capable of practicing medicine in Ohio, and I'll do my very best to, you know, help my patients and do what, you know, do--I mean, do what a good physician does, takes care of their patients, honestly, truthfully, without any reservations.

(Tr. at 92-94)

### **FINDINGS OF FACT**

1. In June 2007, Andrew John Castellanos, M.D., submitted to the Board an application for a training certificate. Pursuant to this application, the Board notified Dr. Castellanos on or about October 24, 2007 that the Board had granted a training certificate to him, number 57-014014, for the period June 29, 2007, through June 28, 2008. In May 2008, the Board granted a renewal of that certificate effective through June 28, 2009.
2. On or about August 30, 2007, Dr. Castellanos submitted to the Board an Application for Physician Licensure. That application is currently pending.
3. In a Decision dated March 3, 2008, and effective April 2, 2008, the Medical Board of California denied Dr. Castellanos' application for a license to practice medicine in California, based on reasons including a false statement by Dr. Castellanos on his California application and his commission of dishonest, fraudulent or deceitful acts.

### CONCLUSION OF LAW

The Decision of the Medical Board of California, as set forth above in Finding of Fact 3, constitutes one of “the following actions taken by the agency responsible for regulating the practice of medicine and surgery \* \* \* in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that language is used in Ohio Revised Code Section 4731.22(B)(22).

\* \* \* \* \*

There is no question regarding Dr. Castellanos’ clinical abilities as a physician. The evidence points to a very competent practitioner, above the average. Dr. Castellanos’ scores on the USMLE were very good, and recommendations from faculty members and attending physicians are exceptionally strong. Three program directors took the time to testify on his behalf at the hearing, which was impressive.

However, it is indisputable that the California Board denied Dr. Castellanos’ application based on detailed findings that Dr. Castellanos had deliberately engaged in dishonest conduct during medical school and on the California application. The California Board particularly noted that, even if Dr. Castellanos had not actually signed the false letter of recommendation, his conduct was nonetheless fraudulent by his own admission, in that he participated in making false statements with the intent to deceive those who read the letter.

The findings and conclusions of the California Board were reliable. In contrast, the opinions of the residency directors regarding Dr. Castellanos’ character were not reliable, because they had received and relied on incomplete, biased information.

Further, Dr. Castellanos himself was not credible with regard to crucial matters. For example, his testimony was not credible that he had simply forgotten his misdemeanor conviction. On the California application, he was asked a direct question about convictions, and the instructions clearly stated that misdemeanors were included. Dr. Castellanos’ memory and intelligence appear to be well above average, based on the record, and he simply was not truthful on the application. Similarly, Dr. Castellanos’ explanations about the recommendation letter were unbelievable. He lied to Howard University, he lied to the California Board, and he lied during the present hearing.

Rehabilitative requirements and probation are not recommended because past efforts at rehabilitation have not been effective: Dr. Castellanos lied on his California application after completing ethics remediation as required by his medical school. In sum, Dr. Castellanos’ repeated dishonesty warrants the denial of his pending application as well as the revocation of his training certificate. His practice of medicine in Ohio, even in a residency program, presents an unacceptable risk to the public.

**PROPOSED ORDER**

It is ORDERED that:

The application of Andrew J. Castellanos, M.D., to practice medicine and surgery in the State of Ohio is hereby PERMANENTLY DENIED.

The training certificate issued to Dr. Castellanos is hereby PERMANENTLY REVOKED.

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

  
Patricia A. Davidson  
Hearing Examiner

# State Medical Board of Ohio

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## EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 10, 2008

### REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

Dr. Varyani announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders; and any objections filed in the matters of Khaled Mohamed Abdelhady, M.D.; Tina Nichole Ammons, M.T.; Andrew John Castellanos, M.D.; Lee C D Hang-Fu, M.D.; Elias Tessema, M.D.; Robert L. Wolfe, M.T.; and the Proposed Findings and Proposed Orders in the matters of Dereck Peery, D.O. and Thomas Edward Taylor, P.A. A roll call was taken:

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

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

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

Dr. Varyani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. They may, however, participate in the matters of Dr. Abdelhady and Dr. Tessema, as those cases are not disciplinary in nature and concern only the doctors' qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

ANDREW JOHN CASTELLANOS, M.D.

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

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

Dr. Castellanos was accompanied by his attorney, Terri-Lynne Smiles. Ms. Smiles advised that she knows that the Board members have read the materials and that they know that years ago, when he was in medical school, Dr. Castellanos drafted a recommendation for a friend, to be signed by a faculty member, Dr. DeGannes. Dr. Castellanos has never denied that he did that. Nor has he ever denied that some of the statements in that letter were false. He has fully admitted to that from the time that he was in medical school through the current hearing. Ms. Smiles stated that there is no question in Dr. Castellanos' mind that he should not have written that letter, and certainly not have written it with false information in it. She stated that there is also no question in Dr. Castellanos' mind that he should have presented the letter to Dr. DeGannes in a different manner. By sticking the letter in Dr. DeGannes' mailbox with other forms that needed to be signed, there was a great potential for an error to be made. Ms. Smiles stated that Dr. Castellanos was wrong, he knows that he was wrong, and he has paid dearly for it.

Ms. Smiles stated that, before being disciplined by Howard University for writing that letter, Dr. Castellanos had a very bright future as a physician in his home state of California. As a result of his actions, particularly in connection with the recommendation letter, he had to delay his residency for one year. He had to switch residencies and move to Ohio to complete his residency program, and he was denied a California license, which was his home state. That denial will have negative ramifications on credentialing and licensing for years to come. Ms. Smiles stated that Dr. Castellanos has also had to spend more than his life's savings pursuing a license to practice medicine. Ms. Smiles stated that Dr. Castellanos accepts all of this. He recognizes that that's the price he's had to pay for the mistakes that he's made.

Ms. Smiles stated that she would submit to the Board that Dr. Castellanos has paid enough. As he's

demonstrated, and as clearly reflected in the testimony of two of his residency program directors, who actually testified at the hearing. Also, an assistant program director testified on his behalf at the hearing. These were people who worked with Dr. Castellanos day in and day out, who understand his character, his capabilities, and his integrity. They all testified, and many other attending physicians provided letters, showing that he is conscientious, forthright, and upstanding. The words that kept being repeated over and over by the attending physicians in their letters and by the residency directors is that he is a role model for other residents. Ms. Smiles stated that, having spent a fair amount of time with Dr. Castellanos the last few months, she would echo those sentiments. She added that he's really a remarkable young man, perhaps because of the mistakes he's made in his past. Ms. Smiles stated that, today, he exhibits the characteristics of a moral and ethical physician. She stated that it would be a shame to throw away his years of education and training, as well as his lifelong dream of serving people as a physician.

Ms. Smiles stated that Dr. Castellanos truly understands the gravity of the situation, and he understands how his record at this point really casts a very negative light on him and raises some very legitimate questions about his ethics and integrity. Therefore, they have proposed in the objections an alternative to denial of his license, namely that he be placed on probation, but that he be given the chance to have a license and to prove to the Board that he can be a very competent, ethical and compassionate physician in the State of Ohio.

Dr. Castellanos thanked the Board for the opportunity to speak today. He stated that he is humbled and embarrassed to be before the Board today. He has made mistakes in his past, but he has done his best to prove himself and to move past those mistakes, and to be a worthy physician.

Dr. Castellanos stated that in his third year of medical school a family friend asked him to write a letter of recommendation for her. He had approached a faculty member in connection with the letter of recommendation and also for her application for medical school. He stated that he was uncomfortable at that time and he should have followed his instincts. That was his first mistake. He asked Dr. DeGannes if he would do a letter of recommendation for his friend, and Dr. DeGannes told him to draft something and that he would take care of it. Dr. Castellanos stated that he looked at letters of recommendation and he wrote something similar in putting together her letter of recommendation. He wrote that Dr. DeGannes knew the applicant, even though he did not. That was his second mistake. Dr. Castellanos stated that he printed the draft letter on medical school stationery and took it to Dr. DeGannes' office, along with a couple of internship forms he needed Dr. DeGannes to sign. Dr. DeGannes was not in his office, and he didn't wait for Dr. DeGannes. He placed the forms and letter in Dr. DeGannes' mailbox; that was his third mistake. Dr. Castellanos stated that he should have reviewed the letter with Dr. DeGannes directly, and maybe that would have avoided some of the confusion.

Dr. Castellanos stated that there has been a lot of speculation as to how the letter got signed and mailed and what his involvement was in the process. Dr. Castellanos stated that he would like to be able to answer the questions for the Board once and for all, but he cannot. He doesn't know how it got signed or mailed, but he can tell the Board that he did not sign Dr. DeGannes' name to the letter or mail it. He didn't see the letter again after placing it in Dr. DeGannes' mailbox. As a result of these events, he was initially expelled

from Howard University. Upon appeal, he was given a limited term suspension. He completed an ethics research paper on ethics and professionalism for physicians. He completed 100 hours of community service. He attended A.M.A. meetings in Washington, DC, that involved doctor issues and also disciplinary matters. He also wrote a letter of apology to DeGannes before being reinstated and permitted to graduate. Dr. Castellanos stated that he was extremely grateful that the internal medicine residency program at St. Mary's in California, had accepted him. He had worked as hard as he could to learn from his mistakes and also from other physicians, and to prove that their trust was not misplaced. Dr. Castellanos stated that he believes that he was successful in proving himself to them.

Dr. Castellanos stated that he then, inadvertently, made one more mistake. In completing his licensure application for California in 2006, he forgot that 14 years prior he had pled "no contest," and paid a fine for a misdemeanor. He had failed to disclose it on his California application; he had forgotten about it in an attempt to disclose what had happened at Howard. Dr. Castellanos stated that these mistakes resulted in the denial of his California application. He understands that the combination of these mistakes seems to show someone who plays fast and loose with the truth. He added that he understands that these mistakes have raised concerns as to whether or not he is an ethical person, and also to his integrity and to serve as a physician. Dr. Castellanos stated that this does not reflect who he is. He was honored by the kind words of his residency directors, and by their willingness to testify on his behalf. He's proud that in working with them over the past three years, they have found him to be honest and forthright. This is the kind of person he prides himself on being. In addition, he was also selected to be chief resident of Jewish Hospital, and he serves as a role model for others. He commented that, perhaps, his greatest honor has been to be selected and to serve on the Ethics Committee for Jewish Hospital. Dr. Castellanos stated that he believes these opinions and honors more closely reflect who he is.

Dr. Castellanos continued that since he was eight years old he has dreamt of becoming a physician, to care for and serve patients. He is the product of a single parent, and he was the first in his family to complete high school. He is the only one to obtain a college and graduate degree. He worked hard to attend college after his honorable discharge from the navy, put himself through medical school, and also pursue his internal medicine residency training. It has been a great sacrifice to his wife and children, who have been a source of strength to him throughout his education and training. He knows he can be a good physician. Dr. Castellanos stated that he only asks for a change to prove himself. He asked that the Board grant his application for a license, adding that he's more than happy to comply with any conditions the Board believes are appropriate.

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

Ms. Pfeiffer stated that 75 is the minimum two-digit passing score for steps 1, 2 and 3 of the USMLE. Dr. Castellanos got an 88, an 82 and an 84 first time around each step. Ms. Pfeiffer stated that that's not disputed. His talent, his competency and his intelligence are not disputed. Unfortunately for Dr. Castellanos, what is at issue here is the fact that the state of California denied him licensure for two basic reasons: he failed to disclose his vandalism conviction on his application, and the disciplinary action that occurred while he was in medical school at Howard University. Also, the California Board had

concerns with the credibility of Dr. Castellanos while testifying at its hearing.

Ms. Pfeiffer stated that what Dr. Castellanos does in this current case before the Ohio Board is to repeatedly insist that, with respect to the Howard University Medical School incident, he was only doing what he was asked to do. Repeatedly, he said that he only did what he was told to do. He tried to shift and make it look like Dr. DeGannes requested him to do this, and so he was on a mission to do it. Ms. Pfeiffer noted that Dr. Castellanos was the one who went to Dr. DeGannes and supposedly asked for the letter of recommendation for his friend. Dr. Castellanos tries to shift the blame and not take the full responsibility. In his objections to the Report and Recommendation, he states, "I disclosed the facts of the incident at Howard University to both residency directors." Ms. Pfeiffer stated that Dr. Castellanos only disclosed some of the facts, and he slanted them to minimize the true depths of his misconduct. She noted that Dr. Goldberg, the current program residency director at Jewish Hospital testified, "the basic thing that Dr. Castellanos did wrong, the act that showed immaturity and lack of judgment, was to ask his professor to write a letter for someone he did not know." Ms. Pfeiffer stated that this clearly shows that Dr. Goldberg did not understand, did not know exactly what took place in medical school. Ms. Pfeiffer stated that she would be hard-pressed to find a doctor who would testify that the fact that Dr. Castellanos drafted a reference letter that was, basically, completely false, would not cause him any consternation.

Ms. Pfeiffer continued that Dr. Nix, the Associate Program Director, testified in person, but he also testified that he was "not in a position to, I think, view a lot of issues as far as honesty related." Ms. Pfeiffer stated that these physicians raved about Dr. Castellanos' clinical competency, but that is not the issue. In fact, one of the letters Dr. Castellanos submitted at hearing was a character reference letter that he obtained from Dr. Joyce Yeh for his California hearing, Dr. Yeh wrote in her closing: "Needless to say, I was quite surprised when the issue about his character was raised. I have no doubt that the entire issue has no grounds and was likely a misunderstanding." Ms. Pfeiffer stated that what that is to her is more evidence that when Dr. Castellanos shares this incident with folks, he's shading, he's slanting, and he's hiding some of the key characteristics.

Ms. Pfeiffer stated that in Dr. Castellanos' letter of apology to Dr. DeGannes, he wrote that he was sorry for the misunderstanding that they had. He's not sorry for creating the false document that he presented to Dr. DeGannes. Ms. Pfeiffer stated that she's not sure that Dr. Castellanos gets it in terms of the ethics, the honesty and the integrity that's needed for his profession.

Ms. Pfeiffer stated that she would close with one quote from the Dean of Special Student Services at Howard University, regarding Dr. Castellanos' disciplinary action.

The role of a physician is arguably the most trusted of any other profession in virtually every society on earth. A physician's ability through training and experience to make life and death decisions for people is a power that must also be grounded in ethics that are beyond reproach. The importance of ethics in the field you seek to enter cannot be overstated.

Ms. Pfeiffer stated that she's been trying these cases for a little over two years, and she finds this to be a challenging and difficult decision. She applauds the Hearing Examiner's effort in her proposal. This was not an easy decision. Dr. Castellanos is a bright, intelligent man, but he's flawed in an area that could wreak havoc down the line. He's gone through some type of rehabilitation efforts through Howard University, but it doesn't seem to have done what it needs to do.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF ANDREW JOHN CASTELLANOS, M.D. MR. BROWNING SECONDED THE DISCUSSION.**

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

Dr. Steinbergh stated that it was disappointing to see that a medical student would have such poor judgment. At this point Dr. Castellanos has been appropriately educated and trained. The Board does know that when you receive an academic degree to become a physician, no one can take that degree away from you. The ability to use that degree is then on the line. There is an absolute professional responsibility that physicians have to patient. They expect a physician to be ethical and honest. Everything physicians do every day challenges that. There are financial challenges. There are time constraints and a lot of pressures on physicians. Dr. Steinbergh stated that Board members worry time and time again about how a person who is not based in good ethics and has a good moral code will respond to these pressures. Does a young man such as Dr. Castellanos, who made this mistake, go on to assume that other mistakes can be made and no one will notice it or that he can argue it away? Dr. Steinbergh noted that Dr. Castellanos has said that he's done a good job in patient care; but when he walks away from that university setting, will he always remember to complete progress notes, and to complete the assessment of the patient? Will he negate away a finding as if it didn't exist because he's not certain about it or because it could challenge his wisdom as a physician? Dr. Steinbergh stated that there are choices that physicians make when the patient walks in the room and asks the physician to care for him or her. There's a huge amount of responsibility to care for that person. However, the biggest piece beyond training comes from one's ability to be intellectually honest about the decisions the physician makes. Dr. Steinbergh stated that she has significant question about that.

Dr. Steinbergh stated that the Board recognizes what happened to Dr. Castellanos there. The real issue for her is whether or not he was telling the truth, and whether or not he continues to hide the truth. She stated that accepting the truth is relieving yourself of the burden of it. Dr. Steinbergh stated that she understands that Dr. Castellanos takes responsibility for his version of this. The question of the difference of versions, and what came out of Howard University and that lengthy letter of concern from the Director of Special Student Services, was a huge concern. Dr. Steinbergh stated that that Director recognized the problem, and it was her responsibility to bring down harsh judgment. Dr. Castellanos won on appeal, and they felt that the judgment was too harsh. He was suspended for a period of time and was allowed to come back with stipulations, which he said he did, and one would hope that he would have said to himself after this was all over that he did what they said he did, and that he's really sorry. Dr. Steinbergh stated that Dr. Castellanos now knows it was wrong, but Board members, after reading the hearing record, still aren't convinced that

he understands it.

Dr. Steinbergh stated that, to the Board, this is a very serious thing. Dr. Castellanos could say that it was a lack of judgment, and that's really true. The issue for her is whether Dr. Castellanos has learned from that lack of judgment. His mentors who came to the hearing said nice things about him, but the hearing record is clear to her that Dr. Castellanos had not been honest with them when he told them his side of the story. She added that what surprised her was a statement by Dr. Choi, the residency program director at St. Mary's, that they had grave concerns, and that they talked about Dr. Castellanos a lot during their deliberations on whether or not to accept him as a resident. Dr. Steinbergh noted, however, that there were red flags there, but no one went back to Howard University to really look at the record. Dr. Castellanos slipped through that way.

Dr. Steinbergh stated that she has no doubt that Dr. Castellanos is working very, very hard to be the best that he can be. She added that Dr. Castellanos is the only one who knows whether that is because he lives with a lie that he's trying to get past. Dr. Steinbergh stated that she's trying to think about how this must be affecting him on a day-to-day basis. Dr. Steinbergh added that, with all the things being said, she questions whether or not he is a role model for young residents. She stated that, apparently, he is, academically. She added that she's pleased to hear that he's been asked to be on an ethics committee, but he will have to be really honest and understanding when he serves on an ethics committee in a hospital system and has to give input into, not just end-of-life care, but all kinds of challenges that come down the line in terms of professional and medical ethics, and how families rely on his judgment.

Dr. Steinbergh stated that she does not agree with the Proposed Order of permanent denial, because she thinks that the Board should give Dr. Castellanos a chance to prove himself. She stated that she thinks of all the years of education that have gone on, and she thinks that Dr. Castellanos made a bad decision. Dr. Steinbergh stated that when she read through this case, she thought about a case that the Board had a few years ago. It involved a young man who came to the Board from another state who had, in fact, done an even more egregious thing with the stationery of the university that he had attended. Dr. Steinbergh stated that the part of this case that bothers her so much is that not only did Dr. Castellanos prepare a letter for Dr. DeGannes to sign, which should have been on Dr. DeGannes' personal stationery, but Dr. Castellanos had the audacity to use Howard University stationery to provide this letter. Dr. Steinbergh stated that, if Dr. DeGannes had agreed to send such a letter, Dr. Castellanos should have composed a letter and given it to Dr. DeGannes, who would have printed it on his own stationery, and Dr. Castellanos would not be before the Board today. Dr. Steinbergh stated that Dr. Castellanos made the horrible decision to involve the university in this deceit. Dr. Steinbergh stated that in the earlier case, the physician had involved others in a plan, and when he came to the Board for licensure, the Board struggled in the same way. She added that she never did agree that he should have a license. The other physician was granted a license, and, as far as she knows, has gone on to practice in an honorable fashion.

**DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF ANDREW JOHN CASTELLANOS, M.D., BY SUBSTITUTING THE FOLLOWING:**

It is ORDERED that:

The application of Andrew John Castellanos, M.D., for a certificate to practice medicine and surgery in Ohio is GRANTED, provided that he otherwise meets all statutory and regulatory requirements, and subject to the following terms, conditions, and limitations:

**PERMANENT REVOCATION, STAYED; PROBATION:** The certificate of Andrew John Castellanos, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years, two years of which must follow completion of post-graduate training, including any fellowships:

- a. **Obey the Law:** Dr. Castellanos shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
- b. **Declarations of Compliance:** Dr. Castellanos 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 this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- c. **Personal Appearances:** Dr. Castellanos shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, 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.
- d. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Castellanos 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.
- e. **Personal Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Castellanos 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. Castellanos 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. **Professional Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Castellanos 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. Castellanos 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.

- g. **Monitoring Physician**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Castellanos shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Castellanos and who is engaged in the same or similar practice specialty.

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

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Castellanos and his medical practice, and on the review of Dr. Castellanos' patient charts. Dr. Castellanos 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. Castellanos' quarterly declaration.

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

- h. Required Reporting To Employers And Hospitals:** Within thirty days of the effective date of this Order, Dr. Castellanos shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Castellanos shall promptly 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. In the event that Dr. Castellanos provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Order Dr. Castellanos shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Castellanos shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Order to the person or entity to whom a copy of the Order was emailed.
- i. Required Reporting To Other State Licensing Authorities:** Within thirty days of the effective date of this Order, Dr. Castellanos shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Castellanos further agrees to provide a copy of this Order at

time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Castellanos shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Order to the person or entity to whom a copy of the Order was emailed.

- j. Violation Of The Terms Of This Order:** If Dr. Castellanos violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

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

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

**MR. HAIRSTON SECONDED THE MOTION.**

Dr. Steinbergh noted that her proposed amendment imposes a stayed permanent revocation. She added, however, that she is not married to that language if Board members are inclined to be less harsh with the language. She added that she could agree to a reprimand. Dr. Steinbergh stated that what's important to her is that Dr. Castellanos goes into probationary terms so that the Board can monitor him in a way that he understands what this is all about. Dr. Steinbergh stated that she knows that, at this point, this has got to be the most horrible thing he's had to go through in his life. She added that the Board's mission is public protection, and when the Board talks about the ethical responsibilities of a young physician, she thinks her motion says that the Board has considered this case and is going to monitor Dr. Castellanos.

Dr. Steinbergh noted that her motion places probationary terms for at least three years, two years of which must follow completion of his postgraduate training, including a fellowship. Dr. Steinbergh stated that the reason that she did that is that if you go through the years of training, if you don't realize the effects that this has on your career, then the Board may have failed. That's the purpose of three years of probation with these stipulations.

Dr. Steinbergh noted that the proposed amended order also requires a personal ethics course, a professional

ethics course, and a monitoring physician. Dr. Steinbergh stated that the amendment is very consistent with other orders the Board has entered when there were concerns about the judgment of a young physician. Dr. Steinbergh stated that she personally wishes Dr. Castellanos well, and she hopes that he understands and comes to terms with whatever the truth is so that he can, at some point, leave this behind.

Dr. Steinbergh stated that, in regards to the California license issue, she appreciates why California denied him a license. She stated that she thinks that it is not beyond understanding that he would have forgotten about the misdemeanor as a teenager. She stated that, when young men or women make a bad judgment in their teen years and they do something bad, it goes on with them for a while. After a while, you get into the seriousness of this current problem, and she can imagine that he's not focused on the misdemeanor, but it's a lesson that everything you do in life continues on.

Mr. Browning stated that he likes the direction of this proposed amendment. He added that he also likes the idea of this doctor getting beyond this and succeeding. He stated that he's not sure how the language of permanent revocation helps that. It really ought to be about the probation and the process he goes through, and not about permanent revocation. Mr. Browning stated that "permanent revocation" is language that's a big red flag that hangs with someone for the rest of his or her life. Mr. Browning stated that a reprimand and probation would give Dr. Castellanos a better chance of getting beyond this over time.

Mr. Browning stated that he also thinks that a three-year probation is reasonable, but when you start adding language of postgraduate training, fellowships, etc., the physician could be with the Board for years on end. He stated that it seems to him that one year of practice would be sufficient, instead of two, and still have the three year language. Mr. Browning stated that the idea is for Dr. Castellanos to get through this, take it very seriously, but get through it.

Dr. Steinbergh stated that she agrees with the language issue. She stated that she wrote that language because when you're talking about permanent revocation of a training certificate and denial of a license, that language was meant to demonstrate to Dr. Castellanos that the Board takes this issue very seriously. She added that she does not disagree with the reprimand language.

Dr. Amato stated that he would go along with the idea of reprimand. He pointed out to the Board that that would be consistent with the last case the Board just talked about. Dr. Amato stated that one thing this Board needs to do more of is to be consistent.

Dr. Amato stated that he disagrees with Mr. Browning about the post-training language. He stated that he spoke with Dr. Steinbergh about this amendment. A person can be in fellowships for a number of years, and he would like to be darn sure that once Dr. Castellanos leaves the academic environment, where he is somewhat supervised, there is a couple of years out there totally making decisions for himself, knowing that this Board is concerned with what he did and wants to make darn sure that it doesn't happen again.

Mr. Hairston stated that this case is interesting. He indicated that Dr. Castellanos should work to make sure that young physicians don't go through what Dr. Castellanos has gone through. He noted that there are

young medical students in the room who need to know that. Mr. Hairston stated that everyone makes mistakes, and he personally tells young people about mistakes he's made

Dr. Egner stated that, as she was reading this case, she thought the absolutely stupid things that people do in their youth are incredible. Does she believe Dr. Castellanos' story? She stated that she doesn't know; but when you have circumstances like that, she finds that it's hard to know exactly what the truth is. Either scenario is outrageous. Dr. Castellanos wrote a letter for somebody that didn't know the person about whom the letter was written. She stated that she can't imagine this, but Dr. Castellanos did it. Dr. Egner stated that when she read the attorney's objections, she found that she had the same thoughts as those objections. She also thought that she would have to rely somewhat on Dr. Castellanos' appearance here today. Dr. Egner stated that Dr. Castellanos does come across as having learned his lesson, being truly sorry, and she hopes that he's learned an incredible lesson.

Dr. Egner stated that she agrees with Mr. Browning. If the Board is going to allow Dr. Castellanos to practice medicine, she wants him to get over this. If he has a propensity to lie, then she's wrong. At this moment in time, she will give him the benefit of the doubt. Dr. Egner stated that she would go with a reprimand, but, because there are still doubts, the Board needs to watch him for some probationary time. Dr. Egner stated that she's also not married to the time.

Dr. Madia stated that he struggled with this case quite a bit. What Dr. Castellanos did was absolutely wrong. He got a letterhead from Howard University, and Dr. Madia added that he personally isn't sure who signed Dr. DeGannes' name to the letter. At the same time, after doing all these things and going through all the stipulations of the medical school, including an ethics course, when he applied for a California license, he did the same thing again. Dr. Madia stated that he can't understand why he would do the same thing again after going through all the medical school's stipulations. Dr. Madia stated that no one questions that Dr. Castellanos is a hardworking, intelligent doctor. Dr. Madia stated that the Board should give him a second chance. He agreed with Mr. Browning that a permanent revocation will stick with Dr. Castellanos for the rest of his life. He added that the Board has to make sure, once Dr. Castellanos is out practicing on his own, that he does the right thing, ethically, for the patient. He stated that Dr. Castellanos should be supervised for at least a year after he's finished training.

Mr. Browning asked that Dr. Steinbergh amend her proposed order to change the permanent revocation language to a reprimand. He added that he agrees with three years of probation, but feels that only one needs to be done following training.

Dr. Steinbergh asked Dr. Castellanos what his plans are after he leaves residency.

Dr. Castellanos advised that he intends to do a fellowship in pulmonary and critical care medicine.

Dr. Steinbergh stated that, with this understanding, she feels that Dr. Castellanos will be appropriately monitored in the hospital setting.

**DR. STEINBERGH ACCEPTED MR. BROWNING'S FRIENDLY AMENDMENT TO CHANGE THE "PERMANENT REVOCATION" PARAGRAPH IN THE PROPOSED AMENDED ORDER TO READ AS FOLLOWS:**

**REPRIMAND; PROBATION:** Andrew John Castellanos, M.D., is REPRIMANDED. Dr. Castellanos shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years, one year of which must follow completion of post-graduate training, including any fellowships:

**MR. HAIRSTON, AS SECOND, AGREED TO THE AMENDMENT.** A vote was taken on Dr. Steinbergh's motion to amend:

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

The motion carried.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF ANDREW JOHN CASTELLANOS, M.D. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

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

The motion carried.



# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

May 14, 2008

Case number: 08-CRF- **059**

Andrew John Castellanos, M.D.  
7314 Euclid Road  
Madeira, OH 45243

Dear Doctor Castellanos:

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 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 June 2, 2007, you caused to be submitted to the Board an Application for Training Certificate [Training Application]. Pursuant to your Training Application, the Board issued to you a Training Certificate on or about October 24, 2007, for the period covering June 29, 2007, through June 28, 2008. On or about August 30, 2007, you caused to be submitted to the Board an Application for Physician Licensure [Ohio Application]. Your Ohio Application is currently pending.
- (2) On or about March 3, 2008, the Medical Board of California, Department of Consumer Affairs, [California Board] Issued a Decision [Decision] wherein it ordered that your application for Physician's and Surgeon's License in the State of California be denied for reasons reflected in the Proposed Decision [Proposed Decision] of February 6, 2006, including making a false statement on an application for physician's and surgeon's license and commission of dishonest, fraudulent or deceitful acts. Copies of the Decision and Proposed Decision are attached hereto and incorporated herein.

The Decision and Proposed Decision, as alleged in paragraph (2) above, individually and/or collectively, constitute "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing

*Mailed 5-15-08*

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/AMM/flb  
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3690 6064  
RETURN RECEIPT REQUESTED

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Statement of Issues )  
Against: )  
ANDREW J. CASTELLANOS )  
Respondent. )**

**OAH No: L2007090128**

**Case No: 20-2007-183369**

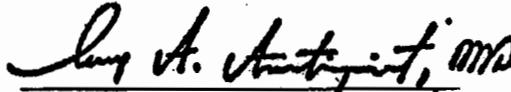
**DECISION**

**The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Medical Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.**

**This Decision shall become effective at 5:00 p.m. on April 2, 2008.**

**DATED, March 3, 2008**

**MEDICAL BOARD OF CALIFORNIA**



**Cesar A. Aristeiguieta M.D., F.A.C.E.P.  
Panel A Chair**

**BEFORE THE  
DIVISION OF LICENSING  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Statement of Issues  
Against:**

**ANDREW J. CASTELLANOS**

**Respondent.**

**Case No. 20-2007-183369**

**OAH No. L2007090128**

**PROPOSED DECISION**

This matter came on regularly for hearing on January 22 and 23, 2008, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

David T. Thornton (Complainant) was represented by Colleen M. McGurrin, Deputy Attorney General.

Andrew J. Castellanos (Respondent) was present and was represented by Frederick M. Ray, Attorney at Law.

During the hearing, Complainant amended the Statement of Issues as follows:

1. Page 6, lines 7 through 10, was amended to read: "Applicant's application is still further subject to denial under Business and Professions Code section 475(a)(3) and 480(a)(2)(3) in that on or about December 19, 2003, while in his third year at Howard University School of Medicine, Applicant was found guilty of forgery, and a pattern of dishonesty."<sup>1</sup>

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<sup>1</sup> The evidence established that Respondent was in his fourth year of medical school, rather than his third, when he was found guilty of forgery and a pattern of dishonesty. This discrepancy is deemed *de minimus* and did not affect Respondent's ability to mount a competent defense.

2. Page 6, lines 11 through 14, was amended to read: "On or about November 3, 2003, an attending physician faculty member filed a complaint with the University alleging that Applicant had, *inter alia*, forged his signature on a letter of recommendation for a student from another school in violation of the Howard University *Student Code of Conduct Section VII, #12*, Forgery, Fraud, and Dishonesty."<sup>2</sup>

3. Page 6, lines 15 through 16, was amended to read: "After an investigation by the University, Applicant was found guilty of forgery, and a pattern of dishonesty, after an administrative hearing on December 19, 2003."

Oral and documentary evidence was received. The record was closed on January 23, 2008, and the matter was submitted for decision.

In this case, Complainant seeks the denial of Respondent's application for licensure as a physician and surgeon on three grounds: (1) Respondent was convicted of a crime that is substantially related to the qualifications, functions and duties of a physician and surgeon. (2) Respondent made a material misstatement of fact on his application for licensure by failing to disclose that he had been convicted of a crime. (3) Respondent is guilty of dishonest, fraudulent or deceitful acts in connection with an incident that resulted in his being disciplined by Howard University while he was a medical student at that institution.

### **FACTUAL FINDINGS**

The Administrative Law Judge makes the following Factual Findings:

1. David T. Thornton made the Statement of Issues in his official capacity as Executive Director of the Medical Board of California (Board).
2. On September 12, 2006, Respondent submitted an Initial and Update Application for Physician's and Surgeon's License (application) with the Board. The application was denied, and this matter ensued.

#### **The Criminal Conviction**

3. On April 29, 1994, in the Municipal Court of the Southeast Judicial District, County of Los Angeles, State of California, in Case No. 94M01759, Respondent pled nolo contendere and was convicted of violating Penal Code section 594, subdivision (a) (Vandalism), a misdemeanor.

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<sup>2</sup> The evidence established that the violation was as to Section VIII, #12, and not Section VII, #12. The discrepancy is deemed *de minimus* and did not affect Respondent's ability to mount a competent defense.

4. Imposition of sentence was suspended, and Respondent was placed on summary probation for a period of two years subject to various terms and conditions including incarceration for 60 days with credit for one day served. Commitment was stayed until July 13, 1994. On July 13, 1994, Respondent reported for commitment. At that time, the court deleted his jail sentence and imposed a fine and assessment totaling \$810.

5. The facts and circumstances underlying the conviction are that, while on a brief shore leave from the United States Navy, Respondent encountered some childhood friends. After dining with them, Respondent agreed to drive one of his friends home. Some of the other friends accompanied them in Respondent's car. They encountered car trouble enroute and, while they were awaiting assistance, Respondent and some of his friends spray painted some nearby train boxcars.

6. Respondent denies having taken part in the vandalism. However, his nolo contendere plea constitutes conclusive evidence of his guilt of the crime charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

7. Respondent's conviction was not substantially related to the qualifications, functions or duties of a physician and surgeon. (Cal. Code Regs., tit. 16, §1360.)

**The Failure to Disclose the Conviction on Respondent's License Application**

8. Question No. 23 on the application read as follows:

Have you ever been convicted of, or pled guilty or nolo contendere to ANY offense in any state in the United States or foreign country?

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**This includes a citation, infraction, misdemeanor and/or felony, etc.** If "YES" attach a list of each offense by arrest and conviction dates, violation, and court of jurisdiction (name and address). Matters in which you were diverted, deferred, pardoned, pled nolo contendere, or if the conviction was later expunged from the record of the court or set aside under Penal Code Section 1203.4 **MUST** be disclosed. If you are awaiting judgment and sentencing following entry of a plea or jury verdict, you **MUST** disclose the conviction; you are entitled to submit evidence that you have been rehabilitated. Serious traffic convictions such as reckless driving, driving under the influence of alcohol and/or drugs, hit and run, evading a peace officer, failure to appear, driving while the license is suspended or revoked **MUST** be reported. This list is not all-inclusive. If in doubt as to whether a conviction should be disclosed, it is better to disclose the conviction on the application.

For each conviction disclosed, you must submit with the application certified copies of the arresting agency report, certified copies of the court documents, and a descriptive explanation of the circumstances surrounding the conviction of disciplinary action (i.e., dates and location of incident and all circumstances surrounding the incident). This letter must accompany the application. If documents were purged by arresting agency and/or court, a letter of explanation from these agencies is required.

**Applicants who answer "NO" to the question but have a previous conviction or plea, may have their application denied or license revoked for knowingly falsifying the application. (Emphasis in text.)**

9. Respondent marked the check box labeled "NO" in response to Question No. 23 on the application. As referenced in paragraph 3, above, that answer was not true.

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10. Respondent testified at the administrative hearing that he answered Question No. 23 in the negative because he was so concerned about making a full disclosure of the discipline he suffered in medical school that he forgot about his 1994 conviction for Vandalism. That testimony was not credible for the following reasons.

a. In a January 17, 2007 letter to the Board, Respondent explained his failure to disclose his 1994 conviction. In that letter, he made no reference to the disciplinary action at his medical school. Instead, he wrote:

When I submitted this application in response to question number twenty-three I did not recall any prior convictions. I did not intentionally exclude this misdemeanor conviction because the truth is I had completely forgotten it. During this same period of time I had several motor vehicle traffic violations that have been resolved for failure to have current vehicle registration while driving, speeding, and a motor vehicle accident involving a hit-and-run where the other party fled the scene. These events came to mind in answering question number twenty-three in which I had answered no, all of which were not serious in nature.

b. At the administrative hearing, Respondent testified that the 1994 vandalism conviction significantly affected his life in that (1) he faced the threat of jail time up until the day of his commitment; (2) he was on active duty with the United States Navy at the time of his arrest and conviction, and the conviction could have adversely affected his naval career; and (3) he would have been convicted of a crime he had not committed. To believe Respondent would have forgotten such a traumatic event in his life, but remembered a few traffic violations which he described to the Board as "not serious in nature," defies both logic and reason.

**The Disciplinary Action at Howard University**

11. Respondent attended medical school at Howard University in Washington, D.C. In 2003, when Respondent was in his fourth year of medical school, he was accused of dishonesty and forgery by one of his professors (Dr. DeGannes). Dr. DeGannes filed a complaint with the University on November 3, 2003. Until Dr. DeGannes filed the complaint, Respondent considered him to be both a mentor and a friend.

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12. The nature of the complaint was that Respondent drafted a letter of recommendation for a friend (Ms. Cao), a student of Brandeis University who was seeking admittance into the Howard University School of Medicine, and that he forged Dr. DeGannes's signature on the letter and on the back of the envelope.<sup>3</sup> Dr. DeGannes had never met or spoken with Ms. Cao, and he had not authorized Respondent to sign a letter on his behalf. Despite Respondent's awareness that Dr. DeGannes and Ms. Cao had neither met nor spoken, Respondent wrote the following in the letter of recommendation:

Dear Sir or Madam:

It is my pleasure to write this letter on behalf of Yun Anna Cao. I have known her since fall 2001, and have interacted with her on numerous occasions. She has been assisting us in our office doing volunteer work in preparation for a long cherished opportunity for a career in medicine.

She is courteous, dedicated and very industrious but above all has a strong motivation for a pursuit in medicine. She showed a great deal of initiative in my clinic and her work was of equal caliber to that of my best volunteers. She possesses a solid base in her basic sciences and a great enthusiasm to learn. Her inner quality and intelligence gives [*sic*] her a sense of direction and motivation to succeed in the most precarious of circumstances. I hope that you consider these valuable traits that this young woman possesses, which speaks strongly for her character and motivation. I also hope you can please assist her in becoming the humane and compassionate physician that she strives to be.

I have had several discussions with Yun regarding her interests in medicine. She is genuinely interested and would like to work in primary care. I recommend Yun for the medical school without reservation and with great enthusiasm. I believe she will make a fine doctor.

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<sup>3</sup> It was Dr. DeGannes's custom and practice to sign the back of every envelope he sent through the mail.

13. Dr. DeGannes became aware of the letter and the forgery when the letter was returned to him because of a faulty address. He became suspicious because (1) he did not know Ms. Cao. (2) He did not recall writing or seeing the letter. (3) The signature on the letter and on the back of the envelope did not appear to be his. (4) The letter had been addressed on a typewriter. Dr. DeGannes did not have a secretary, and he addressed all of his own envelopes using a computer. (5) The letter was on Howard University letterhead, but not on Dr. DeGannes's individualized letterhead which contained his specific address, telephone number, etc. (6) Although Dr. DeGannes had a private medical office practice, he did not have a clinic. (7) The envelope bore a postmark from the State of Maryland rather from Washington, D.C. where Howard University was located.

14. Respondent did not dispute that he had written the letter, but contended that he had done so upon Dr. DeGannes's request, and that Dr. DeGannes had signed the letter inadvertently, along with two applications for extra-mural clerkships Respondent had submitted to him for signature. The two applications were unrelated to the letter of recommendation for Ms. Cao. Dr. DeGannes recalled the two clerkship applications but did not recall ever seeing the letter of recommendation for Ms. Cao before it was returned to him.

15. On December 23, 2003, following an administrative hearing (Hearing No. 1), the hearing officer found that the charges had been substantiated, and that Respondent was guilty of forgery and a pattern of dishonesty. He ordered that Respondent be suspended from the university from January 1, 2004, through the end of the Fall 2004 semester, and that Respondent be required to perform 800 hours of uncompensated community service during the period of suspension.

16. On February 6, 2004, having rejected the hearing officer's sanction, Barbara W. Williams, Ph.D., Dean of the Office of Special Student Services of the Howard University Medical School, wrote to Respondent. Her letter stated in part:

This letter comes to apprise you of the outcome of the hearing held on December 19, 2003 in which you were charged with violating the Howard University *Student Code of Conduct* Section VIII, #12, Forgery, Fraud, and Dishonesty. This adjudication was the result of an allegation by Prof. Christopher N. DeGannes, M.D. that you forged his name on a letter of recommendation [for] Yun Anna Cao.

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This is always a very serious charge, but it is especially troubling since it is leveled against a fourth year medical student; someone that will shortly be leaving this University certified to practice the healing arts. Someone that carries on their shoulders the history and legacy of a medical school founded in 1868 [sic]. The role of physician is arguably the most trusted of any other profession in virtually every society on earth. A physician's ability through training and experience to make life and death decisions for people is a power that must also be grounded in ethics that are beyond reproach. The importance of ethics in the field you seek to enter cannot be overstated. Clearly our College of Medicine admitted you trusting that you had the capability to successfully complete the required training *and* to live up to the ethical requirements and core values of the profession.

Having heard your case and having reviewed the information in the case file, the Administrative hearing Officer has found you "Guilty" of the charge.

You have acted in a manner that shows a blatant disregard for the faith and trust of the faculty of the college of Medicine and of Howard University. The sanction levied in this case must be reflective of the gravity of this matter.

I have given this matter a lot of very, very serious thought and have consulted with several key individuals as part of my deliberations. I have taken into account the many years of hard work and the expense of your education to date. I do not take this step lightly, but in good conscience I cannot shrink from it either. Given the stunningly unethical nature of your infraction, especially considering the field you have trained for, I feel the only appropriate sanction in this matter is Expulsion.

17. Respondent appealed the Dean's order of expulsion from the university. An appeal board was convened and the matter proceeded to hearing on the single issue of disproportionate sanction (Hearing No. 2). On May 17, 2004, Respondent was notified by letter that his appeal had been granted and that the sanction had been reduced to the following:

1. Suspension from the university from February 6, 2004 to August 1, 2004.
2. Participation in 80 hours of community service "that would expose [Respondent] to the detriment caused by lapses of professional ethics."
3. A requirement that Respondent write and send letters of apology to Dr. DeGannes.

4. Submission of a research paper, at least 25 pages in length, "which explores the issues of professional ethics."

18. Respondent successfully completed the sanction and was permitted to graduate from the Howard University School of Medicine.

19. The "Analysis and Conclusions Based Upon the Findings" section of the hearing officer's decision following Hearing No. 1 was well-analyzed and reasoned. Although lengthy, it provides an important understanding of the hearing officer's evaluation of the evidence presented by the two sides during the hearing, and is therefore repeated verbatim below:

The Accused was given a full opportunity to respond to the claims in this matter, including the opportunity to appear at the hearing, the opportunity to call witnesses on his behalf, and the opportunity to cross-examine witnesses called by the Complainant. The Accused appeared at the hearing at 12:15 PM, having been given adequate prior notice that the hearing was scheduled to begin at 11:30 AM. The Accused, at the time that he was notified by the Office of the Dean of Special Student Services, gave no notice that he would not be able to be at the hearing at 11:30 AM as scheduled. Once at the hearing, the Accused stated that he was completing an examination that had started later than he had anticipated. The hearing had begun *ex parte*. The hearing was re-started when the Accused arrived, and he fully participated in the entire proceeding. The Accused asked questions of Dr. DeGannes. The Accused declined to call any witness to testify on his behalf. The Accused offered no documents in the record.

The documentary evidence and the testimony of the witnesses — including the admission of the Accused — support the conclusion that the Accused drafted the letter of recommendation, dated July 26, 2003. The evidence further supports the conclusion that the Accused drafted the letter in Dr. DeGannes' name and on behalf of Ms. Cao knowing that Dr. DeGannes had never met her. Knowing that Dr. DeGannes had never met Ms. Cao, the Accused knew or should have known that the contents of the letter of recommendation were false if represented, as they were in this matter, to be the statements of Dr. DeGannes. The Accused admitted to having caused the letter to be delivered to Ms. Cao for the purpose of her including it as a part of her application for medical school.

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The Accused admitted to engaging in some part of the pattern of dishonesty demonstrated by the documentary evidence and the testimony of Dr. DeGannes. The Accused acknowledges that it was dishonest for him to have produced the letter in the manner that he did. He then furthered the dishonesty by delivering the letter to Ms. Cao for the purpose that he knew that Ms. Cao would use it. Even under the version of the story that the Accused tells, he did not take reasonable care to ensure that Dr. DeGannes had consented to write a letter of recommendation for Ms. Cao. Instead, and again under his version of the events, the Accused submitted the letter in a manner that the Accused reasonably knew or should have known would lead to confusion rather than clarity and informed consent on the part of Dr. DeGannes. Hence, what the Accused admits to having done is sufficient to find that he has violated the *Code*, Section VIII, Sub-Section 12.

The evidence in this record, however, leads to conclusions and inferences of a more nefarious pattern of behavior on the part of the Accused. This Hearing Officer does not credit the Accused's claim that he spoke to Dr. DeGannes about the letter of recommendation. Nor does the Hearing Officer credit the theory of the Accused that Dr. DeGannes inadvertently signed the letter of recommendation. Dr. DeGannes denies that the conversation, on which the Accused relies, took place. On the other hand, Dr. DeGannes does recall the Accused asking Dr. DeGannes about the clerkship application. It is more likely than not that had the conversation included anything about the letter of recommendation, Dr. DeGannes would have recalled that as well. In addition, Dr. DeGannes has no motive to fabricate his testimony. The Accused, on the other hand, has every reason to present his pattern of behavior in the best light possible under the facts.

The Accused's claim that he submitted an unsigned letter of recommendation to Dr. DeGannes for his approval and signature along with the clerkship application forms is unsupported by the weight of the credible evidence. The clerkship application forms are dated July 7, 2003 and were signed by the Accused on that date. The letter of recommendation is dated July 26, 2003. The Instructions for Letters of Recommendation form is dated July 23, 2003. The Accused's explanation of how they came to be allegedly submitted at the same time, the different dates on the documents notwithstanding, is simply not credible.

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First, the Accused claims that he initially sought to submit the clerkship forms in early July, having been anxious to get the application process completed. Inexplicably, the Accused seeks the approval of the forms by Dr. Hassan instead of Dr. DeGannes on July 7th. The Accused offers no credible reason for him to have gone to Dr. Hassan about the clerkship application when it was Dr. DeGannes with whom he had spoken about the application. Be that as it may, the Accused would have this Hearing Officer believe that the Accused, upon learning on July 7th that he needed Dr. DeGannes' signature on the forms, the Accused did not submit the forms to Dr. DeGannes until mid-July — around July 26th.

The Accused's story with regard to the submission of the clerkship forms is internally inconsistent and not credible. When juxtaposed with Dr. DeGannes' testimony on this point, the story told by the Accused, completely lacks credibility. Dr. DeGannes explained that he recalled getting the forms in early July and without any letter of recommendation included with them. Dr. DeGannes testified credibly as to why he recalled his receipt of the forms and the manner of their processing. Again, this Hearing Officer finds no basis on which to discount Dr. DeGannes's version of the events. By the Accused's own admission, Dr. DeGannes has no personal animus against the Accused; therefore, no motive to craft a story that would hurt the Accused. On the other hand, the Accused is attempting to avoid sanctions for a serious violation of the *Code*.

Given the weight of the credible evidence in this record, there is no basis to credit the Accused's claim that he submitted the letter of recommendation along with the clerkship forms. There, moreover, is no evidence to support an inference that Dr. DeGannes, having allegedly received the forms and the letter in the same packet, *inadvertently* signed the letter of recommendation. To credit this story, the Hearing Officer would have to infer that Dr. DeGannes did not read the letter, which would have placed him on notice, that he was writing a letter of recommendation for a person whom he had never met. In the alternative, the Accused would have the Hearing Officer infer that Dr. DeGannes did read the letter, and even though he had never met Ms. Cao, nonetheless would make representations in the letter of Dr. DeGannes having ". . . interacted with her on numerous occasions." Under either of these circumstances, the Accused would have this Hearing Officer infer that Dr. DeGannes signed the letter of recommendation. There is no evidence in this record to support such inferences, and the Hearing Officer makes none of the kind.

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The denial of the Accused to the contrary, notwithstanding, the evidence supports the inference that the Accused did in fact deliberately place Dr. DeGannes['] signature on the letter without Dr. DeGannes' knowledge and/or permission. The Accused then caused the letter to be delivered by [sic] Ms. Cao for the purposes already stated. The evidence in this record supports only one conclusion—the Accused engaged in a pattern of dishonesty in creating the letter of recommendation including the forging of the signature of a faculty member, Dr. DeGannes. He is found guilty of having violated the Code, Section VIII, Sub-Section 12.

20. At the administrative hearing in the instant matter, Respondent made many of the same assertions he did during Hearing No. 1. Those assertions were found not credible for the same reasons set forth in paragraph 19, above.

21. Respondent also testified in the instant matter that he had been deprived of due process in connection with Hearing No. 1 in that he had been unable to review his file before the hearing, and that Hearing No. 1 began in his absence while he was taking a final examination. That testimony was unconvincing. Respondent was offered the opportunity to review his file in advance of the hearing, but he was in California at the time and was unable to do so. He did not request that a copy of the file be sent to him in California, and he did not review the file upon his return to Washington, D.C. Hearing No. 1 was initially scheduled for a date on which Respondent was unavailable. On his request, it was re-scheduled. After an additional brief continuance, the hearing began on a date that was agreeable to Respondent. Although he arrived at the hearing 45 minutes late because of his final examination, the hearing officer began the hearing again upon Respondent's arrival. Both Respondent and Dr. DeGannes testified and were subjected to cross-examination. At the hearing on the instant matter, Respondent claimed that the lack of due process prevented him from offering witnesses and/or documentary evidence at Hearing No. 1. However, he failed to elaborate on the identities of the witnesses he would have called, the documentary evidence he would have offered, or how such witnesses and/or documentary evidence may have changed the outcome of Hearing No. 1. He also did not explain why he failed to request or subpoena the presence of witnesses and why he did not have or request documents to offer into evidence. Thus, the evidence was devoid of any indication that the outcome of Hearing No. 1 may have been any different under other circumstances.

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22. Respondent testified in the administrative hearing in the instant case that he submitted the Cao letter of recommendation to Dr. DeGannes because he had heard from other students that Dr. DeGannes had previously signed recommendation letters for individuals he did not know, and that he was still willing to do so. However, Respondent lacked any first-hand knowledge of Dr. DeGannes actually having signed such a letter. If Respondent submitted the Cao recommendation letter to Dr. DeGannes for that reason, Respondent's conduct was even more egregious than it would otherwise have been because he was submitting a completely false letter to someone he knew would perpetuate the fraud. Respondent's testimony does not adversely reflect on Dr. DeGannes's character; it adversely reflects on his own.

23. However, Respondent's testimony regarding why he chose Dr. DeGannes as the purported author of the letter was inconsistent with an October 26, 2003 letter he wrote as an explanation of his conduct. In that letter, Respondent wrote in part:

Making the decision about which faculty member to ask was difficult, during my stay at Howard University there are [sic] few members I felt comfortable approaching with such a request. I choose [sic] Dr. DeGannes because he seemed like an open faculty member to me, someone I knew was a Howard Alumni [sic], someone I have had the opportunity to discuss my own career aspirations with and someone I felt comfortable [sic], much like a mentor to me.

24. Respondent made a similar statement during his testimony in Hearing No. 2:

If I had a second chance and I would do that over again and with the knowledge I have today, I would have submitted that letter of recommendation from my behalf, no other — no one else. Those statements in that letter of recommendation were from my own — my own personal experience and — and interactions with that student and I would have submitted them on my behalf and no other.

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25. Respondent also wrote the following in his letter of October 26, 2003:

I wrote Mrs. Cao [sic] letter, and used a couple of years of personal interactions with her to incorporate them into my own recommendations. Mrs. Cao has visited the University a couple of times with me and some of the items I include [sic] into my letter are from those accounts and through our own conversations regarding her career ambitions. The letter was intended to introduce Dr. DeGannes to Mrs. Cao and hopefully to stir interest from Dr. DeGannes to write his own letter of recommendation. I did not intended [sic] for my letter to serve as the sole letter to be forwarded to anyone else or to be used in anyway [sic] besides by Dr. DeGannes.

26. If what Respondent wrote in the letter quoted in paragraph 25, above, is true, it belies his testimony. However, it is unlikely that it is true since (1) Respondent wrote the letter on university letterhead indicating an intent that the letter be signed and mailed; (2) Respondent completed the letter with a signature block for Dr. DeGannes's signature; and (3) the letter included false statements concerning actual interactions between Ms. Cao and Dr. DeGannes, including Ms. Cao's work in Dr. DeGannes's "clinic."

27. During the hearing in the instant action, Respondent testified that he was not accused of forging Dr. DeGannes signature but only his "name." That testimony was not credible. The record is rife with Respondent's references to the fact that he was accused of forging Dr. DeGannes's signature. Further, it is illogical that Respondent would have been accused of forging Dr. DeGannes's "name." If the name was something other than the signature, it would have been part of the printed letter, either in the text, letterhead or signature block, and would therefore have been part of the overall falsity of the letter rather than a specific "forgery."

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28. Rather than fully appreciating the extent and egregious nature of his dishonesty, Respondent seems to feel that Dr. DeGannes betrayed him by entering into an agreement with him to sign the letter of recommendation for Ms. Cao and then denying any knowledge of it. During Hearing No. 2, Respondent was asked what lesson he had learned from the experience involving the Cao recommendation letter. Respondent answered:

As to what I've learned? I've learned that you have to be very, very, very wary of the people that you trust because they have a great deal of influence and a great deal of power over you that you're not aware of at that time. Yes, I — I — I — I was found guilty of something. Today before you, I — I — I still plead my innocence. I mean, it's unfortunate that it has gone to — I mean — I mean — I mean it has come to this point, but I have learned that you have to be very critical of gray areas and areas that could be viewed as very — as be — be viewed as, you know, inappropriate. I stay away from those areas. If — if all possible, do not lend yourself to any areas of — of — of scrutiny. Do not stick your head on the line if you're not willing to — you know, I guess to fulfill something. I — I should have been more diligent with the faculty member that brought these charges against me so we had a clear understanding of things. I guess I was a little bit — I guess I — I — I let things run its — its course and I — I should have followed through with our agreement. I should have been more diligent to make sure we had a clear understanding of what I wanted from him and what was expected from him and what he was willing to, I guess, to provide me with. And unfortunately, I — I — you know, I wish I would have done that. It would have made things a lot easier for both of us. And some of the choices that I made were — I mean, I guess I would — I would not make them again.

29. When asked during the administrative hearing in the instant case what he had learned from the experience, Respondent's initial answer was not that he should have been more honest, but that he learned not to trust people. He claimed he had placed his faith into someone he trusted and "only got remorse for it." He then acknowledged that he had made mistakes, but that he would not make them on his patients or compromise patient safety.

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## Mitigation

30. Respondent is a veteran of the United States Navy from which he was granted an honorable discharge in July 1994.<sup>4</sup>

31. During medical school, Respondent volunteered in a program designed to assist physicians who were training to serve underserved populations. Respondent also trained for that service and treated patients through the program.

32. Respondent is one of six children. He grew up in a single family home. He has been married for 10 years and has three children. Respondent and his family reside in Madera, Ohio. He and his wife are in the process of adopting another child, and are attempting to gain custody of one of their minor relatives.

33. Respondent's application for a physician's license is pending in Ohio. He has been granted an MD Training Certificate in Ohio which has enabled him to practice medicine in that state in a training capacity. Respondent is presently a third year resident at Jewish Hospital in Cincinnati, Ohio. He has seen and treated thousands of patients without incident or complaint.

34. Respondent offered several character reference letters which were admitted into evidence as "administrative hearsay" pursuant to Government Code section 11513, subdivision (d). The consensus of the letters' authors is that Respondent is a skilled, ethical and caring physician. One author corroborated Respondent's testimony that Respondent would have been offered a chief residency position had he been granted licensure in California. Few of the authors, if any, referred to the discipline he suffered at Howard University for his dishonest acts. Therefore, references to Respondent's honesty and/or integrity contained in the letters are given minimal weight.

## LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following Legal Conclusions:

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<sup>4</sup> Much was made at the hearing about Respondent's testimony that the main reason he joined the U.S. Navy was to obtain money for medical school. However, Respondent's motives for joining the military do not besmirch his honorable service to his country.

1. Cause does not exist to deny Respondent's application pursuant to Business and Professions Code sections 475, subdivision (a)(2) and 480, subdivision (a)(1), for conviction of a crime, as set forth in Findings 3, 4, 5, 6 and 7. The crime of which Respondent was convicted is not substantially related to the qualifications, functions or duties of a physician and surgeon. (Cal. Code Regs., tit. 16, § 1360.)

2. Cause exists to deny Respondent's application pursuant to Business and Professions Code sections 475, subdivision (a)(1) and 480, subdivision (c), for making a false statement on an application for physician's and surgeon's license, as set forth in Findings 3, 4, 5, 6, 7, 8, 9 and 10.

3. Cause exists to deny Respondent's application pursuant to Business and Professions Code sections 475, subdivision (a)(3) and 480, subdivisions (a)(2) and (3), for commission of dishonest, fraudulent or deceitful acts, as set forth in Findings 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29.

4. While he was a fourth year medical student, Respondent engaged in an egregious pattern of dishonesty designed to mislead personnel from two medical schools. He conceived of the idea of a false letter of recommendation for his friend that he would write, sign and send. He then acted on his idea by taking Howard University School of Medicine letterhead, writing the letter under that letterhead in a manner that would lead the reader to believe it had been written by a professor from that medical school, forging the professor's signature both on the letter and, as was the professor's custom and practice, on the back of the envelope, and then mailing the letter, all without the professor's knowledge and consent. Neither Dr. DeGannes nor anyone else at the medical school would have become aware of Respondent's dishonest acts had the letter not been returned to Dr. DeGannes because of a faulty address.

5. As indicated above, Respondent claimed Dr. DeGannes was aware of the plan and agreed to sign the letter of recommendation even though he had never met or spoken with the individual on whose behalf the letter was drafted. Respondent further claimed that he chose Dr. DeGannes for the task because he had learned from other students that Dr. DeGannes had signed, and was still willing to sign, such letters. If his testimony was true, Respondent's conduct was even more egregious than it would otherwise have been and adds an additional layer to his dishonesty by virtue of his exploitation of another's willingness to engage in dishonest and fraudulent conduct.

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6. However, simple logic belies Respondent's claims. Had Dr. DeGannes known about the letter and either signed it or permitted Respondent to forge his signature on it, when it was returned to him, Dr. DeGannes would have prepared another envelope, this time with a proper address, and mailed the letter again. If he had been aware of the plan for the letter but signed the draft inadvertently, upon its return, he would have made any needed corrections, printed the letter on his individual letterhead, and re-mailed it. No one else at the medical school would have learned of the plan for the fraudulent letter.

7. But Dr. DeGannes did neither. Upon discovering that a letter bearing his purported signature had been sent without his knowledge or consent, he confronted Respondent and then filed a formal complaint against him. He then testified against Respondent at Hearing No. 1, thereby exposing himself to possible sanctions by the university if the hearing officer believed Respondent's story over his. The fact that Dr. DeGannes stepped forward, exposed the fraud, and risked his academic career and his professional reputation, evinces the accuracy of his version of events.

8. Both during the disciplinary action at Howard University School of Medicine, and during the administrative hearing in the instant matter, much was said about whether Respondent forged Dr. DeGannes's signature on the letter, whether Dr. DeGannes inadvertently signed the letter, or whether Dr. DeGannes intentionally signed the letter. The hearing officer in the former hearing, and the Administrative Law Judge in the latter, both found that Respondent forged Dr. DeGannes's signatures. However, the finding that he did so does nothing more than add another layer to Respondent's dishonesty. Even if Respondent had not signed the letter, he committed dishonest acts writing a letter he knew to be completely false and submitting it to Dr. DeGannes for his signature.

9. Approximately three years after he was disciplined for dishonesty by his medical school, Respondent filled out an application for licensure as a physician and surgeon in California. He again committed a dishonest act by omitting a criminal conviction he was required to disclose. He subsequently offered to the Board at least one untrue reason for his failure to disclose the conviction.

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10. Respondent's claim that he has never placed a patient at risk and would never jeopardize a patient through an act of dishonesty, albeit laudable, does not warrant the issuance of a physician's and surgeon's license in light of the factual findings in this case. A physician's dishonesty need not be related to patient care to render him/her unfit for medical practice. In *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, the court stated:

First of all, we find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government out of \$65,000 in taxes may yet be considered honest in his dealings with his patients. In this connection, however, we should point out that today's doctor deals financially with the government—state, local and federal—in many ways that have nothing to do with his own personal tax obligation . . . Above, all, however, there is the relation between doctor and patient. It is unnecessary to describe the extent to which that particular relationship is based on utmost trust and confidence in the doctor's honesty and integrity. (*Id.* at 470.)

11. In *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578 [146 Cal.Rptr. 653], the court stated:

There is no other profession in which one passes so completely within the power and control of another as does the medical patient.

12. Those words were cogently interpreted by Dean of Special Student Services at Respondent's medical school when she wrote to Respondent:

The role of physician is arguably the most trusted of any other profession in virtually every society on earth. A physician's ability through training and experience to make life and death decisions for people is a power that must also be grounded in ethics that are beyond reproach. The importance of ethics in the field you seek to enter cannot be overstated.

13. Respondent has been well-trained to be a conscientious, skilled and caring physician. However, he has demonstrated a penchant toward dishonesty and a willingness to use dishonest methods to achieve his desired goals. Such are characteristics antithetical to those sought by the Board for its licensed physicians. Perhaps time and effort will enable Respondent to rehabilitate himself and overcome these negative characteristics, but for now, Respondent is not a suitable candidate for medical licensure in California.

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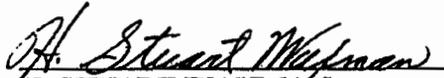
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**ORDER**

**WHEREFORE THE FOLLOWING ORDER is hereby made:**

The application of Respondent, Andrew J. Castellanos, for a Physician's and Surgeon's license, is denied.

DATED: February 6, 2008



H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings