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**MINUTES**

**THE STATE MEDICAL BOARD OF OHIO**

**January 11, 2006**

Andrew F. Robbins, Jr., M.D., President, called the meeting to order at 1:08 p.m., at the Vern Riffe Center for Government and the Arts, 77 S. High St., Columbus, Ohio 43215, Room #1932, with the following members present: Deepak Kumar, M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Carol L. Egner, M.D.; Nandlal Varyani, M.D.; David S. Buchan, D.P.M.; R. Gregory Browning, Ph.D.; Anquetette Sloan; Patricia J. Davidson, M.D.; Kamala Saxena, M.D.; and Anita M. Steinbergh, D.O.

Also present were: Richard A. Whitehouse, Executive Director; Diann K. Thompson, Assistant Executive Director; Lori S. Gilbert, Assistant Executive Director; Rebecca J. Marshall, Chief Enforcement Attorney; Mark R. Blackmer, David P. Katko, Karen H. Mortland, Marcie P. Pastrick, Kathleen S. Peterson, William J. Schmidt, Angela Scott, Charles A. Woodbeck and Lynn Zondorak, Enforcement Attorneys; Kyle C. Wilcox, Damion M. Clifford, and Barbara Pfeiffer, Assistant Attorneys General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Chief, Executive Staff; Sallie J. Debolt, Executive Staff Attorney; Danielle Bickers, Compliance Officer; Barbara Jacobs, Public Services Administrator; and Jacqueline A. Moore, Disciplinary Information Assistant.

EXECUTIVE SESSION

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

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye

The motion carried.

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

The following joined the meeting after the executive session: Patricia A. Davidson and Sharon W. Murphy, Hearing Examiners.

MINUTES REVIEW

**MR. ALBERT MOVED TO APPROVE THE MINUTES OF DECEMBER 14-15, 2005.  
DR. VARYANI SECONDED THE MOTION.** A vote was taken

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye

The motion carried.

PRESENTATION OF PRESIDENT'S PLAQUE

At this time Dr. Robbins noted that the year 2005 was an incredible year of change for the Board. He stated that the Board was fortunate to have Dr. Davidson at the helm during the past year, and added that he thinks that the entire Board feels as strongly as he does that Dr. Davidson did yeoman's work in keeping things moving in a significant direction, and in overseeing the incredible changes that did develop. Dr. Robbins commented that the Board was very fortunate to have Dr. Davidson's leadership.

At this time, Dr. Robbins presented a plaque, acknowledging Dr. Davidson's year as president of the Board.

Dr. Davidson was recognized by the Board with applause.

REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Rashid Ayyub, M.D.; Robert S. Coleman, Jr., M.D.; and Miguel Angel Marrero, M.D. A roll call was

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taken:

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

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

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

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

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

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

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RASHID AYYUB, M.D.

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

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF RASHID AYYUB, M.D. DR. KUMAR SECONDED THE MOTION.**

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

Dr. Buchan stated that Dr. Ayyub appears to be an accomplished individual, but he doesn't meet Ohio's standards for licensure in that he hasn't completed an acceptable examination sequence. The Board therefore doesn't have jurisdiction to grant Dr. Ayyub a license. Dr. Buchan spoke in support of the Proposed Order.

Mr. Browning agreed, stating that this was a pretty straightforward case.

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

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

The motion carried.

ROBERT S. COLEMAN, JR., M.D.

Dr. Robbins directed the Board's attention to the matter of Robert S. Coleman, Jr., M.D. He advised that objections were filed to Hearing Examiner Davidson's Report and Recommendation and were previously distributed to Board members.

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

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

Mr. Byers advised that both Dr. Coleman and his wife are present today to appear before the Board. He stated that he hopes that the Board has had a chance to earnestly consider the objections filed and the totality of the record and the Report and Recommendation in this case. Mr. Byers stated that he trusts that the Board will take its time deliberating in this matter and will listen to Dr. Coleman and consider everything that he has to say.

Dr. Coleman at this time addressed the Board. He stated that he appreciates the time the Board has given him today. He stated that it is very humiliating and embarrassing to have to sit before the Board to defend charges of deception against him. He has great pride in his integrity and honesty and to have to defend these qualities in public is quite humbling and stressful.

Dr. Coleman apologized for the misunderstandings that have caused this problem. In no way did he attempt to deceive or mislead either North Carolina or Ohio. He's worked too long and too hard to risk throwing it all away over something that happened over ten years ago. Dr. Coleman stated that he simply answered the question on the renewal card "at face value," and responded as a non-legally trained individual. He commented that the first time the word, "allegation," became part of his vocabulary was when the Medical Board sent him its initial notice this past July. Dr. Coleman stated that he never thought that answering the question the way that he did would have him in front of the Board three years later.

Dr. Coleman stated that he realizes that the Board has an obligation to fulfill its legal duty by reviewing the details of his North Carolina denial, and his Ohio renewal card information. He added that he's fully aware of the Board's authority to render an adverse action, based solely upon the North Carolina denial. Dr. Coleman stated that he would simply ask for an outcome that is based just on the North Carolina denial and fairly considers all of the circumstances.

Dr. Coleman stated that the issue before the Board today is his fault. He is to blame for the way he answered the question, and for that he is deeply apologetic. However, he did not intend to mislead the Board and he was not trying to hide anything. He and his wife talked about the question when filling out the renewal card, and they could not find where being denied in North Carolina fit into the answer, "yes." He had no idea that a Board could file allegations or charges against him when he did not hold a license in that State. Dr. Coleman stated that he had no idea that the letter from North Carolina was informing him of allegations against him. He interpreted it as reasons he was denied, which is what the letter said. Dr. Coleman stated that he knows that the North Carolina denial was not confidential and that he could not hide or ignore it. After North Carolina denied his application for licensure, he drafted a letter that he has sent in with all applications that ask whether he's ever been denied a license.

Dr. Coleman asked the Board to allow him to continue to practice the profession that he dearly loves with a sincere passion, and without punitive suspension.

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Dr. Coleman again thanked the Board for its time, and added that he has received fair and dignified treatment so far. He stated that he is hopeful of leaving today with his ability to practice unencumbered. Dr. Coleman stated that he would answer any questions Board members may have.

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

Mr. Wilcox stated that he believes that the Hearing Examiner in this matter did a thorough job of laying out the facts in this case. The Board has before it the documents in question, and he believes that the Board members can, using their own judgment, decide whether they were open to any other interpretation. Dr. Coleman cannot deny, and he did not deny at hearing, that he'd been dismissed, which was later modified to a suspension, from the University of Health Sciences in Kansas City, MO. Mr. Wilcox noted that Dr. Coleman acknowledged that he received a letter from the president of the school that notified him of this action on January 20, 1992. This letter is part of the record, and he's sure that Board members have examined it. Mr. Wilcox stated that Dr. Coleman's explanation that he never served the suspension because he withdrew from school does not deny the fact that the suspension did, indeed, occur.

Mr. Wilcox stated that one would think that the trauma involved with being expelled, and then later modified to a suspension from medical school would resonate with a physician for many years. The language in the North Carolina application question was precise and clear regarding whether he had ever been suspended, placed on probation or expelled from medical school. His answer, "no," was clearly wrong. Mr. Wilcox added that he believes the answer was clearly made with an intent to deceive. Again, with Dr. Coleman's Ohio renewal application, his answer denying any charges being filed by any board is clearly a misrepresentation that Mr. Wilcox believes was intended to mislead the Ohio Board.

Mr. Wilcox stated that he will admit that Dr. Coleman did come across very well at hearing. He seems to be very committed to his profession; and his service regarding training of paramedics, which was his former profession, is commendable. Mr. Wilcox stated that the problem with Dr. Coleman is that his deceptive behavior on important documents has occurred on two separate occasions. Mr. Wilcox stated that he believes that this shows the development of a pattern of deception that needs to be addressed by this Board. Mr. Wilcox stated that suspension is warranted in this case, and he believes that Hearing Examiner Davidson's proposed suspension of six months is appropriate.

**DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF ROBERT S. COLEMAN, JR., M.D. DR. STEINBERGH SECONDED THE MOTION.**

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

Dr. Kumar stated that there are a couple of facts that are indisputable. The first is that Dr. Coleman did not answer a question correctly on his Ohio renewal application, pertaining to his North Carolina action. It's also undisputed that Dr. Coleman was suspended from medical school, although Dr. Coleman did try to wordsmith it by calling it a transfer and leave of absence.

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Dr. Kumar stated that, at the same time, the Board had that information when it granted Dr. Coleman a license. The Board knew that Dr. Coleman had been suspended from medical school, and did grant him a license without taking any other action. Dr. Kumar stated that that could very easily lead someone who is not in the legal profession to understand and recognize that that answer was acceptable.

Dr. Kumar stated that one thing is very clear to him: Dr. Coleman does need to be given a sanction including, at least, probation, professional and personal ethics courses, and some degree of suspension. Dr. Kumar stated that he does not support imposing a stayed, permanent revocation in this case, and he added that a six-month suspension is a little bit lengthy for this case. Dr. Kumar suggested a suspension of about three months, and the probationary terms proposed by the Hearing Examiner.

Dr. Steinbergh stated that it's very difficult for this Board to understand how a physician, who is going to make life and death decisions about patient care, can misinterpret, not understand, or not accept responsibility for a fraudulent application. There was no question that Dr. Coleman was suspended from medical school. Once you're suspended, you're suspended. You can leave, but the suspension always follows. You can never erase that. You can never erase the fact that the application to North Carolina was fraudulent, and you can't erase the fact that North Carolina denied licensure. Once you are denied licensure, you can't walk away from that. That has legal implications. Dr. Steinbergh stated that the Report then goes on to demonstrate fraud on application for renewal of a license. Dr. Steinbergh stated that those who deal with this day after day do understand this. She stated that she also understands that there are times when young people clearly don't understand the ramifications, or that, with current technological developments, the Board knows about these things very shortly after. It's the Board's responsibility to find these things. Dr. Steinbergh stated that it's always very sad when a young person gets caught up like this.

Dr. Steinbergh stated that she agrees that this is a person who has been dishonest. There's no question in her mind that Dr. Coleman will learn by this experience. Dr. Steinbergh stated that, in general, she does agree with the Proposed Order; however, she does agree that it would be appropriate to remove the language of stayed permanent revocation, because she thinks that that is severe in this case.

Dr. Steinbergh continued that, in regard to the suspension, she would agree with either proposal. She added that she doesn't think a suspension of 180 days is unreasonable in this case. She added that the probationary terms are appropriate. Dr. Coleman will get a sense of the activity of the Board through this probation, as well as of his personal responsibility to licensure. Dr. Steinbergh stated that getting a medical degree is something a physician achieves academically, but practicing medicine is a responsibility to a license that you have. It does not come automatically with a degree. One has to demonstrate professionalism in all areas, and to date this young man has not.

Dr. Steinbergh again stated that she would support an amendment removing the permanent revocation language.

Dr. Buchan stated that he has to take a different tack from his colleagues who wish to be more lenient in

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this case. He stated that he believes that there is a pattern represented here. The Board members understand as a licensing body that GPA and MEDCAT scores matter, but they're not the number one issue of what determines a good physician. The number one criterion by which the Board evaluates physicians and understands them to be good is character. When he read this case, he was disturbed that the Board did not reflect on how it dealt with that biology exam back in medical school. Then the Board proceeded to hit another strike in North Carolina. It was blatant; there was no misunderstanding. Then Ohio went and took a third strike. Dr. Buchan stated that the pattern of behavior is disturbing to him, and leniency is not in his heart today. Dr. Buchan stated that he thinks that the Proposed Order, as written, is appropriate. He added that he could, quite honestly, move in another direction. Dr. Buchan stated that he's not convinced that this behavior won't be repeated.

Dr. Egner stated that she believes she is in agreement with Dr. Buchan on this case. Her difficulty is that this all starts with something that happened in medical school. She stated that she's always hesitant to brand somebody for life for what they did when they were younger and less mature; but since that time, Dr. Coleman's falsely answering the questions on the North Carolina and Ohio applications does show a pattern of behavior that is questionable. Dr. Egner stated that this does go to Dr. Coleman's case. She noted that today he presented himself extremely well and seems very remorseful. She stated that she does believe that he will learn from this and she doesn't want to take away his experience of practicing forever, but she does think that what he's done is serious.

Dr. Kumar stated that one of the reasons he felt some degree of leniency is appropriate is that when Dr. Coleman initially applied, he answered the question very vaguely. The Board then granted him a license. The Board did investigate and it did have the correct information, and it didn't take any action at that time. Dr. Kumar stated that that could make someone feel that the way he answered the question was appropriate. Dr. Kumar added that there is no question that there was a pattern of deceit, but since the Board didn't take any action before, the stayed permanent revocation is too harsh.

**DR. KUMAR MOVED TO AMEND PARAGRAPH A OF THE PROPOSED ORDER BY REMOVING THE PERMANENT REVOCATION LANGUAGE. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- abstain
	Dr. Varyani	- nay
	Dr. Buchan	- nay
	Dr. Kumar	- aye
	Mr. Browning	- abstain
	Ms. Sloan	- nay
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

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The motion carried.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF ROBERT S. COLEMAN, JR., M.D. DR. KUMAR SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- nay
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- abstain
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

The motion carried.

MIGUEL ANGEL MARRERO, M.D.

Dr. Robbins directed the Board's attention to the matter of Miguel Angel Marrero, M.D. He advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

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

Dr. Marrero was accompanied by his attorney, Terri-Lynne Smiles.

Ms. Smiles advised that she knows that the Board really wants to hear Dr. Marrero and what he has to say, but she wants to make a few points first. She noted that this is a bootstrap action from Pennsylvania. The Pennsylvania Board did not suspend Dr. Marrero at all. It imposed a fine, with no time out of practice. In light of that, as well as in light of this Board's history of the way it has handled similar cases, the recommendation of permanent revocation is inappropriate. It really should not apply in this case. This is not a situation that is anywhere near the severest call for that sort of penalty.

Ms. Smiles stated that the second point she wants to make is that the Pennsylvania report read a bit like a script for a soap opera. She asked that the Board look at the actual operative facts in this case:

Dr. Marrero did not see KT, his current wife, as a patient after June 1999. Beyond that, if you construe all

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of the evidence in the worst possible way for Dr. Marrero, what you come up with is that they did not begin to have an affair until sometime after that point, perhaps August 1999. Dr. Marrero and KT, who are the ones who ought to know, have consistently maintained throughout this and through Pennsylvania proceedings that they did not begin their relationship until the middle of 2000. Ms. Smiles asked that the Board keep those facts in mind as it considers this matter.

Dr. Marrero stated that his wife is with him today. Dr. Marrero apologized for his personal life coming before the Board today. He thanked the Board for the opportunity to address it. Dr. Marrero stated that he doesn't contest the fact that the Pennsylvania State Medical Board took an action against his medical license in Pennsylvania; however, that action is currently on appeal in the Pennsylvania court system. A final adjudication order has not been entered in this specific case. Dr. Marrero stated that he also understands that the fact that the Pennsylvania Board has acted gives the Ohio Board the ability to discipline him.

Dr. Marrero asked that the Board use its discretion in this matter. He has never taken advantage of his role as a physician to influence any patients for his own personal goals. He has never had sexual relationships with any patients. He did not exert any undue influence over KT for her to become romantically involved with him. Their marriage this past year is a testament to that. Dr. Marrero stated that he appreciates that close, personal relationships can cloud a physician's mind and judgment. That is why he does not provide medical treatment for KT, and has not since their romantic relationship began. He has renewed three prescriptions for her when her regular physicians were not available, but that was only on an emergency basis and has not been an ongoing pattern.

Dr. Marrero stated that he does contest many of the facts and conclusions of the Pennsylvania matter that have been adopted by the Hearing Examiner in this matter. The effect is to create an impression of him as an unethical, playboy physician. Dr. Marrero stated that he deeply regrets that his actions would lead to this interpretation. Dr. Marrero asked that the Board look beyond that mistaken impression and see who he really is: A human being, person, who is deeply committed to his family, his patients and his profession. He asked that the Board take this into consideration in deciding this matter.

Dr. Marrero stated that he would be happy to answer any questions Board members might have.

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

Ms. Pfeiffer stated that she appreciates Dr. Marrero's and Ms. Smiles' comments about this case not being the more traditional case where you have an extremely vulnerable patient, or a history of many patients being taken advantage of. Dr. Marrero has, in fact, married the patient who allowed herself to be identified. She wasn't trying to keep herself confidential, and is with him today. Ms. Pfeiffer stated that it is all those factors that, to her, make her wonder why he and his wife came in and why they weren't honest with this Board about their relationship. She stated that the most troubling aspect of this case is what she believes to be the lack of credibility of both Dr. Marrero and KT.

Ms. Pfeiffer stated that she would like to quote a little bit from some of the evidence. A few sentences of

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the Pennsylvania adjudication order are pretty compelling:

(Dr. Marrero) and KT are not found to have provided credible testimony. Motive and conflicting evidence belies the reliability of their testimony and contravenes documentary evidence proffered by the Commonwealth. The documentary evidence speaks for itself. (Dr. Marrero) admitted to having an affair with KT in one venue,...

Ms. Pfeiffer stated that that venue was in a Domestic Relations Court, after their relationship had begun. Dr. Marrero testified that the affair began in August 1999 and that the sexual relationship was ongoing. She continued reading:

yet denies so in a venue with differing impact (i.e., the Medical Board in Pennsylvania) and consequence. (Dr. Marrero) left a phone voicemail message stating that he was having an affair with KT prior to the claimed termination of the doctor patient relationship.

Ms. Pfeiffer stated that she would like to focus on the last couple of months of 1999 and what the evidence showed. The testimony was clear that near the end of 1999 both Dr. Marrero, who was married with four children of his own, and KT, who was married with four children of her own, were simultaneously experiencing marital difficulties. Ms. Pfeiffer stated that she is sure that the decision to leave their marriages was one to which they gave a lot of thought. In September 1999, KT accompanied Dr. Marrero, for the first time, to a conference in Toronto. They acknowledge going to dinner together; they acknowledge there was a picture taken of them with their hands together. In October 1999, KT tells Dr. Marrero that she is going to resign. Dr. Marrero also testified that sometime in October or November 1999, KT came to him and told him that her husband wants her to terminate her employment and cut all ties with him. Dr. Marrero acknowledges that in his testimony. Dr. Marrero stated that he doesn't remember what he said to her, and he didn't know why her husband wanted her to terminate the relationship. Ms. Pfeiffer stated that this lends to the non-credibility of their testimony.

Ms. Pfeiffer continued that in November 1999 Dr. Marrero filed for divorce. Shortly thereafter, on December 3, KT and Dr. Marrero had a big argument. KT quit and Dr. Marrero left a nasty message for her husband, the gist of it saying that they've been having an ongoing affair for the past year.

Ms. Pfeiffer stated that one thing she would like to point out about that is that, in the testimony, Dr. Marrero said that he left this message for KT's husband for the reason that he was upset that she was leaving. Ms. Pfeiffer said that Dr. Marrero's attorney asked why he left the message for KT's husband. Dr. Marrero responded:

Yeah, I remember that. We had a big argument. She had a big argument with me. She was upset about many things and so was I. And she quit at that point.

And I was very upset and just to – against, you know, my good judgment, I just call her husband at the time and I left this nasty message that, basically, give the idea that we

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have been having a relationship, you know, sexual relationship for a long time when that was not really true.

And in retrospect that was kind of like me being vindictive in a way because when she left – see, she was the only one who knew the billing system there. I was – I was going to be crushed financially...

Ms. Pfeiffer stated that, basically, Dr. Marrero is saying that he left this message because he was upset because KT was going to leave. KT's testimony before the Hearing Examiner, however, was a bit different on this issue. When asked whether she ever heard the message, KT responded that she did. She was able to say what the contents of the message were, and she recognized Dr. Marrero's voice. When asked what her reason had been for resigning in December 1999, KT responded that she and Dr. Marrero had argued, that Dr. Marrero told her that he left the message, and so she resigned. When asked whether KT was saying that she knew that Dr. Marrero left the message before she resigned, KT responded that she did. Ms. Pfeiffer stated that this is another example of the lack of credibility of these two witnesses. Ms. Pfeiffer suggested that things weren't going well, Dr. Marrero finally filed for divorce in November, KT's husband is trying to pull her back into that family relationship, and things blew up. She stated that she thinks that that's what culminated in December 1999.

Ms. Pfeiffer stated that she also thinks that the testimony is clear that KT was still in a physician/patient relationship with Dr. Marrero at this time. He did, by her own testimony, prescribe three medications subsequent to June 1999. Ms. Pfeiffer stated that she's unsure what the "emergency" nature was for KT's acne prescription. KT's own testimony was that Dr. Marrero did issue three prescriptions: Prozac, birth control, and an acne medication. She commented that KT testified that each of these had to be refilled over the weekend. Ms. Pfeiffer commented that KT worked in the doctor's office and should know when her medications were about to expire or run out. You plan ahead and get those prescriptions filled. Ms. Pfeiffer stated that this just goes to the lack of credibility of these two witnesses.

Ms. Pfeiffer stated that she's deeply troubled by the fact that Dr. Marrero didn't come in and acknowledge what happened, take responsibility and take their lumps.

**MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. MURPHY'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF MIGUEL ANGEL MARRERO, M.D. DR. KUMAR SECONDED THE MOTION.**

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

Dr. Egner stated that when Ms. Smiles stated that this case reads like a soap opera, she disagrees; she stated that she believes a soap opera would be easier to follow. Dr. Egner stated that she read every bit of testimony, everything in this case, and she still doesn't have a clear idea of exactly what happened and what went on. You can only conjecture. Dr. Egner stated that she thinks that there's a reason why the Board doesn't have a clear idea of what went on and when things happened, and that's because Dr. Marrero and KT have lied. They've lied about details of their relationship, their physician/patient

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relationship, and the prescriptions that were written for so long, she doesn't know where the truth is. Since Dr. Marrero is the only one about whom the Board is concerned, she will confine her comments to him.

Dr. Egner stated that there are many things that make absolutely no sense to her. Dr. Marrero completely denies a physician/patient relationship, but admits to writing prescriptions. Dr. Egner asked whether that isn't a physician/patient relationship. Yet, there is no remorse or no explanation for this, except to say that they were emergency prescriptions. Dr. Egner stated that they were not emergency prescriptions. She added that a reasonable person, a reasonable physician would not find that these were emergency prescriptions.

Dr. Egner continued that, as far as when his relationship began with KT and whether she was still a patient, the Board would have to find that she absolutely was a patient because Dr. Marrero testified to that fact, under oath, at a different court proceeding. His denial of that now shows that Dr. Marrero lies and has a significant character flaw as a physician. Dr. Egner commented that Dr. Marrero's testimony that he left a message for KT's husband, telling him that they were having an affair, because he was concerned about the billing practices in his office was the most ludicrous thing she's ever heard. No one in his or her right mind would do that or make something up like that if there wasn't some other alternative motive.

Dr. Egner stated that this whole case comes down to Dr. Marrero's character, and it's a terrible character. Is it a character that this Board wants for a physician practicing in Ohio? She doesn't think that it is. Dr. Egner stated that the Report and Recommendation is appropriate, and if the Board doesn't go with this, she hopes that it goes with something that is significant.

Dr. Steinbergh stated that she doesn't really disagree with Dr. Egner. Her interpretation of this case was very similar. It was very confusing because there was a lot of dishonesty. Dr. Marrero was a very unprofessional physician. Regardless of the timing of the affair or any of these other circumstances, Dr. Marrero has demonstrated that he's very unprofessional in his behavior. Dr. Steinbergh stated that what concerned her also about this physician/patient relationship is that Dr. Marrero not only had a relationship with KT, he had a relationship with her husband as well, in the sense that Dr. Marrero was an infertility physician, dealing with them as a couple, dealing with their discussions with regard to their infertility, and treatment for their infertility. Dr. Steinbergh stated that Dr. Marrero violated the family relationship, which went beyond the fact that she was an obstetric or gynecologic patient. Dr. Steinbergh stated that this offended her a great deal.

Dr. Steinbergh continued that she would also disagree with a comment that was made in Dr. Marrero's objections. Ms. Smiles gives examples of what she feels are more egregious cases of sexual boundary issues. In the case of Dr. Heyd, Ms. Smiles indicates that the Board suspended Dr. Heyd for 60 days for having sex with a patient. Ms. Smiles states in the objections that, "(a)fter breaking off the affair, Dr. Heyd diagnosed her pregnancy and coerced her into having an abortion." Dr. Steinbergh stated that she does not believe that that was the opinion of the Medical Board. Dr. Steinbergh stated that she was offended by that language in the objections, because she suspects that this case will be appealed and that language might be misleading to a court. The Board did not find what Ms. Smiles alleged.

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Dr. Steinbergh stated that she was very discouraged by this case, but did not feel that it rose to the level of permanent revocation. She stated that she would like to offer an alternative order. Dr. Steinbergh stated that her proposal is to suspend Dr. Marrero's certificate for an indefinite period of time and that conditions for reinstatement or restoration of his license would require some of the usual things: reapplication; demonstration of unrestricted license in the state of Pennsylvania; besides the course required by Pennsylvania, he must complete a course in both personal and professional ethics; demonstrate additional evidence of fitness to return to practice if he has not been engaged in the active practice of medicine for a period in excess of two years prior to application; and the usual requirements of reporting to other state licensing authorities, employers and hospitals. Dr. Steinbergh stated that she would ask that the Order become effective immediately upon mailing.

Dr. Robbins asked whether Dr. Steinbergh is recommending a stayed revocation.

Dr. Steinbergh stated that she is not. She would not disagree with the use of the term "stayed permanent revocation."

Dr. Egner asked whether Dr. Steinbergh is suggesting a minimum period of time for the suspension.

Dr. Steinbergh stated that she's not. She stated that she would simply suspend Dr. Marrero until he gets done with Pennsylvania and he has an unrestricted license there. Other conditions would be that he would take these other courses and meet the other standards.

Dr. Buchan noted that Dr. Marrero has approximately two years of probation in Pennsylvania. That would essentially restrict Dr. Marrero's ability to gain Ohio licensure for two years.

Dr. Steinbergh stated that that is correct. She noted that Pennsylvania is different from Ohio in that they fine. Ohio does not have fining authority, so its Board Orders may seem somewhat more severe. She added that she believes that Dr. Marrero has served one year of the two-year probationary term in Pennsylvania.

Dr. Kumar stated that he would concur with Dr. Steinbergh's suggestion, although he would like a stayed permanent revocation in place. He sees this case as being a lot more egregious, with Dr. Marrero's being untruthful in his testimony.

**DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF MIGUEL ANGEL MARRERO, M.D., BY SUBSTITUTING THE FOLLOWING:**

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Miguel Angel Marrero, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Marrero's certificate shall be SUSPENDED for an indefinite period of time.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall

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not consider reinstatement or restoration of Dr. Marrero's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration**: Dr. Marrero shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Obey the Law**: Dr. Marrero shall obey all federal, state, and local laws, all rules governing the practice of medicine and surgery in the state in which he is practicing, and all terms of probation imposed by the Pennsylvania State Board of Medicine.
3. **Evidence of Unrestricted Licensure in Specific State**: At the time he submits his application for reinstatement or restoration, Dr. Marrero shall provide the Board with acceptable documentation evidencing his full and unrestricted licensure in the State of Pennsylvania.
4. **Professional Ethics Course**: At the time he submits his application for reinstatement or restoration, Dr. Marrero 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. Marrero 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.

5. **Personal Ethics Course**: At the time he submits his application for reinstatement or restoration, Dr. Marrero 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. Marrero submits the documentation of successful completion of the course or courses dealing with personal ethics, he shall also

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submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

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

C. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Marrero's certificate to practice medicine and surgery in the State of Ohio is fully restored.

D. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Marrero shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Marrero shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Marrero's certificate to practice medicine and surgery in the State of Ohio is fully restored.

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

**DR. KUMAR SECONDED THE MOTION.**

Dr. Kumar referred to paragraph B.3. of the proposed amendment, noting that it requires Dr. Marrero to present evidence of unrestricted licensure in a specific state. He noted that "probation" may not be considered as a restricted license.

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Ms. Thompson stated that it would be.

Dr. Kumar stated that he would prefer to say that Dr. Marrero's license will remain suspended as long as he's on probation in Pennsylvania.

Ms. Thompson stated that the language in the proposed alternative is broader. She added that the language, "full and unrestricted licensure" would be generally understood.

Dr. Steinbergh stated that she believes all the states would use that language.

Ms. Thompson stated that it seems clear to her that "full and unrestricted" would mean that the license is not on probation either. She suggested that the Board might add the phrase, "and in good standing."

Ms. Thompson stated that the Board does have an Attorney General's opinion that says that "in good standing" means that the licensee can't be on probation.

Dr. Kumar agreed to the addition of that phrase.

Dr. Egner stated that she doesn't like Ohio's Order being based upon his license status in another state. She stated that she feels that way in all of the bootstrap cases. The Board looks at these cases in relationship to what Ohio's laws are and what this Board's criteria are for an Ohio physician. She stated that she would rather that the Board have an order that is consistent with what Ohio Board members think his actions deem appropriate. If the Board thinks that Dr. Marrero deserves disciplinary action, then it should give disciplinary action based upon what the Board knows and based on what is in accordance with Ohio's laws and rules, and not subject to what Pennsylvania may or may not do.

Dr. Steinbergh stated that she understands that. The reason she proposed this order is because she believes it's an appropriate order for him. The Board has, in other cases, done orders similar to this where once this Board knows that that person has fulfilled the consent agreement or order in another state, the Board feels that that has been sufficient. Her personal opinion is that this is sufficient in this case. That's why she brought it to the Board. Dr. Steinbergh stated that she thinks that her proposal covers the bases. If she can see that Dr. Marrero has done some ethics courses, has taken sexual boundary issue course in Pennsylvania, she thinks his time out is enough. She doesn't feel that this Board needs to do anything further.

Dr. Davidson stated that she thinks she's much more in Dr. Egner's camp for a couple of reasons. She's also uncomfortable putting this back in Pennsylvania's camp. It would make this Board's order hinge upon whatever happens in Pennsylvania after the appeal goes through. Dr. Davidson stated that this Board should make its decision based upon what the laws in Ohio are. She also thinks to have an order with the ultimate sanction, permanent revocation, even though it's stayed, with no other punishment in it, such as suspension time, is not something this Board has done. She stated that that feels strange to her.

Dr. Davidson added that, quite frankly, she doesn't feel that Dr. Marrero is acknowledging any wrongdoing

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at all. She stated that that might be consistent with his appeal and his court position, but she didn't feel that he acknowledged it in his presentation today. Because of that she doesn't think that sending him to a course has much point. He might get something out of it, but she's doubtful. Dr. Davidson stated that she has a feeling that punishment might get his attention. Dr. Davidson stated that she is more supportive of the Board Order as written.

Dr. Kumar stated that he understands the points that Dr. Egner and Dr. Davidson have made. He stated that he would be comfortable modifying the proposed amendment to eliminate B.3., and to impose a definite one-year suspension.

Dr. Steinbergh asked that there be a vote on her amendment. She stated that she does want to include the requirement that Dr. Marrero appear before this Board to request his release. She noted that her proposal doesn't include the usual personal appearances. She would like to add the requirement to make a personal appearance when he requests restoration.

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

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

The motion failed.

Dr. Buchan stated that he is in favor of a sanction less than permanent revocation.

**DR. BUCHAN MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF DR. MARRERO BY SUBSTITUTING THE FOLLOWING:**

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Miguel Angel Marrero, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Marrero's certificate shall be SUSPENDED for an indefinite period of time, but not less than twelve months.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall

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not consider reinstatement or restoration of Dr. Marrero's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration**: Dr. Marrero shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Obey the Law**: Dr. Marrero shall obey all federal, state, and local laws, all rules governing the practice of medicine and surgery in the state in which he is practicing, and all terms of probation imposed by the Pennsylvania State Board of Medicine.
3. **Professional Ethics Course**: At the time he submits his application for reinstatement or restoration, Dr. Marrero 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. Marrero 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.

4. **Personal Ethics Course**: At the time he submits his application for reinstatement or restoration, Dr. Marrero 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. Marrero 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.

5. **Additional Evidence of Fitness To Resume Practice**: In the event that

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Dr. Marrero has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Marrero's certificate to practice medicine and surgery in the State of Ohio is fully restored.
- F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Marrero shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Marrero shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Marrero's certificate to practice medicine and surgery in the State of Ohio is fully restored.

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

**DR. KUMAR SECONDED THE MOTION.**

Dr. Steinbergh suggested adding the usual probationary terms, requiring appearances before the Board.

Dr. Buchan agreed.

Mr. Browning at this time stated that he agrees conceptually that permanent revocation is too harsh a penalty. He added that his sense of the Board is that legitimate concerns have been raised in Pennsylvania and that Ohio has not been given the level of candor that it should receive in this case. The proposal, as a practical matter, just cut the penalty in half. The odds are that the Pennsylvania judgment will stand and

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Dr. Marrero will be out a couple of years. Dr. Steinbergh's previous motion linked Ohio's penalty to Pennsylvania's. Twelve months would be half of what would otherwise have stood had Dr. Steinbergh's proposal been supported.

Mr. Browning stated that he agrees that a separate independent judgment on the part of Ohio makes sense, but he would suggest that the Board stay at 24 months of suspension rather than cutting it to 12 because of the significance of the case and the fact that he came in and didn't give the Board the unvarnished truth.

Dr. Davidson stated that Pennsylvania's order imposed a two-year probation, not a suspension.

Mr. Browning agreed but the practical matter is the same. He still would have been suspended in Ohio for two years under Dr. Steinbergh's proposal.

Dr. Steinbergh suggested that the Board table this matter to allow staff to work with Board members to draw up an appropriate order and bring it back to the Board to read.

Dr. Buchan stated that he thinks that the Board has some consensus. He suggested moving this forward with the proposed one-year suspension, and the reporting to the Secretary and Supervising Member.

Dr. Buchan was asked to clarify his motion.

Dr. Buchan stated that he is proposing stayed permanent revocation, twelve months suspension, and the conditions as follows in Dr. Steinbergh's amendment with the elimination of her paragraph B.3. He stated that there will be monitoring, but no probation. He wants the standard language that would require Dr. Marrero to appear before the Board upon his request for reinstatement or restoration. He again stated that there is no probationary term. Dr. Buchan stated that he doesn't think probationary terms would be necessary as long as Dr. Marrero complies with the conditions for reinstatement. No monitoring is necessary.

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

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

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The motion failed.

Dr. Egner stated that she thinks that there needs to be more discussion. She doesn't know how some Board members feel, and whether their "nay" vote means that they want it to be more lenient or stricter. If the Board is going to write a new Order, it needs a better consensus of how Board members feel.

Dr. Varyani stated that there are too many things going on here. He added that he's in agreement with a lot of them, but they're not balancing out at this time and it's causing a lot of confusion. He stated that the Board needs a stayed permanent revocation, with 24 months suspension, and personal appearances and all that are fine. The Board needs a little time.

Dr. Buchan stated that it seems to be a time issue now, and a couple of members have indicated that a 24-month suspension is more reasonable.

Dr. Kumar stated that it appears that nobody disagrees with a stayed permanent revocation. He will go with either a one-year or two-year suspension. What is missing are probationary terms. He would be comfortable with a one-year suspension, two years' probation, with the standard probationary terms. This would get Dr. Marrero's into Ohio's monitoring system for three years. Dr. Kumar stated that he believes the missing piece before was the probationary period.

Ms. Sloan stated that she could agree with that.

**DR. KUMAR MOVED TO AMEND THE PROPOSED ORDER TO SUBSTITUTE AN ORDER INCLUDING A STAYED PERMANENT REVOCATION, INDEFINITE SUSPENSION FOR A MINIMUM OF ONE YEAR, CONDITIONS FOR REINSTATEMENT, PROBATIONARY PERIOD FOR TWO YEARS AND STANDARD PROBATIONARY TERMS LANGUAGE. DR. SAXENA SECONDED THE MOTION.**

Dr. Steinbergh stated that she opposes the length of this suspension. She indicated that she feels strongly about the statements she made earlier.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- nay
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye

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Dr. Steinbergh - nay  
Dr. Robbins - aye

The motion carried.

**DR. BUCHAN MOVED TO APPROVE AND CONFIRM MS. MURPHY'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF MIGUEL ANGEL MARRERO, M.D. DR. VARYANI SECONDED THE MOTION.** A vote was taken:

Vote:

Mr. Albert	- abstain
Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Varyani	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- nay
Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Saxena	- aye
Dr. Steinbergh	- nay
Dr. Robbins	- aye

The motion carried.

Following the meeting the Board drafted the following amended order, per Board motion:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Miguel Angel Marrero, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Marrero's certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Marrero's certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. Marrero shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Marrero shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics.

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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. Marrero 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.

3. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Marrero 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. Marrero 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.

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

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

1. **Obey the Law:** Dr. Marrero shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which he is practicing, and all terms and conditions imposed by the Pennsylvania Board.
2. **Quarterly Declarations:** Dr. Marrero shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether

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- there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. **Appearances:** Dr. Marrero shall appear in person for quarterly interviews before the Board or its designated representative during the third month following the month in which his certificate is restored or reinstated or as otherwise directed by the Board. Dr. Marrero shall also appear upon his request for termination of the probationary period, and/or as otherwise requested by the Board.
  4. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Marrero violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Marrero's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Marrero receives from the Board written notification of his successful completion of probation pursuant to Paragraph D, above.
- F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Marrero shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional

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license. Further, Dr. Marrero shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Marrero receives from the Board written notification of his successful completion of probation pursuant to Paragraph D, above.

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

FINDINGS, ORDERS AND JOURNAL ENTRIES

JOHN T. COATES, M.D.

Dr. Robbins noted that, by letter of November 9, 2005, the Board issued a Notice of Opportunity for Hearing to John T. Coates, M.D., based upon a prior action against Dr. Coates' Wisconsin license following allegations that Dr. Coates engaged in a sexual relationship with a patient. The Notice was mailed via certified mail, return receipt requested, to Dr. Coates' address of record. A signed certified mail receipt was returned to the Board documenting proper service of the notice. However, no hearing request has been received from Dr. Coates and more than thirty days have elapsed since the mailing of that notice. The matter was before the Board for final disposition.

**DR. KUMAR MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS AS SET FORTH IN THE NOTICE OF OPPORTUNITY FOR HEARING ISSUED ON NOVEMBER 9, 2005.**  
**DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

**DR. KUMAR MOVED TO ENTER AN ORDER DENYING DR. COATES' APPLICATION FOR ENDORSEMENT LICENSURE, EFFECTIVE IMMEDIATELY.**

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Dr. Steinbergh stated that the proposed denial was based on a Wisconsin case. The Wisconsin Board took action on Dr. Coates' license based on his having sex with a patient.

**DR. STEINBERGH SECONDED THE MOTION.**

Dr. Egner left the meeting at this time.

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

Dr. Kumar stated that Dr. Coates had the opportunity to request a hearing and did not take advantage of it. The proposed order is appropriate.

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

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

The motion carried.

**ABDULKADER DAHHAN, M.D.**

By letter of November 9, 2005, the Board issued a Notice of Opportunity for Hearing to Abdulkader Dahhan, M.D., based upon a prior action against Dr. Dahhan's Kentucky license. The Notice was mailed via certified mail, return receipt requested, to Dr. Dahhan's address of record. A signed certified mail receipt was returned to the Board documenting proper service of the notice. However, no hearing request has been received from Dr. Dahhan and more than thirty days have elapsed since the mailing of that notice. The matter was presented to the Board for final disposition.

**DR. STEINBERGH MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE NOVEMBER 9, 2005 NOTICE. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

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

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Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Saxena	- aye
Dr. Steinbergh	- aye

The motion carried.

**DR. KUMAR MOVED TO ENTER AN ORDER OF REVOCATION, EFFECTIVE IMMEDIATELY, IN THE MATTER OF ABDULKADER DAHHAN, M.D. DR. VARYANI SECONDED THE MOTION.**

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

Dr. Steinbergh stated that Dr. Dahhan is currently serving a two-year probation in Kentucky. He did not respond to the Board's Notice of Opportunity for Hearing, and therefore Dr. Kumar's proposed revocation is appropriate.

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

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

The motion carried.

Dr. Egner returned to the meeting at this time.

CAESAR A. DELEO, III, M.D.

Dr. Robbins advised that the Board issued its Notice of Opportunity for Hearing to Caesar A. DeLeo, III, M.D., on November 14, 2005, and acknowledgment of receipt was received from Dr. DeLeo on November 21, 2005. Dr. DeLeo did not request a hearing, and more than 30 days have elapsed since the mailing of the Notice. The matter was presented to the Board for final disposition.

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**DR. STEINBERGH MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE NOVEMBER 14, 2005 NOTICE AND TO ENTER AN ORDER APPROVING DR. DELEO'S REQUEST FOR ENDORSEMENT LICENSURE, SUBJECT TO HIS PASSING THE SPEX OR BOARD RECERTIFICATION EXAMINATION WITHIN SIX MONTHS OF NOVEMBER 14, 2005, EFFECTIVE IMMEDIATELY. DR. VARYANI SECONDED THE MOTION.**

Dr. Kumar noted that Dr. DeLeo has not practiced medicine since 1996. The Proposed Order is appropriate in this case.

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

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

The motion carried.

IRAJ DERAKHSHAN, M.D.

Dr. Robbins advised that the Board issued its Notice of Opportunity for Hearing to Iraj Derakhshan, M.D., on November 9, 2005. Acknowledgment of receipt was received on November 12, 2005. Dr. Derakhshan did not request a hearing, and more than 30 days have elapsed since the mailing of the Notice. The matter is therefore before the board for final disposition.

**MR. BROWNING MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE NOVEMBER 9, 2005 NOTICE. DR. VARYANI SECONDED THE MOTION. A vote was taken:**

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

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Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Saxena	- aye
Dr. Steinbergh	- aye

The motion carried.

**DR. KUMAR MOVED TO ENTER AN ORDER OF REVOCATION, EFFECTIVE IMMEDIATELY, IN THE MATTER OF IRAJ DERAKHSHAN, M.D. DR. VARYANI SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

DAVID CARLIN EPSTEIN, M.D.

Dr. Robbins advised that the Board issued its Notice of Opportunity for Hearing to David Carlin Epstein, M.D., on October 25, 2005. Acknowledgment of receipt was received on October 31, 2005. Dr. Epstein did not request a hearing and more than 30 days have elapsed since the mailing of the notice. The matter is therefore before the Board for final disposition.

**DR. VARYANI MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE OCTOBER 25, 2005 NOTICE AND TO ENTER AN ORDER APPROVING DR. EPSTEIN'S REQUEST FOR ENDORSEMENT LICENSURE, SUBJECT TO HIS PASSING THE SPEX OR BOARD RECERTIFICATION EXAMINATION WITHIN SIX MONTHS OF OCTOBER 25, 2005, EFFECTIVE IMMEDIATELY. DR. KUMAR SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye

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Dr. Talmage	- abstain
Dr. Varyani	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Saxena	- aye
Dr. Steinbergh	- aye

The motion carried.

YASMEEN HASAN, M.D.

Dr. Robbins advised that the Board issued its Notice of Opportunity for Hearing to Yasmeen Hasan, M.D., on November 14, 2005. Acknowledgment of receipt was received on November 21, 2005. Dr. Hasan did not request a hearing and more than 30 days have elapsed since the mailing of the notice. The matter is therefore before the Board for final disposition.

**DR. VARYANI MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE NOVEMBER 14, 2005 NOTICE AND TO ENTER AN ORDER APPROVING DR. HASAN'S REQUEST FOR ENDORSEMENT LICENSURE, SUBJECT TO HIS PASSING THE SPEX OR BOARD RECERTIFICATION EXAMINATION WITHIN SIX MONTHS OF NOVEMBER 14, 2005, EFFECTIVE IMMEDIATELY. DR. EGNER SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

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CITATIONS, PROPOSED DENIALS AND ORDERS OF SUMMARY SUSPENSIONAMY JANE CHAHO, M.D. – CITATION LETTER

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

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

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

The motion carried.

GERALD ANTHONY CONIGLIO, M.D. – CITATION LETTER

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

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

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

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The motion carried.

VILDAN MULLIN, M.D. – CITATION LETTER

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

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

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

The motion carried.

ADEL HASSAN REGAILA, M.D. – CITATION LETTER

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

**DR. KUMAR MOVED TO SEND THE CITATION LETTER TO DR. REGAILA.  
MR. BROWNING SECONDED THE MOTION.** A vote was taken:

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

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Dr. Steinbergh - aye

The motion carried.

ALLEN B. YOUNG, M.D. - NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

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

**DR. KUMAR MOVED TO SEND THE NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING TO DR. YOUNG. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

RATIFICATION OF SETTLEMENT AGREEMENTS

Board members were provided with copies of settlement agreements negotiated by Board staff and/or the staff of the Office of the Attorney General, as authorized by the Board's Secretary and Supervising Member, and as appropriate, the Board President, as well as copies of summaries of the agreements. The names and license numbers of the licensee or applicant subjects of such settlement agreements were removed from the documents, and the subject of each settlement agreement was not identified prior to ratification of the relevant settlement agreement.

JOHN CLARK POWELL, M.D.

**DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. POWELL. DR. BUCHAN SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

MARK A. MITCHELL, M.T.

**DR. STEINBERGH MOVED TO RATIFY THE SECRETARY AND SUPERVISING MEMBER'S APPROVAL OF MR. MITCHELL'S REQUEST TO WITHDRAW HIS APPLICATION FOR REINSTATEMENT OF HIS MASSAGE THERAPY LICENSE. DR. SAXENA SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

At this time the Board was advised that, since the Board has ratified his withdrawal, the Notice of Opportunity of Hearing of December 14, 2005, proposing to deny Mr. Mitchell's request for reinstatement, should be dismissed.

**DR. KUMAR MOVED TO DISMISS THE BOARD'S DECEMBER 14, 2005 NOTICE OF OPPORTUNITY OF HEARING TO MR. MITCHELL. DR. BUCHAN SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

CARLA MELINDA MYERS, D.O.

**DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. MYERS. DR. KUMAR SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

At this time the Board was informed that there may be additional consent agreements to consider later in the meeting.

**DR. BUCHAN MOVED TO TABLE THE TOPIC OF RATIFICATION OF SETTLEMENT AGREEMENTS. DR. STEINBERGH SECONDED THE MOTION.** All members voted aye. The motion carried.

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PERSONAL APPEARANCES

ANTHONY W. KITCHEN, M.D.

Dr. Kitchen appeared before the Board pursuant to his request for release from the terms of the Board's Order of December 11, 2002.

In response to Board members' questions, Dr. Kitchen stated that he is doing very well. He's looking forward to putting his probation behind him. Since it started, he's done very well in his career. He continues to work in the same facility, with the same folks and has been promoted from staff physician to assistant director and he is now the director of the emergency department. Dr. Kitchen stated that he has pretty much resolved all of the issues that brought him before the Board, and he's now looking forward to continuing his career and life with his family.

It was noted by Board members that Dr. Kitchen was not found to be drug dependent.

Dr. Kitchen advised that he had diverted drugs for his own use because he was having marital issues. He added that it's not something that he would recommend. He stated that, since that time, he has undergone the recommended counseling and has done a lot of work with his wife on their marriage. They have had two children since then and their lives are very good now.

Continuing to respond to Board members' questions, Dr. Kitchen stated that he continues to have licenses in both Ohio and in West Virginia. He was released from probation in West Virginia in 2003. Dr. Kitchen stated that he's learned a lot about himself during the past few years.

**DR. BUCHAN MOVED TO RELEASE DR. KITCHEN FROM THE TERMS OF THE BOARD'S ORDER OF DECEMBER 11, 2002. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

The motion carried.

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TIMOTHY S. KRESS, M.D.

Dr. Kress appeared before the Board pursuant to his request for release from the terms of his January 11, 2001 Consent Agreement.

In response to Board members' questions, Dr. Kress stated that he is doing very well in his recovery. He now has almost six and a half years of documented continuous recovery. He has a very strong support network in the Dayton area, where he lives, and a great sponsor. Everything is going very well as far as recovery is concerned.

Dr. Kress continued that, professionally, he works 25 hours a week for Planned Parenthood of Southwest Ohio, and he has done so for the last five years, since he entered his Step 2 Agreement in the year 2000. Professionally, that's going very well also. He has another part-time job, but it's not a medical job. Dr. Kress stated that he went to treatment at Shepherd Hill in Newark, and continued his aftercare for the two years after that. Dr. Kress stated that a very important part of his treatment was limiting what he did to make sure that he had some balance in his life as far as work is concerned. They were, as Caduceus is now, very aware of his work hours. He limits himself to between 40 to 50 hours of work a week. He has no call, nor does he work nights. Once every few months he might get a phone call from one of the nurse practitioners with a question. Dr. Kress stated that having his nights to work on himself is critical for him.

Concerning his plans for after his release from probation, Dr. Kress stated that he will continue to work part-time at Planned Parenthood. As far as recovery goes, he doesn't want to put anything behind him. When the Board involvement is terminated, his recovery activities will continue exactly the same as they have for the last six and a half years. He has a great recovery network in the Dayton area, including the Dayton Caduceus group, which continues to be very strong. The A.A. community is very close-knit. Dr. Kress stated that there comes a time when you no longer "have to" go to recovery activities, but you want to go to them. That was a big hurdle for him a number of years ago. He plans on making no changes in terms of his recovery activities once his Board involvement is done.

Dr. Kress advised that his family support is good. He has four children and a loving wife of eleven years, who has worked and grown with him through the whole process. His children are ages 18 (a stepdaughter), 9, and 7 year old twins.

**DR. KUMAR MOVED TO RELEASE DR. KRESS FROM THE TERMS OF HIS JANUARY 11, 2001 CONSENT AGREEMENT. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye

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

The motion carried.

Dr. Kress at this time stated that he appreciates everything this Board has done for him and for the profession. Knowing the course he was going on, he feels the Board probably saved his life and his family.

ROBERT D. SMARSCH, D.O.

Dr. Smarsch appeared before the Board pursuant to his request for release from the terms of his January 10, 2001 Consent Agreement.

In response to Board members' questions, Dr. Smarsch stated that he is doing very well. His program is the same, with no change. He attends meetings, has a sponsor, and he sponsors a person also. He stays in contact with them regularly. Dr. Smarsch stated that he continues to work at the same place he was working before. Everyone at his workplace is aware that he is in the program and that he has a consent agreement. That was all revealed when he started with them at University. Dr. Smarsch stated that it was hard making that revelation, but it's part of the process. He does moonlighting jobs every once in a while, and he also tells them when he applies for those jobs. He stated that he does this because it was part of the consent agreement, and he's not sure that he would have had it not been a requirement. Dr. Smarsch stated that he has had very good reactions to the information. They seem to appreciate that he was up front and they knew what he was required to do. Most of them were very open to the idea. He didn't get any negative feedback whatsoever regarding that. He added that he doesn't believe that he has ever been turned down by anyone.

Dr. Smarsch stated that he was trained in family practice, but he works in an emergency room, in an area called "rapid care," which is like an urgent care within the emergency room. He sees the lower acuity type patients to take some of the volume off the main ER.

Concerning his 28-day inpatient treatment, Dr. Smarsch stated that he doesn't think that the 28 days is too long. He noted that there is a lot to learn and, emotionally, there's a lot to get through. There's a lot to learn about alcoholism; it takes a lot of time for acceptance. Dr. Smarsch stated that the 28-day requirement is probably appropriate. He added that, once released, he will continue in his recovery program.

**DR. STEINBERGH MOVED TO RELEASE DR. SMARSCH FROM THE TERMS OF HIS JANUARY 10, 2001 CONSENT AGREEMENT. MR. BROWNING SECONDED THE MOTION.**

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A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

The motion carried.

JOSEPH CLAUDE CARVER, M.D.

Dr. Carver made his initial appearance before the Board, pursuant to the terms of his October 12, 2005 Consent Agreement.

In response to Board members' questions concerning the laparoscopic procedure performed on Patient 2, Dr. Carver stated that several things happened in that case. He advised that he had less than an amicable relationship with the administration of the hospital. At the time he was performing the surgery, he believes that he probably let his emotions permit him to make some very poor decisions. He stated this piece of tissue had come out on the outside of his laparoscopic trocar and the nursing staff asked him whether he wanted to send "this piece of tissue away," and his comment to the nursing staff was that the hospital already charges the patients enough money, the pathologist is gone half the time and that's all they need to do is charge the patient another \$200 to examine something that probably is just a piece of peritoneum. He did not recognize that it was a fallopian tube. He did examine the piece of tissue, but at that time he wasn't wearing any glasses. He had been diagnosed with some presbyopia. He'd never worn glasses in his life and since then he's worn his glasses. Dr. Carver stated that he went through a great deal of evaluation and investigation as a result of that case. The hospital, in fact, had a physician with him in the operating room for six months during each case. That person was required to fill out a report with respect to appropriateness of surgery, the correct procedure being done, and the proper documentation. He also received a 28-day suspension for that. He has since then sought counseling at the hospital's suggestion, and he's come to a lot of conclusions as a result of that counseling. Dr. Carver stated that he thinks that he has a very good understanding of why that happened, and he thinks that, based on all the work he's done, he can say without reservation that he doesn't believe that will ever happen again. He now wears his glasses and every piece of tissue that comes out of the abdomen, whether he thinks it's significant or not, is sent off to pathology without a doubt.

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Dr. Kumar expressed concern that Dr. Carver still seems to be blaming the hospital administration, to some degree. He noted that it wasn't the administration's fault that Dr. Carver took the tube out without his knowing about it.

Dr. Carver agreed that it was his fault. He stated that he didn't mean to blame the administration. He added that he thinks that his relationship with the administration is what made him make a bad decision. He's not blaming them in any way; he's only explaining his state of mind at the time.

Dr. Kumar continued that he can't believe that Dr. Carver continued to do the procedure without his glasses on when he couldn't see the monitor.

Dr. Carver stated that his distance vision is very good. He realized later that, because he didn't have his glasses on, when he attempted to look at this piece of tissue, it looked like a slippery, slimy piece of peritoneum. He stated that he had performed laser laparoscopy and lysis of adhesions, which was primarily on the left side of the pelvis. The patient had had a previous procedure and there was a lot of scarring and adhesions in that area. He performed a right ovarian cystectomy and a laparoscopic appendectomy. At the very end of the procedure, as he pulled out the trocar on the patient's left side, there was an endocatch bag. Inside the endocatch bag was the appendix. On the outside of the endocatch bag was a small piece of what looked like slippery tissue. Dr. Carver stated that he looked at it and thought it was peritoneum. That was his fatal error. He didn't send it to pathology, but someone did send it and that's how it was identified. This didn't render the patient sterile.

Dr. Egner stated that Dr. Carver's story makes no sense to her.

Dr. Carver advised that he's scheduled to do a CPEP evaluation on February 10-11. He has been in counseling since that incident. The hospital sent him to a psychiatrist in the area. Dr. Carver stated that he'd seen her quite some time. He went through the whole issue and tried to figure out why and how this happened. When the other issue, where he had an inappropriate relationship with a patient, occurred, the hospital sent him to a different therapist and he's been going to therapy since that time with the other therapist.

Dr. Carver advised that he's sent an ethics course to Ms. Bickers for Board approval. He's preliminarily set up to take that course on February 3-5, if the Board is agreeable to that.

Dr. Egner noted that Dr. Carver is under a consent agreement that imposed a stayed revocation. She stated that she finds it unbelievable that Dr. Carver could accidentally take out a fallopian tube and not see that it was missing, even if the patient does have a lot of lesions. Dr. Carver also had sex with a patient. Dr. Egner stated that she doesn't understand how this could have been handled through a consent agreement and not gone to hearing, but she added that if Dr. Carver messes up again, she will ask that his license be revoked.

Dr. Carver indicated that he understands. He assured the Board that he would do everything within his power to reinstate the Board's confidence in him before this whole process is finished. He understands that

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he's made mistakes; he's paid dearly for them. He's lost his family, he's filed bankruptcy, he's lost his practice and it's very unlikely that he will be able to return to the hospital in which he practiced. Judging from the way things look, even though the Board may reinstate his license, he may not even have an opportunity to practice again anyway. Dr. Carver stated that he hopes and prays that someone will look at him at some point in time and give him the opportunity to practice again. He's worked very hard and has devoted his life to his patients, probably much to his detriment. He's worked entirely too much, doing 300 to 400 deliveries a year, not out of need but out of necessity in the area. There are many contributing factors that have put him into this position. He recognizes what those contributing factors are. He's worked through them with his therapist, and he feels that he's a much better person now than he was a year ago. He's made the mistakes, he recognizes them; he accepts them and he admits them. He accepts sole responsibility for his action in each and every one of the three situations. He hopes that he can regain the Board's confidence at the end of this.

Dr. Buchan noted that Dr. Carver is saying the right things. Now he has to do the right things.

**DR. KUMAR MOVED TO CONTINUE DR. CARVER UNDER THE TERMS OF HIS OCTOBER 12, 2005 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. SAXENA SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

The motion carried.

PAUL E. DUNCAN, M.D.

Dr. Duncan made his initial appearance before the Board, pursuant to the terms of his October 12, 2005 Consent Agreement.

In response to Board members' questions, Dr. Duncan stated that he is doing well. In terms of his recovery, he attends aftercare at Parkside, attends A.A. meetings, has a local sponsor and is up to Step 4 of A.A. He has been drug-free for approximately 120 days. He is currently taking Cymbalta and Abilify for depression and anxiety. He is doing well on those medications, and is sleeping well. His first appointment

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with a psychiatrist was for today, but he had to reschedule to make the Board appearance. He has yet to see a psychiatrist besides the one he saw when he presented. Dr. Mark Thomas, his primary care provider, is prescribing the medications for him. Dr. Thomas is also his monitoring physician. He is not currently undergoing any type of "talk therapy," and added that he thinks that that is something that is to be set up through the psychiatrist. The last time he saw any psychiatrist was when he was in treatment at Parkside, around October 1, 2005. He sees Dr. Thomas every three months. Dr. Duncan stated that he now has an appointment with a psychiatrist on February 2, 2006.

Dr. Duncan advised that his disease came to light when he went psychotic on cocaine one evening. He went to the hospital when police were called. He was on call that night, but he hadn't used in 27 hours when this happened. He went to the emergency room and that's when the problem was picked up. Dr. Duncan stated that he made some major mistakes. He added that he didn't connect with his responsibility of seeing patients and using drugs. He added that there's nothing he can say in defense of what he did. He saw a variety of patient complaints during that time. Dr. Duncan advised that, because his perception was so clouded, he didn't know what was going on. Patient compliments that physicians get because the patients like the bedside manner have nothing to do with what kind of clinician the physician is being at that point in time. It made him think that it was no big deal.

Dr. Steinbergh expressed surprise that no one picked up on his problems in his practice.

Dr. Duncan stated that he thinks they found his practice appropriate. He added that he can't really answer that. He had a medical assistant. No one else there had degrees. He had four employees. Dr. Duncan stated that he thought he had it all covered up so that no one could tell. He doesn't believe that other professionals with whom he communicated picked up on his drug use.

In response to questions about why this time is different, Dr. Duncan stated that he has been through treatment and is taking his recovery one day at a time. That's why it's totally different. He stated that during 1980s he used cocaine once every several months. He stated that he's had a substance abuse problem all of his life. Concerning why he hasn't seen a psychiatrist in three months, Dr. Duncan stated that he's been waiting to get in to see one. Today was the soonest appointment Dr. Moon had available when he called her several months ago. Then he had to reschedule because of the Board appearance.

Dr. Robbins stated that he doesn't like that answer.

Dr. Steinbergh stated that it bothers her that he hasn't even seen his primary care physician in three months. She noted that he needs to be seen by a psychiatrist once a month. Dr. Duncan needs to move forward with that and be assertive about seeing the psychiatrist. Someone needs to be monitoring him regularly.

Dr. Duncan stated that he knows that he's very sick.

Dr. Robbins stated that he doesn't believe that Dr. Duncan is complying with the terms of his Consent Agreement. The Agreement requires him to see a psychiatrist monthly, and it's been three months since he

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signed that and he's not yet seen a psychiatrist. Dr. Robbins stated that he's concerned about the path down which Dr. Duncan may be heading.

Dr. Steinbergh advised that if Dr. Duncan's psychiatrist can't see him every month, he will have to find another psychiatrist who will.

**DR. ROBBINS MOVED TO CONTINUE DR. DUNCAN UNDER THE TERMS OF HIS OCTOBER 12, 2005 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE, AND WITH HIS NEXT APPEARANCE BEFORE THE FULL BOARD IN FEBRUARY. DR. EGNER SECONDED THE MOTION.**

In response to further questions, Dr. Duncan stated that he hasn't started undergoing drug screens yet. There was some confusion with the monitoring physician. He goes to at least four A.A. meetings a week.

Ms. Bickers stated that she has talked with O.P.E.P., who is Dr. Duncan's supervising physician, and things will be straightened out.

Mr. Albert left the meeting at this time.

A vote was taken on Dr. Robbins motion:

Vote:	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

The motion carried.

In response to further questions, Dr. Duncan stated that his

JEFFREY VAUGHN MEYER, M.D.

Dr. Meyer made his initial appearance before the Board, pursuant to the terms of his October 12, 2005 Consent Agreement.

In response to Board members' questions, Dr. Meyer stated that he has been in recovery for three months.

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He finished inpatient treatment at Parkside on November 8, and he immediately got on board with O.P.E.P. He has also started with aftercare. More recently, he has begun attempts to get his previous job, a surgical pathology fellowship position, back. This has become somewhat complicated, but he's still talking with them. He's still out of practice. Dr. Meyer stated that the position he held was a wonderful position and he was extremely excited about it. He can't get that exact position back. Since everything has transpired, they changed their format somewhat and have gone to subspecialty fellowships within the anatomic pathology field, which means GI pathology, GU pathology, breast pathology – not general surgical pathology. They don't offer that position anymore. He's made several calls and has learned that the only available positions are with the breast pathology and GU. They will send him an application and he can at least initiate an attempt to get that position for next year. Dr. Meyer stated that he thinks that that is the best they can do for him, and he didn't expect any more. He commented that he left the program in a very difficult position. They have a very busy service there, and he actually got started a couple of weeks late because of some personal problems in his family. He had their understanding during those couple of weeks, but he's sure that they were anxious to get him there because there was a lot of work to do. He stated that he left a big hole in the work that needed to be done there. When he was dismissed, in his discussion with the graduate medical education director, Dr. Thomas, he was told that the first step was to abide by the Medical Board's wishes and then the school and hospital would be willing to give him a second chance. It would be up to the department, as a final decision, as to whether he gets a second chance. That's kind of where he is now.

Dr. Davidson urged Dr. Meyer to be less concerned about the program he left and more concerned with his recovery.

Dr. Kumar noted that Dr. Meyer indicated that he self-reported. He asked how that came about. Dr. Meyer stated that he was caught on a pre-employment drug screen. Because of the death of his wife's mother, he submitted the sample after orientation. That sample turned up positive, and he was given the opportunity to self-report to the Board. The hospital recommended an attorney and through that attorney he reported to the Board.

Dr. Saxena left the meeting and Mr. Albert returned to the meeting during the previous discussion.

In response to further questions, Dr. Meyer stated that he has been using drugs since college. The first time he used was 20 years ago. It became a regular thing a couple of years after that. He didn't use every day during his residency, but that was part of the justification process that led him to believe that he could control it. He commented that, while his other college friends outgrew the use of drugs, he did not. Dr. Meyer advised that, despite everything his wife was going through at the time he lost his job, including the loss of a parent, she has remained supportive of him, as has the rest of his family. His wife is angry, though.

**DR. BUCHAN MOVED TO CONTINUE DR. MEYER UNDER THE TERMS OF HIS OCTOBER 12, 2005 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

JAMES E. STURMI, M.D.

Dr. Sturmi made his initial appearance before the Board, pursuant to the terms of his November 10, 2005 Consent Agreement.

In response to Board members' questions, Dr. Sturmi stated that he didn't relapse; his sobriety date is September 5, 2001. He acknowledged that he has not been complying with the terms of his consent agreement, adding that he didn't get it. He stated that Ms. Bickers and Mr. Schmidt confronted him about missing several meetings. He obviously didn't understand the significance of the meetings. He was cited for non-compliance in March 2005 and has done what he's supposed to do since then. Dr. Sturmi explained that when he says he didn't "get it," he means that he didn't understand the seriousness of not following the terms of his agreement with the Board. He stated that he undersold the importance of missing a meeting here and there. Dr. Sturmi stated that, at heart, he knows that he was and still is committed to recovery. He's been sober 6,396 of the last 6,403 days. His commitment to recovery has never wavered, but that doesn't mean that the rules don't apply to him or that he deserves any kind of special treatment. Dr. Sturmi stated that this has been very educational.

Mr. Albert stated that every time Dr. Sturmi appeared at an office conference he drilled into Dr. Sturmi the importance of compliance, as did Ms. Bickers and Mr. Schmidt. He stated that Dr. Sturmi got all kinds of breaks, and he didn't appreciate them. He stated that there will be no more breaks for him. He's run out of chances. Mr. Albert stated that he can't understand people like Dr. Sturmi, who has a nice family, has gotten breaks, and has a job. He stated that the next time Dr. Sturmi falls by the wayside, he'll lose his license to practice medicine.

Dr. Steinbergh noted that Dr. Sturmi has a psychiatric diagnosis of bipolar disorder. She asked whether he's seeing a psychiatrist regularly.

Dr. Sturmi stated that he sees Dr. Richard Minter on a quarterly basis. Dr. Sturmi continued, in response to

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Mr. Albert's statements, that within six to eight weeks after the citation was issued in March, and with the insistence of his wife, he did see Dr. Minter, who adjusted some of his medications. He's currently taking 900 mg of Lithium twice a day, and 200 mg of Lamictal. He began taking the Lamictal in March or April and has made a huge difference for him. He feels better and is sleeping better. He also got re-evaluated for his obstructive sleep apnea and has had some adjustments in his pressure. That has made a difference for him. Dr. Sturmi stated that he does take responsibility for his inappropriate decision-making. There was no excuse for it.

Dr. Varyani stated that Dr. Sturmi should understand what it means when he signs a contract. He added that he agrees with Mr. Albert, that this is Dr. Sturmi's last chance.

Dr. Sturmi stated that he understands that, and added that he appreciates the Board's help. He added that he didn't mean that he didn't understand the agreement that he signed. He just didn't understand the importance of very strict compliance to every word of that agreement.

Dr. Varyani stated that he doesn't think that the agreement leaves anything to the imagination. It clearly spells out everything. If a physician signs that agreement, he should comply with it; otherwise he shouldn't sign it.

**DR. BUCHAN MOVED TO CONTINUE DR. DR. STURMI UNDER THE TERMS OF HIS NOVEMBER 10, 2005 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:**

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

The motion carried.

WILLIAM M. WOLERY, D.P.M.

Dr. Wolery made his initial appearance before the Board, pursuant to the terms of his October 12, 2005 Consent Agreement.

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In response to Board members' questions, Dr. Wolery stated that he doesn't understand the Consent Agreement.

Dr. Buchan explained that when physicians are out of practice for a period of time, there is a concern that they aren't up-to-date with regard to the latest in practice. The Board wants to be assured that the public is well-served by the physician's re-engaging practice.

Dr. Wolery asked whether that isn't the reason he's serving a preceptorship at the present time.

Dr. Buchan stated that it is.

Dr. Wolery asked when he can go to work.

Dr. Steinbergh stated that Dr. Wolery has to do a six-month preceptorship and then the Board has to approve a practice plan.

Ms. Bickers stated that Dr. Wolery had the option to request a modification of the consent agreement 60 days from the effective date of the agreement. He's eligible for modification of the consent agreement at this time. Ms. Bickers stated that she spoke with Dr. Wolery's attorney before his appearance today, and it is her understanding that he will probably present that so that it's on the February agenda. Dr. Wolery will be monitored by the Board until at least April, but the Board can address the preceptorship as soon as February.

Dr. Wolery stated that he has worked in a preceptorship for 60 days. He stated that he's ready to go back into practice. He has a position waiting for him. The only thing he needs to do is be cleared by the Medical Board to return to work.

Dr. Buchan stated that it appears that that can be accomplished in February.

Dr. Robbins commented that he finds it sad that there isn't some kind of examination for the podiatry profession, similar to that of the SPEX. He stated that he thinks that the Board did the best it could to get Dr. Wolery back to practice, but he's not sure that this is the best way to do it.

Dr. Steinbergh stated that the Board has had this discussion for many years.

Dr. Buchan stated that there is a Federation of Podiatric Medical Boards, but they have not had the demand to put together a test like the SPEX. They don't have the resources to do it. The alternative is to delve into clinical training or preceptorship, and that's why this agreement was crafted.

Dr. Saxena returned earlier in the discussion.

Dr. Wolery explained that he was injured and did not think it would be appropriate or proper for him to be practicing. Since that time he's had several extensive surgeries and has regained the feeling in his hands.

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He feels that it is his time to get back to work. He added that he has patients who are waiting for him. They want him to be there, and he wants to be there. That's his job.

Dr. Robbins stated that this raises the issue of the number of licensees who haven't practiced for years, and yet, have kept their licenses current and can return to practice without being required to pass an examination or do a preceptorship. He stated that it seems that the Board has to figure out a way to tie that loose end up.

Dr. Buchan suggested that this issue be discussed in Committee.

**DR. KUMAR MOVED TO CONTINUE DR. WOLERY UNDER THE TERMS OF HIS OCTOBER 12, 2005 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

The motion carried.

Dr. Wolery at this time asked the Board to have his license returned to him in February.

Ms. Bickers stated that she will prepare Dr. Wolery's request for the February Board meeting.

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

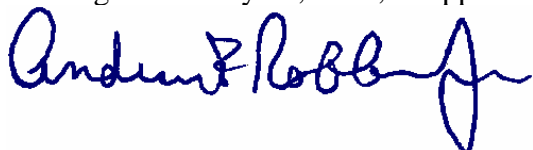
Thereupon at 5:07 p.m. the January 11 2006 session of the State Medical Board of Ohio was duly adjourned.

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We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on January 11, 2006, as approved on February 8, 2006.



Andrew F. Robbins, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)



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## MINUTES

### THE STATE MEDICAL BOARD OF OHIO

January 12, 2006

Andrew F. Robbins, Jr., M.D., President, called the meeting to order at 8:09 a.m., at the Vern Riffe Center for Government and the Arts, 77 S. High St., Columbus, Ohio 43215, Room #1932, with the following members present: Deepak Kumar, M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Nandlal Varyani, M.D.; David S. Buchan, D.P.M.; R. Gregory Browning, Ph.D.; Anquetette Sloan; Kamala Saxena, M.D.; and Anita M. Steinbergh, D.O. The following did not attend the meeting: Carol L. Egner, M.D., and Patricia J. Davidson, M.D.

Also present were: Richard A. Whitehouse, Executive Director; Diann K. Thompson, Assistant Executive Director; Lori S. Gilbert, Assistant Executive Director; William J. Schmidt, Enforcement Attorney; Damion M. Clifford, Assistant Attorney General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Chief, Executive Staff; Danielle Bickers, Compliance Officer; and Barbara Jacobs, Public Services Administrator;

#### LICENSURE, PROBATION AND REINSTATEMENT CONSENT AGENDA

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

Dr. Steinbergh indicated that she would like to consider Dr. Amoil's reinstatement request separately.

**DR. KUMAR MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES ON NOVEMBER 7 AND 8, 2005 WITH: ROBERT M. BENSON, M.D.; SCOTT M. CAMPBELL, M.D.; PATRICK BRIAN CESTONE, JR., M.D.; L. JEAN COOPER, M.D.; ROBERT R. DAIBER, M.D.; TIMOTHY A. GOODEN, M.D.; STEVEN F. GREER, M.D.; DARRELL A. HALL, M.D.; MARK S. HOPKIN, M.D.; KANDHASAMY KANNAPIRAN, M.D.; GRANT F. KOHER, D.O.; PHILLIP THIELE NORTH, M.D.; KOLLI M. PRASAD, M.D.; DALE PRATT-HARRINGTON, D.O.; JAMES M. ROSSELIT, D.O.; JULIA RUFFIN, D.P.M.; JOHN W. SHAW, M.D.; GEORGE A. SOUTHIERE, JR., M.D.; MICHAEL J. STANEK, D.O.; TOBY JAMES TIPPIE, P.A.; MICHAEL CRAIG WARREN, D.O.; AND GREGORY S. ZINNI, M.D. DR. KUMAR FURTHER MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES AND THE SECRETARY AND SUPERVISING MEMBER'S RECOMMENDATIONS AS FOLLOWS:**

- **TO GRANT STEVEN W. CRAWFORD'S REQUEST TO APPLY FOR FULL**

**D.E.A. PRIVILEGES;**

- **TO APPROVE BRAD R. BUNDY, D.O., TO SERVE AS GEORGE V. HASSINK, M.D.'S TREATING PSYCHIATRIST, AND GLENNDA S. STELNICKI, Ph.D, AS DR. HASSINK'S TREATING PSYCHOLOGIST;**
- **TO APPROVE VANDERBILT UNIVERSITY SCHOOL OF MEDICINE'S COURSE, *MAINTAINING PROPER BOUNDARIES*, AS THE ETHICS COURSE REQUIRED BY THE BOARD'S ORDER IN THE MATTER OF TIMOTHY J. HEYD, M.D.;**
- **TO APPROVE ANIL H. JHANGIANI, M.D.'S REQUESTS FOR A REDUCTION IN HIS PSYCHIATRIC SESSIONS TO ONE PER MONTH, AND FOR A REDUCTION IN HIS APPEARANCE SCHEDULE TO EVERY SIX MONTHS;**
- **TO APPROVE THE UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY'S COURSE, *PRIM-E PROFESSIONAL RENEWAL IN MEDICINE (THROUGH) ETHICS*, AS THE ETHICS COURSE REQUIRED BY MAHENDRA K. MAHAJAN'S CONSENT AGREEMENT;**
- **TO APPROVE SUSAN E. BERNER, M.D., TO BE FRANCINE R. MOSLEY, M.D.'S MONITORING PHYSICIAN;**
- **TO APPROVE ASHOK V. PADHIAR, M.D.'S REQUESTS TO REDUCE HIS PSYCHIATRIC SESSIONS TO TWICE PER YEAR, AND TO ELIMINATE THE CHART MONITORING REQUIREMENT OF HIS CONSENT AGREEMENT;**
- **TO APPROVE CHRISTINA M. DELOS REYES, M.D., TO SERVE AS NYKOLAI VASIL PIDHORODECKYJ, M.D.'S MONITORING PHYSICIAN, WITH TEN CHARTS REVIEWED PER WEEK;**
- **TO APPROVE WILLIAM DENNY ROBERTSON, M.D.'S REQUESTS TO REDUCE HIS DRUG SCREEN REQUIREMENT TO TWICE PER MONTH, TO REDUCE HIS APPEARANCE SCHEDULE TO EVERY SIX MONTHS, AND TO ELIMINATE HIS CHART MONITORING REQUIREMENT;**
- **TO APPROVE KENT ROBINSON M.D.'S PROPOSED PRACTICE PLAN TO WORK FOR ALLIANCE PRIMARY CARE, DIVISION OF HEALTH ALLIANCE, AND C. KEITH MELVIN, M.D., TO SERVE AS DR. ROBINSON'S MONITORING PHYSICIAN, WITH TEN CHARTS REVIEWED PER WEEK;**
- **TO APPROVE WILLIAM A. ROMER, M.D.'S REQUEST TO REDUCE HIS APPEARANCE SCHEDULE TO EVERY SIX MONTHS;**

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- TO APPROVE PAUL W. WILSON, D.O.'S REQUEST TO ELIMINATE HIS CHART MONITORING REQUIREMENT.

**DR. KUMAR FURTHER MOVED:**

- TO APPROVE JENNIFER M. TAKATS, M.D., AS AN ASSESSOR FOR THE PURPOSES OF PERFORMING A PSYCHIATRIC ASSESSMENT, AS REQUIRED FOR REINSTATEMENT PURSUANT TO PARAGRAPH 9b.iv OF DAVID E. ALLEN, M.D.'S MARCH 9, 2005 CONSENT AGREEMENT;
- TO APPROVE THE PROFESSIONAL ETHICS COURSE OFFERED BY PROFESSIONAL BOUNDARIES, INC., TO SATISFY THE REQUIREMENTS OF PARAGRAPH 5(b) OF JOSEPH C. CARVER, M.D.'S OCTOBER 12, 2005 CONSENT AGREEMENT;
- TO APPROVE CASE WESTERN RESERVE UNIVERSITY'S *INTENSIVE COURSE IN MEDICAL ETHICS, BOUNDARIES AND PROFESSIONALISM*, AS FULFILLING THE REQUIREMENTS OF PARAGRAPH 2(B) OF THE BOARD'S ORDER OF JANUARY 12, 2000 IN THE MATTER OF JOPINDAR P. HARIKA, M.D.

**DR. KUMAR FURTHER MOVED TO APPROVE FOR LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS, THE PHYSICIAN APPLICANTS LISTED IN EXHIBIT "A", THE P.A. APPLICANTS LISTED IN EXHIBIT "B", THE ACUPUNCTURISTS LISTED IN EXHIBIT "C", AND THE P.A. UTILIZATION PLANS SUBMITTED BY THE FOLLOWING: DAYTON ORTHOPAEDIC SURGERY & SPORTS MEDICINE; GENERAL & VASCULAR SURGEONS OF BUTLER CO.; AND ZUBEIDA MOORJANI, M.D. DR. KUMAR FURTHER MOVED TO APPROVE THE RESULTS OF THE DECEMBER 2005 PMLEXIS, COSMETIC THERAPY AND MASSAGE THERAPY EXAMINATIONS, AND TO CERTIFY AS PASSING AND LICENSE THOSE RECEIVING A SCORE OF 75 OR GREATER ON THE EXAMINATION, AND TO CERTIFY AS FAILING AND DENY LICENSURE TO THOSE WHO RECEIVED A SCORE OF LESS THAN 75 ON THE EXAMINATION. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:**

Vote:

Mr. Albert	- aye
Dr. Talmage	- aye
Dr. Varyani	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Saxena	- aye
Dr. Steinbergh	- aye

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Dr. Robbins - aye

The motion carried.

REINSTATEMENT REQUESTSSTEVE AMOILS, M.D.

Dr. Steinbergh stated that Dr. Amoils has requested approval of an ethics course. She noted that Dr. Amoils was charged with sexual misconduct. She added that she's not sure that the course for which he is seeking approval will meet Dr. Amoils' needs. Dr. Steinbergh stated that it's not specific to his violation.

**DR. STEINBERGH MOVED TO DENY APPROVAL OF THE COURSE DR. AMOILS PRESENTED, AND TO ASK HIM TO PRESENT A COURSE THAT ADDRESSES HIS VIOLATION. DR. STEINBERGH FURTHER MOVED TO AUTHORIZE THE SECRETARY AND SUPERVISING MEMBER TO APPROVE A COURSE PROPOSED BY DR. AMOILS THAT DOES ADDRESS HIS VIOLATION. DR. BUCHAN SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

The motion carried.

LICENSUREJOHN CLARK POWELL, M.D.

Dr. Powell's request for endorsement of his National Boards was presented to the Board for consideration at this time. Dr. Robbins advised that the Board ratified a Consent Agreement with Dr. Powell the previous day.

**DR. STEINBERGH MOVED TO APPROVE DR. POWELL'S REQUEST FOR ENDORSEMENT LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED**

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**AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS, AND PURSUANT TO DR. POWELL'S CONSENT AGREEMENT OF JANUARY 11, 2006. DR. KUMAR SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye

The motion carried.

**COLUMBUS SLEEP CONSULTANTS – P.A. UTILIZATION PLAN**

The above-captioned P.A. Utilization Plan was presented to the Board for consideration at this time pursuant to the Group's request to allow its P.A.s to see up to 40 patients per day.

Dr. Steinbergh advised that the Board was provided information concerning a Report and Recommendation in the matter of the P.A. Utilization Plan of Mark S. Roberto, M.D. Based on Hearing Examiner Melinda Early's recommendation, the Board approved Dr. Roberto's P.A.s to see four patients per hour, for a maximum of 32 patients per day. She recommended that the Board allow the Columbus Sleep Consultant P.A.s the same patient load.

Dr. Buchan spoke in favor of the P.A.s being allowed to see four patients per hour, but questioned limiting them to seeing 32 patients per day. He indicated that he would favor allowing a P.A. who worked ten hours a day to see 40 patients a day.

Dr. Steinbergh agreed with Dr. Buchan's recommendation.

**DR. STEINBERGH MOVED TO AMEND COLUMBUS SLEEP CONSULTANTS' P.A. UTILIZATION PLAN TO ALLOW THE P.A.S TO SEE NO MORE THAN FOUR PATIENTS PER HOUR. DR. SAXENA SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye

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Ms. Sloan           - aye  
Dr. Saxena         - aye  
Dr. Steinbergh     - aye

The motion carried.

DRAFT REPORT – FEDERATION OF STATE MEDICAL BOARDS REPORT – ADDRESSING SEXUAL BOUNDARIES: GUIDELINES FOR STATE MEDICAL BOARDS

Dr. Robbins at this time referred the Board members to the report compiled by a Federation special committee.

Mr. Albert stated that he thinks that the report covers pretty much all of the bases.

Ms. Wehrle advised that Ms. Debolt has done an analysis of the Report and how it would impact the Board if it were to adopt this report.

A copy of the report, as well as a copy of Ms. Debolt's written analysis, shall be maintained in the exhibits section of this journal.

Ms. Debolt stated that she has found two areas of concern for the Board. The first deals with lines 75 through 89, which lists a number of items that should be considered as sexual violations. The section doesn't address the question of the patient's consent. Ms. Debolt stated that she understands that this Board has traditionally held that there really is no such thing as consent because of the inequality of power within the physician/patient relationship. Ms. Debolt stated that the failure to include consent in a definition of sexual violation may open the door wide for any defense attorney. Ms. Debolt continued that there are other places in the report, particularly lines 297 and 299, that specify that patient consent should not be considered a legal defense, although it may be a contributing circumstance. She stated that it would be fitting to include that language in the definition.

Ms. Debolt referred to the end of the report where it talks about the various criteria recommended for imposing an appropriate sanction, beginning on line 317. Ms. Debolt stated that one of the factors to include is culpability of the licensee. Ms. Debolt stated that, as a former enforcement attorney, she believes that some explanation of what is meant by "culpability" is needed.

Ms. Gilbert suggested that a physician who sees a patient once and then refers the patient to his or her nurse practitioner and later develops a social relationship with the patient might be less culpable than a psychiatrist treating a patient with a low IQ who then has a sexual relationship with that patient.

Dr. Talmage stated that the concern for culpability is in those situations where the patient aggressively initiates a sexual encounter. There may be some circumstances where the physician, although partially to blame, didn't initiate the contact but eventually went along with it. He stated that that would only be a mitigating circumstance; it wouldn't be an excusing circumstance. He stated that if the physician is in any

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way controlling a person's medical treatment, that physician is in control and must be held accountable for any inappropriate sexual activity. He stated that he would not consider an emergency room physician who saw a patient once and then began a relationship with that patient six months later as having violated sexual boundaries.

Mr. Albert commented that the Board has never said how much time must pass before a physician can engage in a sexual relationship with a former patient.

Dr. Talmage stated that the A.M.A Council on Ethical and Judicial Affairs (CEJA) opinion says that, depending upon the depth of the relationship that has already been established, it may never be appropriate. It depends upon how much intimate knowledge the physician has of the patient. He stated that in his own case, were he to initiate a relationship with a patient, he knows what the patient's contraceptive use is, he knows whether she has had prior partners, he knows whether she has had particular diseases. As an obstetrician/gynecologist, he has a lot more intimate knowledge of that patient and would probably be in the category where it would never be appropriate for him to establish a relationship with someone who has been his patient. In the case of an allergist who sees a patient once and six months later asks the patient out, he believes that the Board would consider that the depth of knowledge of that patient's medical care would not be a compromise to their relationship.

Dr. Steinbergh stated that she believes that this Board has accepted the standard that, if the physician releases the patient with a certified letter to the patient severing the physician/patient relationship, and the transfer of records to another physician has occurred, and there is no evidence in the interim that the physician has prescribed or in any way had a physician/patient relationship with the patient, that's a legitimate thing. Those physicians who are intent to have a relationship with a patient would have to make certain that the transfer to another physician is appropriate and that the physician/patient relationship is severed.

Dr. Robbins commented that that issue would make a good newsletter article. Board members agreed.

Mr. Albert agreed that the Board would probably accept that.

Dr. Talmage stated that, since the Federation Committee thought that, because it was specified that consent was not possible, it didn't include that in the first page of the document. Dr. Talmage stated that he thinks it is perfectly legitimate to include language about consent on the first page of the document.

Dr. Buchan stated that he would agree with this report with the "consent" modification. Dr. Buchan also suggested that "age" and "competence" of the patient should be considered as separate items in the list of criteria used to determine sanction. He stated that the two don't necessarily relate to each other. He agreed that if the wording was changed to "age and/or competence" would be appropriate.

Ms. Gilbert referred to the section of the report which lists items that may be considered sexually inappropriate. She stated that number 7 on the list, beginning on line 68 of the Federation's report, doesn't make sense to her. The item states that it is inappropriate to perform "an intimate examination or

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consultation without clinical justification **and** (emphasis added) without explaining to the patient the need for such examination or consultation except when the examination or consultation is pertinent to the issue of sexual function or dysfunction.” Ms. Gilbert stated that if there is no clinical justification, it’s an inappropriate exam period. The “and” language isn’t necessary.

Dr. Talmage stated that he would agree. The only circumstance that he would see that would come close to that would be a case they recently reviewed where the patient came to the physician with a sore throat and the physician did a breast examination. The physician’s justification was that she hadn’t had a breast exam in over a year, and that he did a breast exam on all new patients. The physician didn’t explain that to the patient and she was offended by the examination. There was an information issue there.

Dr. Robbins expressed concern that there are a lot of potentially smooth talkers who might convince a patient that an inappropriate examination was appropriate.

Dr. Talmage asked whether the issues in paragraph 7 needed to be separated.

Dr. Steinbergh stated that paragraph 7 could end with the word, “justification.”

Dr. Talmage suggested the following language for the additional paragraph:

performing an intimate examination or consultation without explaining to the patient the need for such examination or consultation even when the examination or consultation is pertinent to the issue of sexual function or dysfunction.

Dr. Talmage stated that the explanation is the key to the whole thing.

Dr. Steinbergh agreed. Patients don’t understand what the doctor is going to do until the doctor explains what he or she is going to do and why.

Dr. Talmage summarized the proposed changes as follows: Separating lines 68-71 into two issues; change line 76 to add, “or consented to;” and to separate age and competence on line 327 as two separate issues.

Concerning the word, “culpability,” Dr. Buchan recommended leaving it alone. He stated removing that assumes an absolute and it’s dangerous territory to suggest that all scenarios are an absolute.

#### EXECUTIVE DIRECTOR POSITION; POSITIONS EXEMPT FROM CLASSIFIED CIVIL SERVICE

Dr. Robbins referred to the memorandum in the agenda materials that indicates that state law requires that the Board appoint an Executive Director and give him the authority to sign personnel actions and fiscal documents on behalf of the Board. The Board must also designate staff positions that are exempt from classified civil service.

**DR. STEINBERGH MOVED THAT THE BOARD CONTINUE RICHARD A. WHITEHOUSE IN**

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**THE UNCLASSIFIED POSITION OF EXECUTIVE DIRECTOR, UNTIL SUCH TIME AS HIS SUCCESSOR SHALL BE APPOINTED.**

**DR. STEINBERGH FURTHER MOVED TO AUTHORIZE THE EXECUTIVE DIRECTOR TO SIGN, ON BEHALF OF THE BOARD, ANY PERSONNEL ACTIONS, FISCAL DOCUMENTS AND ANY DISCIPLINARY DOCUMENTS THAT WOULD OTHERWISE HAVE TO BE SIGNED BY THE BOARD AS THE APPOINTING AUTHORITY, FOLLOWING RESOLUTION OF THE BOARD TO TAKE SUCH ACTION.**

**DR. STEINBERGH FURTHER MOVED THAT, PURSUANT TO SECTION 124.11(A)(8), REVISED CODE, THE BOARD DESIGNATE THE FOLLOWING POSITIONS AS UNCLASSIFIED: ADMINISTRATIVE ASSISTANT 3, POSITION CONTROL NUMBER 83016.1, AND SECRETARY, POSITION CONTROL NUMBER 83022.4.**

**MR. BROWNING SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye

The motion carried.

#### ADMINISTRATIVE REPORT

Mr. Whitehouse at this time introduced the following new personnel: Angela Scott, Enforcement Attorney, Lynn Zondorak, Enforcement Attorney, and Robert Rounds, Records Management Officer.

Mr. Whitehouse reviewed his written report, a copy of which shall be maintained in the exhibits section of this journal.

#### PRESIDENT'S REPORT

Dr. Robbins announced his intention to make a report each month. He stated that one thing he would like to address is Committee assignments. He stated that he has decided not to change the current committees unless Board members are uneasy in their committees and wish for a change. He asked that Board members contact him if that is the case.

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Dr. Robbins announced that, due to the unavailability of a meeting room for the Thursday session of the May Board meeting, the Board will meet only on Wednesday in May.

Dr. Robbins stated that one thing he would like to do as President is to hold brunch meetings with representatives of various organizations, such as the professional associations and medical school deans.

Dr. Kumar suggested a meeting with groups that provide clinical preceptorships to offshore medical school students.

Dr. Robbins stated that he would also like to have one such meeting with Legislators.

Mr. Browning commented that there's a long list of organized groups who would be interested in such a meeting. It's hard to meet with just some of them. There are many who will want the same opportunity, and it will be awfully hard to say no to some and not others.

#### REPORTS BY ASSIGNED COMMITTEES

##### EXECUTIVE COMMITTEE

Dr. Robbins stated that the Committee discussed the matter of the Federation's annual meeting, to be held in Boston from April 20-22. The past policy of the Board has been that up to six Board members can go to the meeting. The Committee discussed this issue, and felt that this could be restrictive. Dr. Robbins stated that his feeling was that if eight members of the Board wanted to go to the Federation meeting, he would be willing to discuss that. He advised that he will be attending as voting delegate, and Mr. Whitehouse will attend as the Executive staff scholarship recipient. As things have turned out, it appears that there are six members who have expressed interest in going: Dr. Talmage, Dr. Kumar, Dr. Steinbergh, Dr. Varyani and Dr. Egner. Dr. Robbins asked whether any other Board members wish to attend the meeting.

Dr. Buchan stated that he would encourage the newer members to go to this meeting.

Dr. Saxena stated that she might be interested in attending.

**DR. STEINBERGH MOVED TO APPROVE DR. ROBBINS AS THE BOARD'S VOTING DELEGATE, AND MR. WHITEHOUSE AS THE EXECUTIVE STAFF SCHOLARSHIP RECIPIENT. DR. KUMAR SECONDED THE MOTION.** All members voted aye. The motion carried.

At this time Mr. Whitehouse discussed the way in which mail addressed to individual Board members is handled in the office. All such mail is given to Ms. Schmidt for appropriate distribution. Following the discussion, Ms. Schmidt was instructed to notify Board members of mail that has been received in the office addressed to them. If the correspondence relates to matters under investigation by the Board or other adjudicatory matters, she will inform the Board member that they have received such correspondence, and to whom it has been distributed so that Board members will be aware of the existence of such

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correspondence should they be approached by the author.

Dr. Steinbergh advised that a resolution will be presented at the Federation meeting that would require osteopathic physicians to pass the COMLEX USA, which is approved in all states, as the sole licensing examination for osteopathic physicians. At the Federation level, the discussion has been that the official policy of the Federation is that the U.S.M.L.E. is recognized as the national licensure examination. Currently osteopathic physicians can take either exam. The A.O.A. and the NBOME would like the requirement to be that osteopathic physicians are only licensed through COMLEX USA because they don't believe that the U.S.M.L.E. appropriately tests the osteopathic educational process. Dr. Steinbergh stated that because the Federation has, in fact, agreed that both examinations are valid, she is asking that the Board endorse the resolution at the Federation meeting.

**DR. STEINBERGH MOVED TO ENDORSE A RESOLUTION THAT THE COMLEX USA IS THE SOLE LICENSING EXAMINATION FOR OSTEOPATHIC PHYSICIANS. DR. TALMAGE SECONDED THE MOTION.** All members voted aye. The motion carried.

#### LEGISLATIVE LIAISON & RULES COMMITTEE

Mr. Browning referred the Board to the written report, a copy of which shall be maintained in the exhibits section of this journal. He noted that S.B. 154, the P.A. legislation, was unanimously voted out of the House the previous day without any significant discussion. The only amendment attached to the bill was increased fees for registration, renewal and penalties for late renewal.

#### LICENSURE COMMITTEE

Dr. Robbins stated that the Committee reviewed the licensure application of Niteen Andalkar, M.D., and tabled that matter to obtain further information.

Dr. Robbins continued that the Committee reviewed the licensure application of David Stern, M.D., which was tabled by the Committee in December. He advised that Dr. Stern is the newly appointed Dean of the University of Cincinnati's medical school. He has not been engaged in the active practice of medicine since 1985. The Committee asked Dr. Stern to supply further information concerning his clinical medical background over the past 20 years.

Dr. Robbins stated that the Committee spent some time discussing Dr. Stern's application, and it could not come up with a recommendation to bring to the full Board. The Committee was, essentially, split down the middle as to whether Dr. Stern should be required to pass the SPEX for Ohio licensure.

Dr. Steinbergh noted that Dr. Stern was hired without a license, so he clearly doesn't need one for his position as Dean.

Dr. Talmage asked whether it has been established that Dr. Stern needs a license to conduct clinical research.

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Dr. Robbins stated that he doesn't believe that Dr. Stern does need the license. He commented that it doesn't look good that the Dean of an Ohio medical school does not hold a license to practice medicine in the state.

Dr. Talmage stated that if Dr. Stern doesn't have a license, the Board will have no authority to take action against him should a problem arise. It would therefore be in the Board's interest to license him.

Dr. Robbins stated that Dr. Davidson's argument the previous day was that Dr. Stern does not meet Ohio's requirements for licensure because he hasn't practiced clinically in a number of years. Dr. Robbins added that there was a lot of discussion about extraordinary circumstances.

Mr. Schmidt advised that Section 4731.222, Ohio Revised Code, gives the Board the authority to require a test or more education of any applicant who hasn't practiced in more than two years. The Board hasn't adopted a rule concerning this; but it has adopted a procedure, which is, to require the applicant to pass the SPEX or specialty recertification examination. However, if, because of extraordinary circumstances, the Board has an applicant about whose clinical competency it does not have a concern, the Board has the authority to license without SPEX or other examination. Mr. Schmidt stated that Dr. Stern is an individual who has been involved in extensive research, involving clinical applications, over a long period of time. He has been working with other physicians using the fruits of his labor. Mr. Schmidt suggested that this is a unique case where the Board might not require the SPEX.

**DR. TALMAGE MOVED TO GRANT DR. STERN'S REQUEST FOR ENDORSEMENT LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. DR. STEINBERGH SECONDED THE MOTION.**

Dr. Steinbergh stated that Dr. Stern does have an extensive background in research that has been applied clinically. She also advised that Dr. Talmage has made a good point: Should Dr. Stern participate in any medical decision in the use of his research, the Board couldn't take action against him. Nor could it take action should Dr. Stern become impaired in anyway. Dr. Steinbergh stated that she agrees that the Board must maintain a minimal standard, but there are times when it would be foolish to withhold a license from a candidate such as this.

Dr. Varyani commented that he would not be worried about setting a bad precedent by approving this application.

Mr. Albert stated that at some point in time the Board should move to create a limited license for individuals who do not intend to practice clinically, but who want to hold an Ohio license in order to be a hospital administrator or medical school dean.

Dr. Varyani stated that the Board isn't at that stage now. He added that he's pretty sure that there are physicians out there who have maintained a current license but who haven't practiced medicine in years.

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Those physicians could return to active practice tomorrow and the Board would have no say in the matter. There should be a different license for those not involved in the active practice of medicine.

Dr. Buchan stated that he does understand the merits of a medical school dean holding a license in the state in which he is dean, but he is concerned that the Board would be holding this physician to a lower standard. Dr. Buchan stated that he doesn't see the merit in granting this physician a license. Dr. Buchan added that he doesn't think that a non-practicing physician should hold a current license in Ohio.

Dr. Kumar stated that, to some extent, he agrees with Dr. Buchan. If Dr. Stern is so qualified, how hard would it be for him to take and pass the SPEX? He's doing research in clinical sciences and should be able to pass.

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

Vote:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- abstain
	Dr. Kumar	- nay
	Mr. Browning	- abstain
	Ms. Sloan	- nay
	Dr. Saxena	- nay
	Dr. Steinbergh	- aye

Needing six votes to grant a license, the motion failed.

**MR. ALBERT MOVED TO TABLE THIS MATTER UNTIL THE FEBRUARY 2006 MEETING. DR. VARYANI SECONDED THE MOTION.** All members voted aye. The motion carried.

#### PRESCRIBING & PAIN MANAGEMENT COMMITTEE

Dr. Varyani stated that, in view of recent Board discussions on the administration of medications to hospice patients, the Committee reviewed a draft revision to Rule 4731-11-09, Ohio Administrative Code, the rule for prescribing to persons not seen by physicians. A copy of the proposed revised rule shall be maintained in the exhibits section of this journal. Dr. Varyani stated that the Committee recommends adding the following as paragraph (E)(5):

The provision of controlled substances or dangerous drugs by a physician who is affiliated with a hospice program licensed pursuant to chapter 3712. of the revised code, to a patient who is enrolled in that hospice program.

**DR. BUCHAN MOVED TO ACCEPT THE COMMITTEE'S RECOMMENDATION AND TO PROCEED TO RULES HEARING. DR. STEINBERGH SECONDED THE MOTION.** A vote was

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taken:

Vote:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye

The motion carried.

LIMITED BRANCH & ALTERNATIVE MEDICINE COMMITTEE

Dr. Buchan stated that the Committee reviewed applications for certificates of good standing from six massage therapy schools and one cosmetic therapy school. The Committee recommends approval of all.

**DR. BUCHAN MOVED TO ISSUE CERTIFICATES OF GOOD STANDING TO THE FOLLOWING: CARNEGIE INSTITUTE OF INTEGRATIVE MEDICINE & MASSOTHERAPY; GATEWAY COMMUNITY & TECHNICAL COLLEGE; INSTITUTE OF THERAPEUTIC MASSAGE, INC.; NORTHWEST ACADEMY OF MASSOTHERAPY, INC.; TRI-STATE COLLEGE OF MASSOTHERAPY; SPIRIT CREEK HEALING ARTS ACADEMY; AND LORAIN COUNTY COMMUNITY COLLEGE. MR. BROWNING SECONDED THE MOTION.**

A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye

The motion carried.

SCOPE OF PRACTICE COMMITTEE

Dr. Steinbergh reported on the Committee's continuing work on the "Joint Regulatory Statement Regarding the Provision of Esthetic, Cosmetology & Related Services." Dr. Steinbergh stated that this

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matter was brought to the Committee about two years ago because the Cosmetology Board was concerned about physicians who were starting to use estheticians in their offices. The Cosmetology Board was concerned that physicians were delegating procedures that were beyond their scope of practice. The Cosmetology Board wanted to be able to go in and assess their licensees. During subsequent discussions, there were changes in the direction of the statement. At this point the matter is tabled and the Committee will review the initial discussions and try to deal only with those issues that pertain to the use of estheticians in the office and whose authority it is to monitor these people. The Committee will go back to the beginning and see if there is something that can be produced as a joint statement. Then, depending upon how the Medical Board feels, the Committee may need to move into other issues.

Dr. Steinbergh stated that the Committee also reviewed a draft letter of response to a letter from William R. Kelley, M.D., concerning the ability to delegate IM injections to an unlicensed person under the provisions of Rule 4731-23-02, OAC. Specifically, Dr. Kelly requested guidance in applying the language of Paragraph 4731-23-02(B)(6)(f), OAC. Dr. Steinbergh advised that the Committee reviewed a draft response, a copy of which shall be maintained in the exhibits section of this journal, and recommends that the letter be sent to Dr. Kelly.

**DR. STEINBERGH MOVED THAT MR. WHITEHOUSE'S DRAFT RESPONSE BE SENT TO DR. KELLEY. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Steinbergh stated that the Committee also discussed an inquiry from Jennifer Hayhurst of OSMA, seeking an interpretation of the requirements specified in OAC 4731-25-03(A)(4), the standards for surgery using moderate sedation/analgesia. A draft response, a copy of which shall be maintained in the exhibits section of this journal, was reviewed by Committee. Dr. Steinbergh noted that the rule in question requires that physicians who perform surgeries or procedures in an office setting hold hospital or ASF privileges to provide sedation/analgesia or complete at least five hours of current category I CME related to moderate sedation/analgesia. Ms. Hayhurst has asked whether that requirement is still in effect if the physician employs an anesthesiologist or a CRNA to administer anesthesia during all such surgeries. Following discussion, the Committee recommends approving the staff's draft response.

**DR. BUCHAN MOVED TO APPROVE THE DRAFT RESPONSE TO MS. HAYHURST'S**

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**LETTER. DR. VARYANI SECONDED THE MOTION.** A vote was taken:

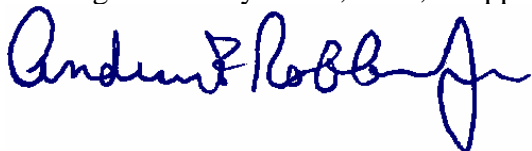
Vote:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye

The motion carried.

**MR. ALBERT MOVED TO ADJOURN. DR. BUCHAN SECONDED THE MOTION.** All members voted aye. The motion carried.

Thereupon at 10:35 a.m. on January 12, 2006, the January 11-12, 2006 meeting of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on January 11-12, 2006, as approved on February 8, 2006.



Andrew F. Robbins, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)

