

August 13, 2008

MINUTES

THE STATE MEDICAL BOARD OF OHIO

August 13, 2008

Nandlal Varyani, M.D., President, called the meeting to order at 1:00 p.m., in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes State Office Tower, 30 E. Broad St., Columbus, Ohio 43215, with the following members present: Dalsukh Madia, M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Carol L. Egner, M.D.; Marchelle L. Suppan, D.P.M.; R. Gregory Browning, Ph.D.; W. Frank Hairston; Jack C. Amato, M.D.; Susan E. Stephens, M.D.; Darshan Mahajan, M.D., and Anita M. Steinbergh, D.O.

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

MINUTES REVIEW

MR. HAIRSTON MOVED TO APPROVE THE MINUTES OF JULY 9-10, 2008. DR. AMATO SECONDED THE MOTION. A vote was taken

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

The motion carried.

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REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Varyani announced that the Board would now consider the Proposed Findings and Proposed Orders appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the findings of fact, conclusions of law and proposed orders; and any objections filed in the matters of: Shelly Bade, M.D.; Eugene Allan Brewer, M.D.; William David Leak, M.D.; Brian Frederic Griffin, M.D.; Kyle Elliott Hoogendoorn, D.P.M.; Parisa Khatibi, M.D.; and William W. Nucklos, M.D.; and the Proposed Findings and Proposed Orders in the matters of John A. Halpin, M.D., and Frank Murray Strasek, D.P.M. A roll call was taken:

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

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

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

Dr. Varyani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. They may, however, participate in the matter of

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Dr. Khatibi, as that case is not disciplinary in nature and concerns only the doctor's qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

WILLIAM DAVID LEAK, M.D.

Dr. Varyani directed the Board's attention to the matter of William David Leak, M.D. He advised that objections were filed by both the State and Dr. Leak to Hearing Examiner Porter's Report and Recommendation and were previously distributed to Board members.

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

Dr. Leak was accompanied by his attorney, Douglas E. Graff. Mr. Graff advised that he had filed two preliminary motions and he asked for oral argument on those motions. He asked whether they will be heard.

Dr. Varyani stated that Mr. Graff and Dr. Leak have five minutes to present either one or both of them at this time.

Mr. Graff stated that one motion was a request for additional time to address the Board and the other was a motion to strike the State's expert. He added that there are also motions pending to strike the State's objections. Mr. Graff asked whether those motions are going to be heard.

Dr. Varyani stated that he believes that, after reading the record, they were all heard at the hearing and the motions were ruled upon then. Today the Board is hearing his case.

Mr. Graff stated that it is the obligation of the Board to review the procedural rulings of the Hearing Examiner prior to the Report and Recommendation. He stated that he has filed that motion with the Board. Mr. Graff stated that, according to the Board's Hearing Rules, and the Ohio Revised Code, that is to be heard first. He asked whether it will be heard, or if it had already been ruled on.

Dr. Varyani stated that he believes that it's been ruled on already.

Mr. Graff asked what the ruling was and when it was made.

Dr. Varyani stated that he doesn't recall the date, adding that he'll have to consult with his attorney on that.

Mr. Whitehouse stated that Dr. Varyani is referring to the date of the hearing. He stated that the motions were dealt with at the time of the hearing. The Board will be considering all the matters before it, factual and procedural, before it takes its action.

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Mr. Graff stated that, according to the OAC 4731-13-03 (G), it should be ruled on in advance, and he's asked that that be done. A written motion has been filed. He asked whether that has been distributed to the Board, and whether a ruling has been made by the Board. Mr. Graff stated that he's trying to get a procedural issue.

Ms. Pfeiffer advised Dr. Varyani that this is his meeting to run. If Dr. Varyani wants to give Mr. Graff and Dr. Leak their opportunity to address the Board for the five minute period, they can so address.

Ms. Pfeiffer stated that Dr. Varyani does not have to engage in an interchange with Mr. Graff at this point in time.

Dr. Varyani stated that, speaking on behalf of the Board, he's saying that the Board has heard Mr. Graff, that the rulings have been made, and the Board is here to hear his statement. He again stated that Mr. Graff will have five minutes to address the Board.

Mr. Graff thanked Dr. Varyani and indicated that he would move forward.

Mr. Graff stated that they're here today on what he believes is the longest hearing in which he's ever been involved with the State Medical Board. There were several days of testimony and Dr. Leak had been charged with three individual areas concerning his medical practice. The first of those was a minimal standards count concerning some electrodiagnostic testing, which Dr. Leak will talk about in the remaining time. The second was a fellowship program, including a podiatrist among twelve individuals who graduated from that fellowship program and received board certification in the subspecialty of pain management from their appropriate boards. The third was an event of malpractice coverage that had not been carried by Dr. Leak for a period of seven months.

Mr. Graff stated that he will address the malpractice issue first. He stated that, as everyone on this Board knows, the Dublin-based company of National Century Financial Enterprises (NCFE), the largest healthcare financier in the United States, went bankrupt. It had provided healthcare financing, as shown in the record, to Dr. Leak and others; and for a period of time Dr. Leak was without malpractice insurance. For a period of seven months there was a sign on the wall of his waiting room notifying individuals of his lack of malpractice coverage. However, there was a time during that period of time that he did not follow the Board's administrative rules and did not have individually signed receipts of that non-emergency patient's knowledge of the lack of malpractice insurance. Mr. Graff stated that this was during the period 2003-2004, and any statute of limitations would have since passed and no patient harm has been shown. Mr. Graff stated that he does understand the Board's concern that there was, in fact, a failure to fully follow all of the Administrative Rules. Unfortunately, NCFE's demise took down not only Dr. Leak. Michael Reese Hospital in Chicago had to close because it couldn't meet its payroll. Doctors Community Health Care and D.C. General, the only public hospital in Washington, D.C., also had to close. It was not an individual event but a nationwide crisis. It has been rectified, and for that, Dr. Leak expresses his concern and regret.

Mr. Graff stated that the Hearing Examiner has recommended that the second issue be dismissed, i.e., the fellowship program that Dr. Leak ran in interventional pain medicine for individuals in this community,

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which was unaccredited. Mr. Graff stated that he will leave the majority of that to Dr. Hoogendoorn and Dr. Griffin to talk about, but that fellowship program was then approved by the American Board of Podiatric Medicine as an accredited residency for Dr. Hoogendoorn, and he did get credit for it. Dr. Griffin did get credit for the unaccredited fellowship and, in fact, passed his boards in the subspecialty of pain medicine. Mr. Graff stated that it is not unusual for a program to be first unaccredited and then accredited, as the testimony in the record shows.

Mr. Graff stated that the final issue is about minimal standards of care. He stated that he raised the issue that the Board used what they believe were unqualified experts. That is in his written material and clearly within the hearing record. A very well-qualified neurologist, Thomas C. Chelimsky, M.D., whose credentials he is sure are outstanding, was brought in as an expert on interventional pain medicine: something he doesn't do, something he didn't practice, although he does, at the same time, have the subspecialty certification and passed the written didactic exam. However, Dr. Chelimsky doesn't do interventional pain medicine. He never has and so testified.

Mr. Graff stated that the Board did bring forward an expert who was very well-qualified: Mark V. Boswell, M.D., the man who ran the program in pain medicine with Dr. Chelimsky at Case Western Reserve University. Mr. Graff stated that Dr. Boswell is an anesthesiology-trained pain medicine subspecialist. He is now, and was at the time he testified, the Director of Anesthesiology at Texas Tech, one of the top programs in the United States and internationally, and a program founded by the godfather of pain medicine, Gabor Racz, M.D. Dr. Boswell testified that he knew Dr. Leak, had helped him get his clinical instructorship, had sent a resident or two down to the program itself in Columbus, and found Dr. Leak to be at the forefront of pain management. Dr. Boswell testified in the record that he has written of Dr. Leak, written of Dr. Leak's experts, David R. Longmire, M.D., and Gary W. Jay, M.D., and that Dr. Leak practiced within the standard of care. Mr. Graff stated that the Board didn't want to use Dr. Boswell as an expert, but only as a fact witness. Mr. Graff stated that the facts are very clear: the top qualified individual did testify in this hearing and the standard of care was met.

Mr. Graff at this stated that Dr. Leak will talk about his practice and the opportunity he has to bring the area of pain medicine forward.

Dr. Leak stated that he appreciates the board's allowing him the time to address it. Dr. Leak stated that few physicians or anybody have ever crossed the doors of a pain practice. In their world, they are faced with people pursuing medications or other non-validated disability circumstances. He stated that their job is to be able to sort all that out. Dr. Leak stated that at the time of this evaluation, pain medicine was, indeed, in its infancy. At the time they could do procedures, and in the world of anesthesia, anesthesiologists are expected to do pain. Sixty two percent of all medical directors of pain services are anesthesiologists. If you pick up any book on pain and anesthesia, it talks about doing injections and procedures because that is what anesthesiologists do. Dr. Leak stated that if he were an obstetrician and treated people with uterine bleeding, he'd be expected to do D & Cs, and a lot of them if he were the only one around doing them. If he were an orthopaedist with a subspecialty interest in diseases or injuries of the upper extremity, he would do a lot of EMG's, nerve conductions and carpal tunnel procedures. Dr. Leak stated that, as an anesthesiologist, when you see people you do diagnostic, prognostic and therapeutic injections. That was the scenario of the day. He stated that they've evolved. They've developed and discovered newer

technology.

Dr. Leak stated that they looked at 24 patients. He stated that their record of performance shows that only twelve percent of their patients have interventions. Eighty eight percent do not. The diagnostic studies that they used were in an effort to validate because, at the time, they needed to know whether there was evidence of disease. They used electrodiagnostic testing. They used a study known as Selective Tissue Conductance (STC), which looks at the amount of sweat one has in an injured area of tissue. There was no standard of how many to test or how to use it, but they knew the following: based on a study done in 1989, they knew that when they did stellate ganglion blocks, and most of the physicians in the room know that if you inject in the neck and block the ganglion, the eye droops, the face gets red, the pupil gets large. That, they can look at. However, they also know that if they inject into the muscle and the patient says that he or she has relief but then turns around and asks for Percocet after that, they have not validated whether they have been effective or not. They pursued efforts to validate whether the injections were effective or not using electrodiagnostic studies. There was no other method for doing so at the time. They have evolved with other agents, where they don't do as many now because they have topical agents. They don't do as many injections anymore. They have pharmacologic agents that treat nerve disease that didn't even exist at the time, so they don't have to do as many injections anymore.

Dr. Leak stated that to give the Board an idea about the way this data and information could be used, there are two case reports: one case report demonstrates a gentleman who had positive electrodiagnostic studies, it demonstrates how they used the category of electrodiagnostic studies to prove presence or absence of noxious pathology, or painful pathology around the nerves. In that report, they also demonstrate what they will do in the case of that individual who had positive findings. The other report is one of a lady who had an abnormal toxicology screen and no significant findings of electrodiagnostics. Those are the people who do not get interventions. Those are the people that go to counseling and rehabilitation. That is the nature of the practice of pain management as they know it.

Dr. Varyani stated that Dr. Leak has one more minute to complete his statement.

Dr. Leak stated that he would like to point out that the phase looked at again was at its infancy. Pain medicine is now in the adolescent phase at best. Like every other arena of medicine, there is evolution, not unlike the time in the early 1920s when Dr. LeFevre came as a neurosurgeon to this community and no one respected him, because nobody knew about neurosurgery, until he had significant success. He was then accepted. He, like Dr. LeFevre, was an outlier in his first examination because of top scores and performance on his examination. They've contributed, they've taught people in every arena of medicine, as required to be proficient in diagnosing and treatment of painful conditions. Dr. Leak stated that they think that this is a very important thing to do, as education is what they do in medicine, and they did it with full openness to the community and with every authority they thought was reasonable at the time. Dr. Leak stated that he would appreciate the Board's consideration for the community and for the treatment of pain in this country.

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

Mr. Wilcox stated that the State agrees with many of the portions of the lengthy Report and

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Recommendation, issued by the Hearing Examiner in this matter, including the Recommendation of permanent revocation of Dr. Leak's license. He stated that he does, however, have a few points of contention and some points he would like to reiterate concerning Dr. Leak and his practice.

Mr. Wilcox stated that Dr. Leak is a classic example of someone who operates in, what he would call, the gray area. He simply refused at hearing to give straight answers to simple and often straightforward questions. In his practice he simply runs hundreds, if not thousands, of patients through his program at Pain Control Consultants, Inc. (PCC), a program which consists of subjecting patients to many useless and medically meaningless tests, shooting them up with steroids and then finally prescribing narcotic pain medications. There is no apparent attempt to actually heal these patients through exercise and/or rehabilitation. As Drs. Chelimsky and Bashar Katirji, M.D., the State's two experts in this matter, testified, many of the tests ordered by Dr. Leak were worthless from a diagnostic standpoint. The STC test and the somatosensory evoked potentials (SSEPs) are two examples of tests which were ordered, performed and billed by Dr. Leak. Each patient in this case was subjected to the same barrage of tests, regardless of pain symptoms, which the State's experts found to be a deviation from the standard of care. The testing ordered and conducted by Dr. Leak lacked any documentation in the medical records as to the reasoning or the medical judgment behind the ordering of the tests. There was also no follow-up or mention of the test results; in essence, no clinical thought process that has been documented in these medical records. It was as if these STC tests or SSEPs were being ordered just for the sake of ordering a test. There is simply no medical indication for these tests to be ordered.

Mr. Wilcox stated that Dr. Leak has contended that one of the State's experts, Dr. Chelimsky, is not qualified to testify in this matter, but you have to look at Dr. Leak's practice. His practice at PCC was clearly within the area of neurology. When he ordered and supervised nerve conduction studies tests – the STC test and the SSEPs – Dr. Leak claims that these tests are ordered in order to find the basis for the pain complaints in these patients. His theory is that these tests can help locate the area of pain along the nerve pathways in the subject's body. The Board presented two of the foremost experts in the field of neurology and in the autonomic nervous system in this country. These experts flatly rejected Dr. Leak's theory of testing, concluding that it was below the minimal standard of care.

Mr. Wilcox stated that Dr. Leak claims that the STC tests and the SSEPs and nerve conduction studies are somehow only understood from his perspective as an interventional-based pain medicine specialist with a background in anesthesiology, but, to the contrary, Dr. Leak's lack of expertise in the area of the autonomic nervous system is readily apparent when reviewing this record. The battery of STC tests, SSEPs and nerve conduction studies routinely ordered by Dr. Leak shows that he has no idea what these tests were purportedly showing. Dr. Leak cannot point to one single STC test result and identify how it trained or altered his treatment of an individual patient. The results of these tests were inconsequential because, as Dr. Chelimsky and Dr. Katirji clearly articulated, the tests resulted in no data or conclusions that could be relied upon.

Mr. Wilcox stated that he has one final point to make in this matter. He stated that the Report and Recommendation concludes that, since Dr. Hoogendoorn was being supervised by Dr. Leak and was under this so-called fellowship program, there was no unlicensed practice of medicine in this case. Therefore, the Report and Recommendation concludes that Dr. Leak could not have aided and abetted in such unlawful

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and unlicensed practice. Mr. Wilcox stated that the State disagrees, however, and believes that a podiatrist cannot practice medicine in a fellowship program, especially if that program is designed for medical doctors. There are no loopholes in the Medical Practices Act that would allow any unlicensed person to practice medicine and surgery in the state. Since the record in this matter clearly shows that Dr. Hoogendoorn was practicing medicine without a license to do so, the Board should make a finding that Dr. Leak unlawfully aided and abetted in the unlicensed practice of medicine and surgery by Dr. Hoogendoorn.

Mr. Wilcox stated that the State agrees with the recommendation of permanent revocation of Dr. Leak's certificate to practice medicine and surgery.

Dr. Varyani stated that before he goes forward, he would like to state that Dr. Leak was allowed exactly 15 minutes to address the Board, which is 200% over the time the Board usually allows for an address. Dr. Varyani added that he allowed the testimony of Dr. Chelimsky to remain in the record because Dr. Chelimsky is a board-certified pain management specialist. Dr. Varyani asked for a motion approving his rulings.

DR. STEINBERGH MOVED TO APPROVE DR. VARYANI'S RULINGS, MADE ON BEHALF OF THE BOARD, TO ALLOW DR. LEAK ADDITIONAL TIME FOR HIS ADDRESS AND TO DENY DR. LEAK'S MOTION TO STRIKE DR. CHELIMSKY AS AN EXPERT WITNESS. DR. AMATO SECONDED THE MOTION. A vote was taken:

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

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF WILLIAM DAVID LEAK, M.D. MR. BROWNING SECONDED THE MOTION.

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

Dr. Stephens stated that she is new to the Board, but she's not new to pain. She stated that she has to say

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that she thinks that the Board and its attorneys have gotten it all wrong. Dr. Stephens stated that she's a spine surgeon and she deals with pain every single day. She deals with all the pain management people and the providers of pain management all the time. Dr. Stephens stated that it is a still-evolving area. There are so many different specialties involved and no one specialty has the right answer. For a neurologist to come in and say, "I know this and this is the way it is," is ridiculous. Dr. Stephens stated that there is such an incredible overlap in every single specialty in pain.

Dr. Stephens continued that, in terms of the testing that went on, when you have someone in a desperate situation with pain, you keep trying to find a reason for their pain. Dr. Stephens stated that she knows a lot of pain people who do nerve conduction studies, she knows a lot of people who do the temperature things, she knows a lot of people who do the SSEP, and they're kind of just trying to find anything to help these people. Dr. Stephens stated that sometimes, most times, these diagnostic studies don't point to anything, but you're still obligated to help somebody that comes back to you. Dr. Stephens stated that physicians haven't figured out pain. That's why there are so many articles in *Time Magazine*. That's why there's so much controversy.

Dr. Stephens stated that she didn't see anything wrong with what Dr. Leak has done. Noting the Board's concern about the podiatrist going beyond his scope of practice in giving injections, she stated that podiatrists operate all the way up to the knee. If this podiatrist has gone through a pain management program, and they also deal with neuropathic pain and nerve pain and all those other things, she doesn't think that's beyond their scope.

Dr. Stephens added that, to say that cortisone or steroid injections are worthless, she has patients that come to her every three months for these injections because they do provide some relief. It's a difficult population, there aren't enough physicians in the specialty, and it's a still-evolving specialty. Dr. Stephens stated that she just doesn't get this.

Dr. Mahajan stated that he's a neurologist and he understands what Dr. Stephens is saying, but all the testing – the SSEP, nerve conduction studies – are uncomfortable procedures, and ordering them as a routine on everybody, the majority of the people, without rationale is not logical. Many of these studies, soft tissue conduction, and so forth, are best left with institutions that have parameters on what to make out of them. These are not the standard of care in the community practice. Dr. Mahajan stated that in looking at this case, the tests were ordered excessively and they were not rational.

Dr. Stephens stated that in her community they are standard of care. She stated that she knows that all the pain people do all these different things. Every community and even different hospitals have different standards of care. Dr. Stephens again stated that she doesn't see anything wrong with any of this stuff.

Dr. Egner stated that she has moderately lengthy comments on this case, and added that she'll try not to be too long.

Dr. Egner thanked Hearing Examiner Porter, adding that she can't imagine combining three citations into one hearing, with all of the physicians and the podiatrist being represented by their own lawyers, and then the State's lawyers. Dr. Egner stated that, from the way the record read, she would say that it appears that

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the hearing was held in a very orderly fashion, and she gives Mr. Porter a tremendous amount of credit. She also stated that she is sure that taking one hearing and creating three Reports and Recommendations was just an incredibly difficult task. She again thanked Mr. Porter and said that he did an excellent job and a wonderful representation for the Medical Board.

Dr. Egner stated that this isn't really about pain management being in a gray zone. She stated that she agrees with Dr. Stephens that there are not absolute answers in pain management, nor were there from 1999 to 2001, but it was also not caveman medicine. In 1999 and 2001, it wasn't that long ago, physicians did not know a lot about pain, maybe not as much as they do today, but it wasn't just a hit and miss practice of medicine.

Dr. Egner stated that Dr. Leak was accused of many counts in his citation. She stated that she will not go through all of them, but she will go through some that she feels are the most important. Dr. Egner stated that she also feels that the expert witnesses were reliable and were appropriate. Dr. Chelimsky is a neurologist, an expert in electrodiagnostic medicine, and was director of the Cleveland Hospital pain center. Dr. Egner stated that, even if Dr. Chelimsky doesn't do a lot of interventional medicine, she can't believe that he doesn't know about it.

Dr. Egner stated that Dr. Leak failed to perform, recommend or document EMG. She stated that this seems to be at the heart of much of the issue. She stated that this is a test that was readily available from 1999 to 2001, a test that is considered much of the gold standard by many physicians, whether they be neurologists or anesthesiologists. It wasn't that EMG wasn't used often, but rather it is that, in a practice that used testing on every patient, averaging more than ten tests per patient, he never used an EMG in the 24 patients that were looked at. Dr. Egner stated that there must be a reason for that. Is it that it's too cumbersome? Is it that it had to be done by a specialist that wasn't employed by PCC? Is it the billing of the EMG was not a cost-effective thing to do? Dr. Egner stated that she doesn't know, but she does know that there's a glaring red flag that an EMG was never ordered. One-third of patients suffered from radicular pain. They received the NCS, but no EMG. The NCS tests limbs, not roots, and without being done with an EMG is meaningless. Dr. Egner commented that experts on both sides spoke to that issue.

Dr. Egner continued that two thirds of the patients suffered from joint and back pain. They received the unnecessary SSEP test. This test was available in the 1980s and at that time was kind of the state of the art. She stated that as medicine improves and advances are made, tests fall by the wayside. That's what should have happened with this test. Dr. Egner stated that she's not saying that it should never be used, but it was the primary test in this practice. It's now outdated and it was then. The false positive rate was high and MRIs, which were available from 1999 to 2001, would give a lot of the information from these tests.

Dr. Egner stated that Dr. Leak gave a lot of testimony, saying that the tests were done to confirm pain. She stated that's very different from doing tests, sometimes painful tests, to find out the cause and treatment for the pain. Saying that you want to see if the patient, when he says he has pain, really does have pain, is a whole different approach to medicine. Dr. Egner stated that she's not saying that it's not appropriate to a point in a pain medicine practice, but it should not be a practice's primary goal to see who's lying and who's not. The test, the McGill Pain Questionnaire and the Visual Analog Scale, was never used, and experts said that that is the test that really helps to confirm a patient's subjective nature of the pain.

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Confirming whether the patient really does have pain is not the primary purpose for any of these tests. Dr. Egner stated that in Dr. Griffin's testimony, even he dispels the EMG over the SSEP to establish the existence of pain. Dr. Egner stated that the whole operation of the practice was to prove that the patient's not lying. She stated that the tests don't do that, that's not the purpose of the tests, and so they were unnecessary tests.

Dr. Egner stated that PCC did have the cookbook approach. Every patient got the same battery of tests and got them multiple times. They tested multiple nerve roots when the complaint was confined to only one. She noted that even Dr. Leak's expert, James P. Bressi, D.O., states that they used the tests to validate pain and that is not an appropriate indication.

Dr. Egner stated standing orders were in place for all 24 patients. They failed to form an individual clinical impression. The plan of care was the same for all patients – extensive diagnostic testing. Dr. Egner stated that the histories and physicals are minimal and often non-detailed, except for the patient questionnaire. There was major lacking in the impression and plan part of the medical record. Dr. Egner stated that there appears to be both a problem with documentation, as well as a problem with routine care plans or even a lack of care plan.

Dr. Egner noted a failure to obtain psychological consultation. She stated that Dr. Chelimsky states that patients should have a psychological evaluation within three months of their initial visit, and this was rarely done. There was no documentation of it and no follow-up. There was no consideration of these factors in many of the plans of care, and Dr. Leak himself states that a person threatening suicide would be in need of psychological help. Dr. Egner stated that this is a basic lack of respect for patients in pain and needing chronic benign pain management. She stated that this would be akin to only suggesting that one get financial help after they've declared bankruptcy. She stated that it makes no sense to have that as the baseline standard. It is practicing below the minimal standards.

Dr. Egner stated referring patients for addiction evaluation, treatment or drug screens was not done. If it was done, tests were never in the chart. Dr. Egner stated that partly, PCC had very poor documentation, but it is, again, a lack of respect for the patients that you're taking care of and not looking at their overall treatment of pain in a broader view. It was doing pain management by techniques and prescriptions. This was especially evident when care was denied to patients unless they consented to diagnostic or invasive procedures. She noted that medicines were withheld from patients 5 and 12 until they would consent to the spinal differential block. Dr. Egner stated that this is absolute malpractice and practicing below the minimal standards.

Dr. Egner stated that people practice below minimal standards for the most part for one of three, or a combination of three, reasons:

- 1) greed – “It is a moneymaking operation, and the more patients I see, the more tests I order, the more procedures that I do, I make more money,” and in that, practice below minimal standards.
- 2) the “cowboy syndrome” – Those physicians practice outside of what you would call “traditional medical practice. They see things a little bit differently. They feel they're always on the cutting edge

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– “I don’t have to follow the rules. I can practice. I don’t have to go with what the community says, I know better in pain management.” Or “I know better and alternative cares are so much better than what the community usually does.” They’re willing to try new things – they think that they’re rather innovative and a free thinker. Dr. Egner stated that, on the one hand, everyone in medicine has a little bit of that cowboy syndrome, and it’s a good thing. It’s how medical advances are made. Dr. Egner stated that when it goes too far your practice is completely outside the community standard, which she believes this one was, and it becomes dangerous and damaging to patients. Rules just don’t apply. It is isolating and it can get out of control. Dr. Egner stated that she believes that it is also one of the reasons why Dr. Leak has absolutely no hospital privileges in any hospital in Columbus. She stated that she doesn’t know the circumstances of his not having privileges, but it is part of that syndrome of not being part of the medical community.

- 3) lack of knowledge – Dr. Egner stated that, in Dr. Leak’s case, she doesn’t believe that he really suffers from a lack of knowledge. She thinks that he knows his subject matter quite well. He knows what tests do what, he knows how they’re reimbursed, how to do them technique-wise, and what the side-effects are.

Dr. Egner stated that greed, thinking he knows better than anyone else and that he can practice in a very untraditional way are Dr. Leak’s problems. Unfortunately, those are not amenable to improvement. A lack of knowledge can be. You send someone through training and they acknowledge that what they did wasn’t the best practice of medicine. Nowhere in Dr. Leak’s testimony at hearing, or even today, at all suggests that perhaps there’s a better way to do things. His greed and his untraditional practice are reflected in the number of procedures for the patients, ongoing care without an end-point or functional goal. It is reflected in not using EMGs, relying on the SSEPs and the STCs, and not changing any plan of care based on test results. He justifies every unnecessary diagnostic test. He justifies not changing his plan of care based on test results. He justifies his documentation, noting that “it just takes more time to get through our charts.” Dr. Egner stated that Dr. Leak justifies withholding pain medications until patients comply with his plan. He justifies being interested only in tests and procedures and not a comprehensive pain medicine approach. Dr. Egner stated that he justifies his plan of care and not adjusting it to individual needs. Dr. Egner stated that, therefore, she is very in favor of permanent revocation in this case.

Dr. Stephens again stated that she is a spine surgeon and she refers at least ten people a day to pain management. She’s seen records from the Cleveland Clinic, from University Hospital, from all over, and this is what everyone does in pain. This is not below the standard, it’s what everyone’s doing. In pain management in her area, one of her two top referrals don’t have hospital privileges. She stated that that’s not unusual – they’re in competition with the hospital, they don’t need hospital privileges and a lot of them don’t have hospital privileges.

Dr. Stephens stated that, in terms of the “cookie cutter” approach and everyone having the same forms and things like that, the Board should see the forms from the Cleveland Clinic. They all look the same. You shouldn’t even bother to read them because you can’t distinguish one patient from another. Dr. Stephens stated that she just doesn’t get that criticism.

Referring to the EMG and nerve conduction studies, Dr. Stephens stated that she’s a spine surgeon and

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based on MRI findings of disc herniations and patient complaints, she never relies on EMG and nerve conduction studies. Dr. Stephens added that, in terms of pain management, that's what you try to do – confirm that the patients are really having pain. Withholding medication and things like that for procedures is oftentimes done. It's not like you're trying to bribe the patient to do a procedure, but it's kind of like you need a reason to do the procedure. Dr. Stephens stated that she has lots of patients who have epidural blocks injections for years, eight to ten years.

Dr. Amato stated that the discussion back and forth on the testing he finds interesting, as an OB/GYN. The problem he has is, if one wants to have a cookbook approach to medicine, and everybody has said that this is still a developing area, it seems to him the place where that belongs is in the university setting, to try to establish a criterion, if it is possible. Dr. Amato stated that it bothers him that in the practice of the art and the science of medicine, every patient seemed to be tested the same. The thing that made no sense to him is that the outcome of the tests made no difference in the treatment. What's the reason for doing a test if it's not going to affect how you're going to treat the patient?

Dr. Amato stated that he was also a little bit concerned that, since he's had a family member injected for trigger points, and having been there when the injections were done, it kind of bothers him when you have 40 trigger points injected in one visit. Dr. Amato stated that a lot of what he saw here seems to smack of a production line to develop CPT codes.

Dr. Varyani stated that he would like to speak on this issue as well, because he trained in pain management between 1979 until 1980 at the Cleveland Clinic. He had a very good relationship with the Cleveland Clinic and he does practice pain therapy, although anesthesiology is his first job. Dr. Varyani stated that he has met and he knows Dr. Gabor Racz. He stated that if this discussion was being held in the 1990s, he would agree that pain management was in its infancy. He believes that the conductant spark that is being talked about was proven to be a questionable modality in the late 1990s. When you lose everything else, then you rely on, maybe, the sympathetic or the parasympathetic system as having this, or having this overreaction. But in 2008, pain management is a science. If someone tells him that they're doing ten epidural injections in ten months, it has been proven that if you do three and if the three don't work, it doesn't work.

Dr. Varyani stated that he is in Dr. Egner's camp on this. She has outlined what pain therapy is, and he congratulated her on hitting the nail right on the head. He stated that this is not a cowboy issue, this is purely greed. You cannot have conductance done on everybody – not everybody has either a phantom pain, or you cannot figure out what dermatome it's coming from, or if you have reflex sympathetic changes, or whatever. Dr. Varyani stated that he cannot fathom everybody having a conductance test. That's basically testing your autonomic system, and that's proven to be questionable today.

Dr. Varyani stated that he had read this case, and he's reserved his comments for the end. He stated that all he will say is that he hopes to God that the Cleveland Clinic Pain Management Institute is not just gibberish. Dr. Varyani stated that he was a resident from there and he thinks that they've grown. They're now doing things of which they never dreamed. It has evolved, and he's sure that it will evolve more. Dr. Varyani stated that if a pain patient comes to him, he's not just going to do epidural blocks, or conductant tests or this or that. If he doesn't understand, he'll go straight to an MRI. Dr. Varyani indicated

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that with an MRI you can see up to 1 mm inside the body. Why are these totally questionable tests being done? You can do them at certain times when you can't diagnose the pain, but not on everybody. Why would you do conductance on everybody? Dr. Varyani stated that that happens to be the routine at PCC. You need an EMG. If the pain is following another dermatome, and you cannot figure out why its happening, then you would need an EMG to see if there's weakness in that dermatome or not. You don't need an EMG on everybody. You don't need conductance on everybody. Physicians know how things work now.

Dr. Steinbergh stated that she's a primary care physician and not as much of an expert as some other Board members, but she does refer patients frequently or pain consultation. She did thoroughly review this chart, and she feels, quite frankly that she does agree with the Hearing Examiner's findings, except for one. She does agree that Dr. Leak subjected his patients to unnecessary tests and to an extraordinary number of tests as Dr. Egner outlined. She also felt that he did an excessive number of invasive procedures.

Dr. Steinbergh stated that she also agrees that Dr. Leak unlawfully aided and abetted the unlicensed practice of medicine in the case of Dr. Hoogendoorn.

Dr. Steinbergh stated that if she, as a primary care physician, saw that this type of thing was going on, she would not refer the patient to this pain physician because she feels that he's very inappropriate.

Dr. Stephens stated that she would just like to say that a lot of the pain management centers that she uses, including the Cleveland Clinic and University Hospital, operate like this.

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

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

The motion carried.

Dr. Madia advised that he has an acquaintance with Dr. Leak and has, therefore, abstained from voting on this case.

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BRIAN F. GRIFFIN, M.D.

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

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

Dr. Griffin was introduced to the Board by his attorney, Thomas W. Hess, Esq.

Dr. Griffin advised that he practices interventional pain medicine in Hilliard, Ohio. He thanked the Board for giving him the opportunity to make a statement.

Dr. Griffin stated that he is a licensed physician in the State of Ohio and has been practicing since 1979. He's board-certified in emergency medicine. He advised that he has a second board that is sanctioned by the ABMS through anesthesia. It's the anesthesia sub-specialty of pain treatment. He's also board certified in a lesser board in pain management, which is not ABMS sanctioned.

Dr. Griffin stated that he was practicing emergency medicine in Columbus, Ohio, in the late 1990s. In 1999 Dr. David Leak offered him a position in a fellowship program at Pain Control Consultants, located in Columbus. Dr. Griffin stated that he did perform due diligence prior to accepting the fellowship position. He learned that the program was established in 1984, that he would be the twelfth physician to participate in this fellowship program, and that previous fellows had graduated and gone into pain management.

Dr. Griffin stated that the fellowship program had a 75-page syllabus that set forth what was expected of the fellows. The syllabus indicated that fellows would be exposed to both clinical and academic aspects of interventional pain medicine. In addition, the fellows were exposed to Pain Control Consultants' patients, and the patient encounters were used as a teaching experience. Finally, the syllabus indicated that fellows were guided by the standing requirements Dr. Leak had established for treating chronic pain patients.

Dr. Griffin advised that, in addition to the clinical learning experience in the fellowship program, Dr. Leak established an academic curriculum that included structured meetings, grand rounds and a drill club. This academic curriculum provided fellows the opportunity to participate in publication or lecturing in the field of interventional pain medicine and greatly contributed to the knowledge gleaned from the fellowship program. Dr. Griffin stated that the fellows had structured meetings with Dr. Leak at 8:00 a.m. each morning. These meetings were used to discuss clinic and patient problems and to allow the fellows to present issues regarding various pain control patients. He stated that Dr. Leak ran each of these morning conferences and critiqued the care that was being provided by the fellows. Grand rounds were also held every Thursday night. Dr. Griffin stated that grand rounds provided fellows and Dr. Leak the opportunity to present a single problem or single patient to the group with some discussion on the patient's disease and the treatment necessary to treat the disease.

Dr. Griffin stated that he participated in the fellowship program for two years. The first year, 1999, was

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devoted to clinical pain management. The second year, 2000, involved the surgical procedures of pain management. In all, the fellowship provided him the opportunity to truly learn the interventional side of pain management. Dr. Griffin stated that he completed the fellowship program in 2001. Therefore, he was still in training during the time period in question, 1999 and 2000. Dr. Griffin pointed out that all of this occurred nine years ago.

Dr. Griffin continued that in 2000 Dr. Kyle Hoogendoorn, a licensed podiatrist, participated in the fellowship program. He stated that Dr. Leak informed him that he, as a senior fellow, would assist Dr. Leak in the fellowship program and monitor Dr. Hoogendoorn's participation during his first year of fellowship. Dr. Griffin stated that it was his experience that the fellowship program, like any other educational program in the medical field, was operating using a hierarchy. This meant that Dr. Leak, the director, would teach him, the second year fellow; and he, in turn, would teach Dr. Hoogendoorn, the first year fellow. They would all teach whoever else might be in the clinic for an educational endeavor.

Dr. Griffin stated that the fellowship program was accredited by the Accreditation Council for Continuing Medical Education, which, at the time, was the only accreditation available to this training program. The fellowship program was not accredited by the Accreditation Council for Graduate Medical Education (ACGME) because the Council was not accrediting pain management fellowships during the time period in question. Dr. Griffin advised that, despite the fact that the fellowship was not accredited by ACGME, the ABMS recognized his training and allowed him to sit for subspecialty certification in pain medicine, the only ABMS-backed exam for pain management. Dr. Griffin stated that he passed the examination on his first attempt. He stated that he thinks that that indicates that he was, by that time, knowledgeable, and it shows the validity of the fellowship.

Dr. Griffin stated that, in terms of medical specialties, interventional pain medicine is a relatively new field. He stated that he feels that, at times, his field of interest is misunderstood. Some of the public think that he is nothing more than a pill pusher who has no concern for patient care or safety. This impression is not true. More often than not, his patients have suffered with pain and its associated consequences for many, many years. On average, about eleven physicians have been seen by this patient prior to their referral to his practice.

Dr. Griffin stated that he is privileged to treat patients from all walks of life and from a wide geographic area. He even has a D.E.A. agent as one of his patients.

Dr. Varyani advised Dr. Griffin to conclude his statement.

Dr. Griffin stated that the fellowship program was a real event. He had to do grand rounds, speak, write a chapter in a medical text, and took call. He commented that it would seem to him that when you're in the training program, by fact, you don't know as much as you would like to know and intend to know down the road. Therefore, you're not completely up on all aspects of the care of the patient in pain management. That is why the attending is in place – so that they can teach you the proper way and you know what you're doing down the road. The fellowship is another layer of education for physicians interested in pain management.

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Dr. Steinbergh stated that she thinks that this is in the hearing record, but asked whether there has ever been an attempt to get this fellowship accredited. Dr. Steinbergh stated that she didn't see any indication that the program was ever accredited by the ACGME.

Dr. Griffin stated that he doesn't believe it was.

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

Mr. Wilcox stated that the State's comments regarding Dr. Griffin will be focused on just a few points. First, the State agrees with the Conclusion of the Hearing Examiner that the evidence in this case clearly shows that Dr. Griffin's treatment of the 23 patients in question was below the minimal standard of care. Dr. Griffin subjected these patients to an extraordinary number of invasive procedures, including injections into muscle and nerve tissue. He also subjected these patients to a barrage of unnecessary and worthless tests, under the guise of confirming that these patients had legitimate nerve damage and the resulting pain.

Mr. Wilcox stated that the State disagrees with the Hearing Examiner's Finding that the evidence was insufficient to support a conclusion that Dr. Griffin aided and abetted Dr. Hoogendoorn in the unlawful practice of medicine and surgery. Mr. Wilcox stated that the Board should make written findings that detail that, from the period of August 2000 through November 2001, Dr. Griffin committed the equivalent of conspiracy, in violation of Ohio Revised Code (ORC) 2923.03 by aiding and abetting Dr. Hoogendoorn in the unlawful practice of medicine in violation of ORC Section 4731.41, which is a felony offense as defined in ORC 4731.99(A). Mr. Wilcox stated that the State respectfully requests that these written findings be incorporated into the final order issued by the Board.

Mr. Wilcox continued that the State disagrees with the Report and Recommendation, regarding the mitigation factor that seems to lessen the culpability of Dr. Griffin from the substandard practice because he was under the direction and influence of Dr. Leak. Mr. Wilcox stated that Dr. Griffin is responsible for his own actions, regardless of whether they were under the so-called fellowship program of Dr. Leak. Dr. Griffin knew what he was doing, and he should have recognized that the practice at Pain Control Consultants was far below the standard of care. It was his responsibility as a licensee to extricate himself from a bad situation. His failure to do so, coupled with his willing participation in this fraudulent practice, warrant a more serious penalty than the Hearing Examiner's proposed stayed revocation.

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

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

Dr. Egner stated that she would like to address some of the very specific allegations and some conclusions about them. She stated that, as far as the STC tests, Dr. Griffin testified that STC tests influenced their treatment, but he also testified that they were not very reliable. Dr. Egner stated that you can tell by the patient record and from the tables in the Report and Recommendation who the ordering physician was, and Dr. Griffin ordered the STC test on 16 of 23 patients. He performed an average of nine of these tests per

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patient. Two of the patients had twenty STC tests ordered by Dr. Griffin. Dr. Egner stated that there is no doubt that those tests were ordered in an excessive manner. Dr. Egner commented that, ironically, Dr. Griffin defends ordering these tests and the appropriateness of these tests, but then says that he has not ordered or performed one STC test since leaving Dr. Leak's practice. Dr. Egner stated that that makes no sense at all, unless he knew at the time that these were not worthwhile tests.

Dr. Egner continued that in the record Dr. Griffin defends everything that he did while at Pain Control Consultants. Concerning his failure to recommend or do EMGs, Dr. Griffin testified that SSEP is the benchmark test; yet, no expert, not even their own, agreed with this. Concerning failure to have indication for the tests, tests were done on a routine standing order basis.

Dr. Egner stated that Dr. Griffin didn't come to this unaccredited fellowship program right out of a residency. He had one year of postgraduate training, and then he had quite a few emergency room physician jobs, where he matured, became more responsible. He also had a position where he was the liaison between physician staff and administration, which was also a position of responsibility. Dr. Egner stated that it's hard for her to understand how Dr. Griffin would couch everything as "I was just following standard orders."

Concerning Dr. Griffin's failure to document, Dr. Egner stated that Dr. Griffin's answers always justify the lack of documentation. Dr. Griffin says that if there's no note in the chart regarding the results of tests, it wasn't necessary as there was a result on the test. Dr. Egner stated that all practicing physicians know that every test result comes with an impression at the end; but to just put that into the chart someplace, where it's not easy to find, and not follow it through the patient record, really almost nullifies having done the test. It's difficult to refer back to. It's difficult to consider this, especially during such long-term, ongoing treatment.

Dr. Egner stated that, when asked about the failure to make psychiatric referrals, Dr. Griffin said that every patient had a referral. When asked whether the information was in the chart, Dr. Griffin referred to it as drivel. Dr. Griffin said, ". . . it's hard to remember to put every single drivel of information into the chart." Dr. Egner stated that that's how much importance Dr. Griffin placed on psychiatric and psychiatry referrals for chronic pain management care.

Dr. Egner noted other areas of concern, including failure to refer patients to addictionologists and failure to do tox screens. She noted that Patient 20 lost his OxyContin prescription, and still got more prescriptions. Patient 20 had also increased his methadone on his own. Dr. Griffin gave this patient a verbal reprimand. Dr. Egner stated that part of Dr. Griffin's past includes his being a deputy sheriff. He was a member of a SWAT team. Dr. Egner stated that she would think that Dr. Griffin is familiar with law enforcement and with laws. Yet, he didn't see that red flag of either over-use and addiction or diversion and selling drugs. Dr. Egner stated that she doesn't believe Dr. Griffin. She does believe that he was well aware of what was going on.

Dr. Egner noted Dr. Griffin's excessive use of invasive techniques: giving injections for trigger points versus tender points. Dr. Egner stated that she thinks that was brought out very well in this case, and the experts addressed that issue. Trigger point injections are indicated, not tender points. Dr. Griffin would

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give chemoneurolysis injections around lots of nerve fibers, instead of the main one. Dr. Chelimsky states that this is an unproven approach. Dr. Egner stated that Patient 17 had 21 invasive procedures in an eight-month period of time. Patient 14 had 11 procedures in four months. Dr. Egner stated that, in and of itself, this might be indicated, but putting all of the facts of the case together, there is a record and a pattern of excessive invasive techniques.

Dr. Egner stated that, looking over the record, she sees that Dr. Griffin has a false entry in his CV. He claims that he is board certified through the Board of Anesthesia, when he's board certified through the Board of Physical Medicine and Rehabilitation. She stated that she doesn't understand that; she doesn't know how anyone doesn't know through what board they're boarded. She again noted Dr. Griffin's history: he was a deputy sheriff, a member of a SWAT team; he worked in multiple emergency rooms; he acted as a liaison between physicians and medical staff. Yet, he justifies everything he did today and in his objections because he was a fellow, as if he didn't have the ability to think on his own. He doesn't even say that he knew then or knows now that there may have been a better way. There may have been better documentation, to give more comprehensive care. Dr. Griffin justifies all of it. Dr. Egner stated that, for this, she believes that he should be held responsible. He had full licensure in Ohio and had the ability to at least tell the Board that he's learned something from this fellowship that he might do differently. As far as the Board knows, he doesn't do anything differently except for not ordering that one test.

Dr. Egner stated that she is in favor of the Hearing Examiner's Proposed Order, except for the timing of it. She indicated that her proposal would restrict Dr. Griffin's license until such time as he completes the proposed clinical education program portion of the Order. Dr. Egner advised that she would like Dr. Griffin to devote himself to some education and relearning before going back into his private practice and being monitored.

DR. EGNER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF BRIAN FREDERIC GRIFFIN, M.D., BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

1. **PERMANENT REVOCATION, STAYED; PROBATION:** The certificate of Brian Frederic Griffin, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years.
 - a. **Obey the Law:** Dr. Griffin shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 - b. **Limitation/Restriction:** The certificate of Dr. Griffin to practice medicine and surgery in the State of Ohio shall be LIMITED and RESTRICTED as follows:

Clinical Education Program: Dr. Griffin's certificate shall be LIMITED and RESTRICTED to participation in a clinical education program, to be approved in

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advance by the Board or its designee, related to or concerning the use of EDX studies and interventions in the practice of pain medicine. The exact number of hours and the specific content of the program shall be determined by the Board or its designee, but shall total not less than 40 nor more than 80 hours. The Board may require Dr. Griffin to pass an examination related to the content of the program. This program shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

Prior to the termination of the limitation, Dr. Griffin shall submit to the Board documentation of successful completion of the clinical education program and a written report describing the program, setting forth what he learned from the program, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future. Upon acceptance of the documentation of successful completion of the clinical education program and the written report, the Board shall provide Dr. Griffin with written notification that this condition has been fulfilled and that the LIMITATION and RESTRICTION has been terminated.

- c. **Declarations of Compliance:** Dr. Griffin shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- d. **Personal Appearances:** Dr. Griffin shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
- e. **Monitoring Physician:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Griffin shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Griffin and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Griffin and his medical practice, and

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shall review Dr. Griffin's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Griffin and his medical practice, and on the review of Dr. Griffin's patient charts. Dr. Griffin shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Griffin's quarterly declaration.

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

- f. **Absence from Ohio:** Dr. Griffin shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
 - g. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Griffin is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
2. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Board Order, Dr. Griffin shall provide a copy of this Board Order to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Griffin shall promptly provide a copy of this Board Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. In the event that Dr. Griffin provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider,

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within thirty days of the effective date of this Board Order Dr. Griffin shall provide a copy of this Board Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Griffin shall provide the Board with **one** of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

3. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Board Order, Dr. Griffin shall provide a copy of this Board Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, though which he currently holds any license or certificate. Dr. Griffin further agrees to provide a copy of this Board Order at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Griffin shall provide the Board with **one** of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.
4. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Griffin's certificate will be fully restored.

EFFECTIVE DATE OF ORDER: This Order shall become effective thirty days from the date of mailing of notification of approval by the Board.

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

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| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |

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| | |
|----------------|-----------|
| Dr. Talmage | - abstain |
| Dr. Suppan | - aye |
| Dr. Madia | - abstain |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - nay |
| Dr. Mahajan | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

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

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

The motion carried.

KYLE ELLIOTT HOOGENDOORN, D.P.M.

Dr. Varyani directed the Board's attention to the matter of Kyle Elliott Hoogendoorn, D.P.M. He advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

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

Dr. Hoogendoorn was accompanied by his attorney, Elizabeth Y. Collis.

Ms. Collis advised that objections have not been filed by Dr. Hoogendoorn in this case. She noted that the

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Hearing Examiner has recommended that the charges against Dr. Hoogendoorn, as raised in the 2006 notice of opportunity for hearing, be dismissed. Ms. Collis stated that they would be making two points, though.

Ms. Collis stated that the issue before the Board is whether Dr. Hoogendoorn practiced medicine without a license while he trained in the fellowship at CCH. After three weeks of testimony about the fellowship program from Drs. Leak, Hoogendoorn, Griffin, and numerous State and Respondents experts, the Hearing Examiner recommended that all charges be dismissed against Dr. Hoogendoorn.

Ms. Collis noted that extensive testimony was presented at the hearing from Richard Weiner, D.P.M., who is the Podiatric Residency Program Director at Grant Medical Center in Columbus, regarding the education and training that podiatric residents and fellows receive throughout Ohio. Dr. Weiner clearly testified that podiatric residents are routinely educated and trained in areas outside of the foot and ankle because, as according to Dr. Weiner, the body is a connected system. In order to adequately diagnose and treat conditions of the foot and ankle, podiatric students need to be trained in all areas of the body. Dr. Weiner testified that it is not unusual for podiatric residents or fellows to be involved in medical rotations throughout the hospital in various areas, including general medicine, neurology, neurosurgery, pediatric medicine, and geriatric medicine. According to Dr. Weiner, podiatric students are routinely asked in their training to assist in surgical procedures outside of the foot and ankle.

Ms. Collis stated that there was also testimony from Andrew Thomas, M.D., the residency program director at the Ohio State University. He testified that podiatric residents are trained right alongside allopathic and osteopathic physicians, and that they are expected to complete many of the same educational and training requirements. Dr. Thomas also testified regarding the educational requirements, as are outlined by the Council for Podiatric Medical Education (CPME). Ms. Collis stated that, as is seen in the hearing record, Dr. Thomas clearly went through all of the educational requirements for podiatric students. Ms. Collis stated that, as was raised in an earlier case, this fellowship program was approved by the CPME as it was conducted through Dr. Leak's office, and no changes were made to the program from the time Dr. Hoogendoorn started the program to the time this program was accepted and approved by CPME. As also highlighted by Mr. Porter, unrefuted testimony was presented to show that ten physicians, including Dr. Griffin, completed the fellowship and obtained subspecialty certification in pain management from an ABMS-approved program.

Ms. Collis stated that, although the State attempted to argue throughout this case that Dr. Hoogendoorn practiced outside the scope of his license, the State failed to introduce any evidence or testimony from a podiatrist regarding the education and training of podiatry students. The State only relied upon experts who both said that they were not familiar with the scope of podiatric practice, with the training of a podiatry student, and with what podiatry students learned in school, and stated that in their residency programs they had never worked alongside a podiatric resident.

Ms. Collis advised that the Hearing Examiner in this case got it right. At all times in question, Dr. Hoogendoorn was actively engaged in a valid fellowship program. To make any other determination in this case than what the Hearing Examiner has recommended will have vast ramifications on how all podiatrists are trained throughout the State of Ohio. Ms. Collis stated that she would respectfully request

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that the Board approve and confirm the Report and Recommendation in this case and dismiss all charges against Dr. Hoogendoorn at this time.

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

Mr. Wilcox stated that, upon review of the Report and Recommendation, the State respectfully objects to the conclusions that find that the conduct of Kyle Elliott Hoogendoorn, D.P.M., did not constitute the practice of medicine and surgery without a certificate in the State of Ohio. The Report and Recommendation concludes that since Dr. Hoogendoorn was a participant in Dr. Leak's pain medicine fellowship, his conduct was lawful, even though Dr. Hoogendoorn is not a licensed medical doctor by the State Medical Board of Ohio. Mr. Wilcox stated that the State does not agree, and it takes the position that practicing medicine without a license is a felony in Ohio. The State requests that the findings and the final order in this matter reflect this legal certainty.

Mr. Wilcox stated that the practice of medicine and surgery is not conditional. You're either licensed to practice medicine and surgery in this state or you are not. In this case, the Board needs to focus on these questions: Would the medical procedures performed by Dr. Hoogendoorn, and detailed in this hearing record, constitute the practice of medicine? Were these procedures beyond the scope of the practice of podiatry? And was Dr. Hoogendoorn licensed to practice medicine and surgery by the State Medical Board of Ohio? Mr. Wilcox stated that the record is clear that Dr. Hoogendoorn and his activities do rise well beyond the practice of podiatry and are, indeed, the practice of medicine and surgery. In addition, there is no evidence in the record that Dr. Hoogendoorn has ever held a license to practice medicine in the State of Ohio, or in any other state, for that matter.

Mr. Wilcox stated that Dr. Hoogendoorn endeavored from the outset of this hearing to confuse the issues of this case. This case is not about what podiatry students do in their podiatric residency training. This case is about a fully-licensed podiatrist who entered into an alleged training program designed for medical doctors, way beyond his practice and skill set. This case is about a podiatrist practicing medicine well beyond the scope of the podiatrist, as set forth in law. Whether this was a fellowship program under Dr. Leak is irrelevant. You cannot delegate the medical tasks documented in this record to an unlicensed physician in the State of Ohio, no matter how much supervision this person may have. You cannot turn a podiatrist into a medical doctor by putting him into a training program under the supervision of M.D.s. As the State's expert, Dr. Chelimsky, opined at hearing, these procedures in question constitute the practice of medicine and require the knowledge and the skill set of a trained physician to safely administer to patients. Podiatrists cannot practice medicine beyond the defined scope of R.C. 4731.51.

Mr. Wilcox stated that Dr. Hoogendoorn was the first, and only, podiatrist to attempt the purported pain management fellowship with Dr. Leak. It is clear why this is a bad idea from the outset. Dr. Hoogendoorn was practicing medicine from day 1, and practicing on areas clearly beyond the scope of podiatry, as defined by law. The chemoneurolytic and trigger point injections in the areas of the neck, the shoulders, and the lumbar region are not something that podiatrists do in their practices. Podiatrists also don't prescribe controlled medications that are clearly outside the scope of podiatry, such as methylphenidate, Wellbutrin or Zyprexa, to name a few.

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Mr. Wilcox stated that Dr. Hoogendoorn claims that podiatry training routinely allows students to practice outside the scope of podiatry, yet there's no concrete evidence in this record, other than the vague, hypothetical testimony of Dr. Weiner and Dr. Thomas. Even their testimony basically said that podiatry residents do rotate in overlapping areas of medicine, but their participation in these areas is mainly relegated to observation and assisting medical doctors in these specialties of medicine. The attempt to confuse the Board and compare what Dr. Hoogendoorn claims he did as a resident, or what podiatry residents may theoretically do, should be ignored. The purpose of the fellowship is for the trainee to get hands-on learning in his or her chosen specialty and then to go out and apply that to their practice. In this case, Dr. Hoogendoorn clearly could not incorporate the vast majority of procedures he was learning into his podiatric practice.

Mr. Wilcox stated that, regardless of the level of supervision, Dr. Hoogendoorn was routinely doing procedures and prescribing medications for conditions that were beyond the scope of practice and expertise of a podiatrist. Dr. Chelimsky specifically testified that the trigger point and the chemoneurolytic injections documented in the 24 patient charts require the skill, knowledge base and medical judgment of a physician. Dr. Hoogendoorn's argument that he can be a fellow and practice as a medical doctor if under supervision and then walk across the street and be unqualified to perform the exact same procedures he did under supervision is untenable. Mr. Wilcox stated that this hearing has revealed that Dr. Hoogendoorn unapologetically and illegally practiced medicine without a license throughout his fellowship at PCC.

Mr. Wilcox stated that the State respectfully requests that the Board amend the Report and Recommendation to reflect Findings of Fact and Conclusions of Law that Dr. Hoogendoorn's activities documented in this record did amount to the practice of medicine and surgery without a certificate, and that his actions rise to the level of acts constituting of felony, in violation of Revised Code 4731.22(B)(10).

MR. BROWNING MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF KYLE ELLIOTT HOOGENDOORN, D.P.M. DR. STEINBERGH SECONDED THE MOTION.

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

Dr. Suppan stated that she is a podiatric physician and surgeon, and she would like to validate Dr. Weiner's testimony that podiatry residents routinely operate outside their scope of practice in performing procedures while under the watchful and supervisory eye of their attending. She personally has run a podiatric residency program, both as the director of the program and as an attending. She has run a podiatric fellowship as the director of the fellowship. It is also true for podiatric fellowships that podiatric fellows will frequently work outside of the scope of practice.

Dr. Suppan stated that a prime example of that in the podiatric profession is Dr. Warren Joseph. About 15 years ago, Dr. Joseph did an infectious disease fellowship in Philadelphia. It was the first time that any podiatrist in the United States had done an infectious disease fellowship. That podiatric physician and surgeon went on to educate podiatrists throughout the United States, and to raise the podiatric standard of care and to raise the minimal practice standards by going to pursue additional education.

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Dr. Suppan stated that she's coming from the view that she totally supports the seeking of additional education. She thinks that a podiatric physician should try to get all of the education that he/she can possibly get, and, of course, within the perimeters of Ohio law.

Dr. Suppan stated that she thinks that Dr. Hoogendoorn is an individual who was in a podiatric residency program. He was in the safe womb of an incubator, so to speak, doing procedures legitimately while under supervision. He matriculated through his residency program successfully, obtained his independent license in the State of Ohio, and at a later point entered into a fellowship. Dr. Suppan indicated that she felt that Dr. Hoogendoorn entered into the fellowship with good intentions, but it was unclear how much due diligence he did at that time. Very soon after he began his fellowship, he had a visit from members of the Pharmacy Board, advising him that it was inappropriate for him to be writing prescriptions for medications that were out of his scope of practice. Dr. Hoogendoorn stated that at that point, he immediately took action to cease from doing that and to relinquish that to Dr. Leak and Dr. Griffin to write those prescriptions.

Dr. Suppan commented that, had the fellowship been more hospital-based, or if it had already been accredited, it may have had greater credibility. One of the things that went to the credibility of this program was that it was located in an ambulatory care, clinical practice setting, where there was very little infrastructure for the supervision or participation of the other attending physicians. She stated that when Dr. Hoogendoorn became aware that he, potentially, was in a gray area with this fellowship, he immediately sought to get the highest level of accreditation that the podiatric profession offers, which is accreditation by the CPME.

Dr. Suppan stated that she believes that, in reviewing all of the testimony, Dr. Hoogendoorn sought to acquire additional podiatric education that he intended to use in his practice. A number of years have transpired since then, and she believes that Dr. Hoogendoorn said on the record that he had no intention to do epidurals or to do any of the procedures that he had learned while he was under a fellowship.

Dr. Suppan stated that her primary point in speaking is not speaking to minimal standards at all, but to the aspect of the aiding and abetting Dr. Hoogendoorn in the practice of medicine. She stated that she doesn't believe that that was his intent. She added that for the Board to position its actions in a way that discourages a podiatric physician from acquiring additional training in any way could have widespread ramifications for the profession.

Dr. Mahajan agreed that physicians should all try to acquire more education. But once Dr. Hoogendoorn was at that practice, and he saw the action of the practice, and he was visited by someone from the Pharmacy Board, and other things, he should have realized what situation he was in and that he was practicing outside the scope of the podiatry practice. Dr. Mahajan stated that he doesn't mind anyone going for education, but you have to pay attention to where you're going and who's getting it.

Dr. Stephens stated that she's an orthopedic surgeon and was trained at a county hospital and she also did her fellowship at the Clinic, and in surgery and in training all along they had podiatrists. A lot of the problems that podiatrists deal with are differentiation between spinal causes of pain and things like diabetic neuropathy and things that occur just in the foot region. Dr. Stephens stated that she doesn't think that it's

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unreasonable for a podiatrist to seek extra training in pain management, because next to the back, people have a lot of foot pain. Dr. Stephens stated that she thinks that people make certain assumptions when they go into a fellowship – that they are safe, that it is a cocoon, that it's like a residency, and it's kind of like, when in Rome, you do as the Romans do. Dr. Stephens stated that she looks back on her education as a resident and a fellow. When she was a fellow, she just did what she was told to do. She did what everybody else was doing. She didn't have the sense, common or other, to make any kind of differentiation between what she was doing and what she wasn't doing. She was just trying to get through the fellowship. Dr. Stephens stated that she really doesn't have any problems with what Dr. Hoogendoorn did.

Dr. Steinbergh stated that she does have concerns with what Dr. Hoogendoorn did. She stated that she appreciates the residency training and she appreciates the concept of fellowship training, but she thinks that Dr. Hoogendoorn made a bad choice in going into this particular program which clearly was unaccredited. She commented that one would wonder why he would be the only podiatrist who had entered into this program, and there hasn't been one since.

Dr. Steinbergh stated that Dr. Hoogendoorn is licensed as a podiatric physician and surgeon, and he knows what his scope of practice is. She stated that she finds his injecting other parts of the body that have nothing to do with podiatry inappropriate. She does not find it inappropriate to learn how to do these injections and for him to apply them to the foot and ankle, as within his scope of practice. Had he been appropriately trained there, those injections would have been directed to that part of the body that encompasses his scope of practice. Dr. Steinbergh stated that she personally feels that Dr. Hoogendoorn practiced outside the scope of practice. She added that that is not to say that podiatric physicians should not be residency trained or fellowship trained, but, in the university setting, where there is a lot of supervision. Dr. Steinbergh stated that when she looks at this particular case, with these particular physicians, and what was demonstrated during this particular hearing, she does believe that Dr. Hoogendoorn practiced outside of his scope of practice.

Dr. Egner stated that her impression on the writing of the prescriptions is a little different, in that, when that came to be the focus of his writing prescriptions for Zyprexa, Ritalin, OxyContin, methadone, certainly drugs that are out of the scope of practice of the podiatric community, the resolution of that wasn't so much that he wasn't prescribing them anymore, but the prescriptions were going out under two other people's names. There's a little bit of difference there. It's a working of the system as opposed to following the law. Dr. Egner stated that she thinks that there are some gray areas there.

Dr. Egner stated that, as to whether or not Dr. Hoogendoorn was practicing outside the scope of a podiatrist, he absolutely was. Is it inappropriate in a training or fellowship setting? Dr. Egner stated that she thinks that that's where the real question comes in; and she doesn't have extremely strong feelings about it one way or another, except to say that common sense tells us that he was doing procedures that his podiatric school training and his year of postgraduate education in a podiatry residency never intended him to be doing. Fellows are very closely supervised, and she's not 100% sure how closely supervised Dr. Hoogendoorn was during this fellowship. She stated that she thinks that he was a provider of a lot of medical care that generated a lot of billing and made a lot of money for PCC.

Dr. Egner stated that she would not be in favor of dismissing the charges, but she would she would be in

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favor of a reprimand.

DR. EGNER MOVED TO AMEND THE PROPOSED ORDER BY SUBSTITUTING AN ORDER OF REPRIMAND. DR. STEINBERGH SECONDED THE MOTION.

Dr. Varyani stated that he has a problem with this. He stated that, if he were a podiatrist, and he knows his scope of practice, and if he goes into a fellowship or somebody accepts him as a podiatrist in a fellowship that definitely is not supposed to be the learning experience for furthering his podiatry practice, he has a problem with that. The other side, or the monetary side, was just explained by Dr. Egner and he understands that. If the Board doesn't do anything about this, there will be a lot more fellowships coming up and a lot more programs. There is no stopping someone creating a monetary fellowship, where it's really not for training purposes, but for the purpose of monetary reasons. In a residency program, he does not have a problem with a podiatry resident, or any other resident, going in to assist in neurosurgery or being taught other things to do. He has no problem with that. But this is not that situation. The program was definitely not accredited. The fellowship was for one reason and one reason only, and nobody was caring about scope of practice, neither Dr. Leak's side or Dr. Hoogendoorn's side, and he has a problem with that.

Dr. Varyani stated that he thinks that the Board needs to get to the bottom of this. He added that he's sorry that Dr. Hoogendoorn got caught in this, but he's sure that Dr. Hoogendoorn was glad to get into the fellowship, too, because he was able to do much more than he would ever be doing, or intended to do. Dr. Varyani stated that he cannot understand why Dr. Hoogendoorn would do this fellowship, if he had no intention of doing what he went to the fellowship for. He stated that he needs to know that.

Dr. Suppan stated that the procedures are a small part of the entire fellowship. Earlier there was testimony that these procedures represented maybe 20% or less of the entire profile of the practice. There's skill in making a diagnosis, in determining where pain in the lower extremity or in the feet is coming from.

Dr. Varyani stated that he understands the difference between pain in the feet and learning how to rule out x, y, z conditions. But he really doesn't see why he would do this if he wasn't going to use it.

Dr. Suppan stated that when she was a resident in 1980, she routinely scrubbed on general surgery and orthopaedic surgery; in fact, in an orthopaedic procedure she was the primary person who amputated the limb. Of course, that was under the watchful eye of the surgeon. However, the leverage point was that what she learned by tissue handling, but learning how to control bleeding, by learning how to suture different layers, it was all part of the experience.

Dr. Varyani stated that he understands, but she would be doing that in due course of time. She would be suturing the foot, she would be suturing the leg or near the ankle, so that's part of what she's going to do. Dr. Hoogendoorn admits that he doesn't have any intention to do pain therapy above the ankle. Why was he learning for two years what he was learning. Dr. Varyani stated that he understands pain therapy and he knows what it involves. If it was an accredited residency program, that's fine. But why would he be doing for two years what he would never do again. Dr. Varyani stated that he has a hard time understanding that.

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Dr. Amato stated that he thinks that any education is good. Diabetes is certainly not something that he believes that a podiatrist treats, but he certainly treats the complications of it. Dr. Amato stated that what he sees in this case is a young man who obviously, perhaps, is a cut above his classmates, who wanted more knowledge; however, perhaps he was a little bit gullible in what he went into – a non-certified program. He took steps to try to fix that, to get the certification. Dr. Amato noted that Dr. Hoogendoorn testified that after the fellowship, he had no intentions, obviously, of doing anything beyond on the foot. He's used the knowledge he gained in that fellowship in his present practice.

Dr. Amato stated that, to him, there's a difference between a residency and fellowship. He thinks that a lot of what Dr. Hoogendoorn did in the fellowship was clearly way beyond the scope of practice for a podiatrist, and not under the kind of supervision that he'd get in a residency. Dr. Amato continued, however, that at this stage, he agrees with the idea that he doesn't think it should be a straight dismissal, but he would agree to a reprimand only, so that it will not affect this young man's future career. Dr. Amato stated that he has a gut feeling that what Dr. Hoogendoorn has gone through to get where he is, where the Board is today, has been an ample awakening to him of what was wrong about the choice he made for education. Dr. Amato spoke in support of the motion to amend.

Dr. Steinbergh stated that one thing the Board hasn't talked about is the patient. When someone performs the number of procedures that have been performed by Dr. Hoogendoorn and all of these procedures, how about the pain and unnecessary procedures, perhaps, that these patients have had to suffer? Dr. Steinbergh stated that it's not just a matter of training a person, it's a matter of training appropriately, the procedures that he did with and without supervision, and the prescribing of medications outside of his scope of practice. Dr. Steinbergh stated that this affects patients. Dr. Hoogendoorn did not have a license to do what he did.

Dr. Steinbergh stated that in terms of the training, the education a person achieves, she doesn't think Board members are in disagreement about that, but she does, quite frankly, think about patient and patient care and how this may have affected people that the Board doesn't even know today.

Dr. Stephens stated that she would like to talk on the pain issue again, and about patients. She stated that in her practice she sees a lot of patients that are in pain; and she indicated that they're in so much pain that they will try anything. Typically, an injection is not all that painful. If it's in the muscle, around the nerve, or anything like that, it can be painful, but nothing compared to the pain and despair that the patient already has.

Mr. Browning stated that, if you didn't need it to begin it, then you just got pain you didn't need. He stated that his concern is that he thinks that the doctor deserves a reprimand for poor judgment. To be in the midst of a completely dysfunctional, fraudulent practice and cooperate with it and not understand that, you have to ask yourself what is going on that you don't understand that.

Mr. Browning added that, in addition to patient harm for unnecessary procedures, the Board could be talking about a financial fraud case. Someone's paying for all of this – probably, in some cases, everybody in the room. These are Medicaid patients, Medicare patients, and insurance patients. Mr. Browning stated that money is a part of the picture. Paying for unnecessary procedures is going on every day of the week in

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this country and this is another big example of that, and it shouldn't go without being mentioned.

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

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

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF KYLE ELLIOTT HOOGENDOORN, D.P.M. DR. EGNER SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Ms. Pfeiffer stated that, in light of the fact that the Conclusions of Law and Findings of Fact found no violation, they will need to be amended to find a violation before the Board can impose a discipline.

Dr. Steinbergh stated that Dr. Varyani had prepared alternative Findings of Fact and Conclusions of Law, as follows:

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FINDINGS OF FACT

From in or about 2000 to in or about 2001, Kyle Elliott Hoogendoorn, D.P.M., undertook the treatment of nineteen patients¹ as identified on a confidential Patient Key. During the period in or about August 2000 through in or about November 2001, Dr. Hoogendoorn:

- (a) Administered chemoneurolytic and other injections into the splenius capitis, levator scapulae, trapezius, superior trapezius, cervical erector spinae, thoracic erector spinae, lumbar erector spinae, latissimus dorsi, paraspinal, and/or rhomboid muscles, and/or the intraspinous ligament, and/or greater trochanter, and/or gluteal area of Patients 1-5, 7-9(6-8), 11(9), 14(12), 17(13), and 21-22(16-17).

The evidence is insufficient to support a finding that Dr. Hoogendoorn administered chemoneurolytic or other injections to Patient 20.

Further, the evidence is insufficient to support a finding that Dr. Hoogendoorn administered chemoneurolytic or other injections into a zygapophyseal joint of any patient.

- (b) Prescribed controlled and noncontrolled medications, including, but not limited to, Nicotrol, Wellbutrin, Neurontin, Propranolol, Vioxx, Zyprexa, Ultram, OxyContin, Clonazepam, Duragesic, Depakote, Senokot, Trazadone, hydrocodone, methadone, Transderm Scop, Celebrex, Zanaflex, Catapres, Zithromax, propoxyphene, oxazepam and/or methylphenidate to Patients 2, 7(6), 11-14(9-12), 18(14), 20(15), 23(18), and 24(19) for the treatment of non-podiatric conditions.

Although the evidence indicates that Dr. Hoogendoorn eventually obtained accreditation from the Council on Podiatric Medical Education [CPME] after the time period relevant to this matter, for the period from in or about August 2000 through in or about November 2001, Dr. Hoogendoorn practiced beyond the scope of his podiatric license in an unapproved, non-accredited fellowship program. The Board acknowledges that evidence was presented that non-accredited fellowships are often of the same educational quality as accredited fellowships, and that the primary difference between the two is that a physician from an accredited program is able to obtain ABMS-approved board certification. As long as participants in non-accredited programs already have the licensure necessary to practice in such programs, this presents no problem. Nevertheless, there is no evidence that an allopathic or osteopathic physician possesses the authority to confer his or her unlimited scope of practice upon a podiatrist in a non-accredited, unapproved fellowship program. Dr. Hoogendoorn's participation in such a program constituted practicing beyond the scope of his podiatric certificate and the

¹ Patient numbers in this section are referred to by their number in the Master Patient Key. If the patient number on Dr. Hoogendoorn's patient key differed, that patient number is noted in parentheses. See Board Exhibit I.

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unlawful practice of medicine and surgery.

CONCLUSIONS OF LAW

As set forth in the Findings of Fact, the conduct of Kyle Elliott Hoogendoorn, D.P.M., constitutes “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code, Practice of medicine or surgery without certificate. Pursuant to Section 4731.99(A), Ohio Revised Code, violation of Section 4731.41, Ohio Revised Code, constitutes a felony offense.”

Mr. Browning asked whether this is about practicing outside of his scope, or is it about engaging in unnecessary practice.

Dr. Steinbergh referred to the Conclusions of Law.

Mr. Browning stated that he opposes this. He stated that the Board has had a conversation about going outside of scope of practice. He stated that he’s not in favor of going outside of scope. He didn’t see the evidence that Dr. Hoogendoorn, in fact, did that.

Dr. Suppan agreed. She stated that she thought that the consensus was that Dr. Hoogendoorn didn’t go out of the scope of his practice, but rather that he demonstrated bad judgment in becoming party to this practice, because of the minimal standards issues.

Dr. Steinbergh stated that she felt clearly he went out of the scope of his practice.

Mr. Browning stated that another vote is needed then.

Dr. Suppan agreed with Mr. Browning.

Dr. Egner stated that she would be much more in favor of it in terms of the practice itself. The Board has found Dr. Leak and Dr. Griffin practiced below minimal standards. The Board said that they ordered too many tests, they didn’t look at the tests they ordered, they didn’t change their care plan of the tests, and their prescribing was below minimal standards. Now the Board is looking at the fellow.

Dr. Steinbergh stated that the other thing that the Board found was that they aided and abetted the unlicensed practice of medicine with Dr. Hoogendoorn.

Dr. Varyani agreed with Dr. Steinbergh.

Mr. Browning stated that he thinks that the Board needs to make another judgment on that front. That is not what he found, and he believes that there are others on the Board who did not find that to be the case.

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Mr. Browning stated that the Board gives people reprimands based on the Board's own good judgment and their bad behavior. The Board doesn't need the Attorney General's office trying to feed it facts to which the Board may not agree. He stated that he opposes the proposed motion.

Dr. Suppan commented that the alternative Conclusions of Law and Findings of Fact completely changes the profile of this.

Ms. Pfeiffer stated that she would like to clarify that the Board's citation, it's notice of opportunity for hearing, to Dr. Hoogendoorn, alleges only the violation that his conduct constituted acts constituting a felony, practicing medicine and surgery without a license. If the Board finds that happened, it can discipline him. If the Board doesn't find that he violated that, then it doesn't have a basis to impose a disciplinary sanction against the doctor.

Dr. Amato stated that he agrees with Mr. Browning. The Board may not be 100% legal in saying that it's a reprimand, and if the good doctor wants to take the Board to Franklin County Court of Appeals and spend \$40,000 to \$50,000 to make the Board withdraw the reprimand, then he thinks that he will vote to withdraw the reprimand. Dr. Amato stated that he thinks that Dr. Hoogendoorn has been punished enough; however, he doesn't agree that the Board should just give him a dismissal. He stated that he thought that that's what this Board just voted on.

Dr. Steinbergh stated that the Board did just vote on it, but it did not, in its amended order, make any amended findings.

Dr. Amato stated that he doesn't care if the Board has any findings. He stated that he doesn't care if this gets written up or not, he personally feels that this man needs more than just a dismissal. He was dumb, but hopefully he's a bright young man who will go forward.

Mr. Whitehouse stated that he believes that that has been effectively communicated, but the Board cannot go forward with sanctions based upon anything other than what was in the citation. As to the matter of Dr. Leak, he believes that the amended order did not find that there was aiding and abetting of the unlicensed practice.

**DR. SUPPAN MOVED TO RECONSIDER THE VOTE ON THE AMENDED ORDER.
DR. EGNER SECONDED THE MOTION.**

Dr. Suppan stated that Mr. Browning raises an excellent point, and she totally agrees with Dr. Amato and support those positions. She stated that she would recommend dismissal and a verbal reprimand from Dr. Varyani.

Dr. Varyani stated that he just read through everything. He knows the guy did this and everything, and he just told his personal feeling. He would be happy to go along with the majority, but the only reason he feels that he knowingly did this, and it's unfortunate and Dr. Amato used the word, he may be, but, his problem is that Dr. Hoogendoorn did do something wrong. He would reprimand him. He won't go along with saying that he didn't do anything wrong.

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Dr. Mahajan stated that, basically, he does find that Dr. Hoogendoorn did go beyond the scope of his practice and if the Board is getting into so many technicalities, the Board can ask him to admit it, apologize and get it over with.

Dr. Suppan stated that in terms of a point of order, there's a motion and a second to reconsider.

Dr. Varyani stated that the Board is basically discussing the reconsideration. He stated that there is no motion at this point on the table. The Board is just reconsidering the motion. If the Board wants him to rule on the third motion, he could; if it doesn't that's fine. The Board is right now reconsidering the motion, and if somebody wants to vote, not vote, they should tell him what to do, or someone could offer an amendment.

Mr. Browning stated that he's just surprised, after ten years on this Board, that the Board cannot make a judgment about reprimanding a physician based on its belief that, in this particular situation, a fraudulent practice, routinely practicing below minimal standards, even though he was, in effect, a student, and, he thinks, in a legitimate situation, that the Board can't hold him accountable in a fairly modest level for not standing up and saying, "wait a minute, I'm in the middle of a mess, and I'm a part of the mess."

Mr. Browning stated that he doesn't understand why the Board can't reprimand someone based on that evidence without saying that he was engaged in felonious behavior. Mr. Browning stated that it appears to him that the Board either has to say that he's engaged in felonious behavior or do nothing. Those are the two choices the Board has been given by the attorneys. Those are the only two choices the Board has, and he's surprised. He added that he's not saying that the attorneys are wrong, but he's very surprised that the Board is not allowed to discipline someone by giving him a reprimand, based on the Board's good judgment, which is why its here making judgments about these cases every single month.

Ms. Pfeiffer stated that, to recap, the Board can affirm or modify the Report and Recommendation. If the Board affirms it, it's saying that there was no violation and it should be dismissed. The only way the Board can impose a sanction or discipline is if it finds a violation of the allegations made against him. The only allegation the Board charged Dr. Hoogendoorn with was engaging in acts that constituted a felony, the unlicensed practice of medicine and surgery. He wasn't charged with anything else. In the other cases, there were other charges and other Findings of Fact and Conclusions of Law. In this one there's only one. If the Board makes the finding that he violated that law, the Board can discipline him, it can reprimand him. If the Board finds that he did not violate the law that he was charged with violating, the Board doesn't have the authority to issue discipline. If the Board later on thinks that there are separate charges that should be filed against him, that's a whole separate issue. But the Board has to decide today whether or not Dr. Hoogendoorn did, in fact, commit the violation in the citation letter.

Dr. Varyani asked whether the Board can rewrite the Report and Recommendation and come back and talk about it later on today.

Several Board members stated that they can't.

Mr. Whitehouse explained that the issue has to do with the specific violation alleged.

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**DR. SUPPAN MOVED TO DISMISS THE CHARGES AGAINST DR. HOOGENDOORN.
DR. EGNER SECONDED THE MOTION.**

Dr. Varyani stated that he would now entertain further discussion or proceed to a vote.

Dr. Mahajan stated that he has problems dismissing this. He stated that the Board members know that what he did was not right. It was bad judgment on his part and he should be reprimanded.

Dr. Egner stated that the Board is restricted by the citation letter. If the cite said, “we also accuse you of poor judgment in entering into a program that was not appropriate in its education and treatment of patients,” he’d probably get more than a reprimand. She indicated that question is whether or not he committed a felony. Dr. Egner stated that she feels that all the Board members have stated that he hasn’t.

Dr. Steinbergh disagreed, stating that she believes that Dr. Hoogendoorn did commit acts constituting a felony. She believes that he practiced outside the scope of his practice, for all the reasons that she gave. She said that she is willing to settle on the reprimand because of his situation, but she does believe that he practiced outside the scope of podiatric medicine. He’s licensed, he’s been through a residency, and he chose a fellowship inappropriately. He did all of these things that the State demonstrated that he did, and, in her mind, significantly affected patient care by the prescribing what he did. This was not a highly structured residency program, the Board is not talking about that; and it’s not talking about the fact that he wanted to get more training. She stated that the Board can all agree – training is wonderful. This was inappropriate training and he practiced medicine without a license.

Dr. Egner stated that Dr. Hoogendoorn’s own Board has certified the program as a legitimate fellowship. She has all of the concerns that Dr. Steinbergh has. Her concerns are much more from a minimal standards perspective. That’s not part of the cite. Does she think that he deserves dismissal in the sense that absolutely nothing was wrong? No. But if she is restricted by the citation letter, which she is, she is going to change her vote for dismissal.

Ms. Schmidt advised that the Board has two motions on the table right now: one for reconsideration of the Board’s vote on the amended order, and the other to dismiss the charges.

Dr. Suppan stated that she believes that she made both motions. She asked to withdraw the motion to reconsider in favor of the motion to dismiss. Dr. Egner, as second, agreed.

Ms. Pfeiffer suggested that it might be more appropriate for the Board to move to approve and confirm the Report and Recommendation, if that’s what the Board wants to do, as opposed to a simple motion to dismiss.

**DR. SUPPAN MOVED TO WITHDRAW HER TWO EARLIER MOTIONS. SHE FURTHER
MOVED TO APPROVE AND CONFIRM MR. PORTER’S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF KYLE ELLIOTT
HOOGENDOORN, D.P.M. DR. AMATO SECONDED THE MOTION.**

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Mr. Amato asked for the floor.

Dr. Varyani gave Dr. Amato the floor.

Dr. Amato stated that he thinks that Dr. Hoogendoorn understands that the majority of the Board feels that he's reprimanded.

Mr. Albert left the meeting during the previous discussion.

A vote was taken:

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

The motion carried.

Mr. Albert was present during the discussion of the following cases.

WILLIAM W. NUCKLOS, M.D.

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

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

Dr. Nucklos was accompanied by his attorney, Ms. Collis.

Ms. Collis stated that Dr. Nucklos will not be making a personal statement today, based on legal issues in this case; however, she does have two points she would like to raise with the Board for its consideration before it makes a final recommendation and vote

Ms. Collis stated that the Board has the burden of proof. She stated that the Board needs to show, based on

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reliable, probative and substantial evidence that the charges in this case against Dr. Nucklos have been valid. Ms. Collis stated that in this case, in support of the Board's position, the only evidence that the Board relied upon is a compilation of medical records reviewed by the expert. She stated that it is important to note that the documents the State's expert reviewed were not Dr. Nucklos' original medical records and were not even copies of his original medical records. Ms. Collis stated that the records that were introduced at the hearing were incomplete, and there were discrepancies in the record. For example, in certain instances they showed pages where clearly most of it was the same, but then there were different copies and different notes on the different pages. Ms. Collis stated that those are just some of the problems that they found with the record, they don't even know about some of the problems they didn't find in the record. Ms. Collis stated that from the testimony it was clear that there were pieces of the record that were seized separately. They were in a different drawer. These were never put together. Ms. Collis stated that it was clear from the testimony of Dr. Parran, the State's expert, that the records included things in them, such as police reports, pharmacy logs, investigative reports, which were never part of Dr. Nucklos' records.

Ms. Collis continued that, in providing testimony in this case, Dr. Parran was only given these compilation records. Dr. Parran was not given the complete medical records. He was not able to examine any of the patients involved or speak to any of the patients involved. He was not able to speak to any pharmacists or other physicians who might have given care to any of the patients that Dr. Nucklos treated.

Ms. Collis stated that, in addition, at the hearing, the only evidence introduced by the State in support of its position were the incomplete records and Dr. Parran's testimony, which was based on his review of these records. Ms. Collis asked whether, if their licenses were to be challenged by the Board, the Board members wouldn't want the Board, at a minimum, to review a clean, clear, accurate original copy of their records. She stated that that was not done in this case.

Ms. Collis stated that, based on the fact that the Board has been provided with altered and incomplete medical records, she believes that the decision of this Board, if it's based on those records, is not based on reliable, probative and substantial evidence.

Ms. Collis stated that she's also highlighted briefly in the objections that in this case the Board has charged Dr. Nucklos with practicing below the standard of care in his treatment of patients for intractable pain; however, the State did not charge Dr. Nucklos with violating Revised Code Section 4731.052, which is the statute that governs the treatment of patients with intractable pain. Under this specific law, which was drafted by the Legislature to govern how intractable pain is treated in patients, the State may only discipline a physician if they are not prescribing medications pursuant to this section. Ms. Collis stated that the State didn't even cite Dr. Nucklos with violating this section.

Ms. Collis stated that the sanction that has been recommended by the Hearing Examiner in this case is the most serious and harshest sanction that the State can impose. By permanently revoking Dr. Nucklos' license, the Board will permanently end his career as a physician. Ms. Collis stated that, in making this grave decision, the Board needs to ensure that the evidence that is the basis for this decision is reliable, probative and substantial. She stated that, based on the fact that the Board did not have complete accurate copies of Dr. Nucklos' records, and that was the basis of their entire case, she would assert that any

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decision based on that against this physician is not based on reliable, probative and substantial evidence.

Ms. Collis continued that, in addition, there were no witnesses called to testify. No pharmacist was called to testify, no patients were called to testify, no other colleagues who work in the Springfield area were called to testify. It was just this review of these incomplete medical records and Dr. Parran's testimony based on these records.

Ms. Collis stated that at this point Dr. Nucklos' license has been suspended for more than 28 months. She stated that she would respectfully request that the Board reinstate his medical license at this time and put certain probationary terms, such as retraining or education in place, since he has not been able to practice for that time period. She added that, based on the allegations in the case and based on the evidence, she thinks that that is a fair resolution to what has been charged in this case.

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

Ms. Unver stated that Dr. Nucklos may have initially opened his Springfield, Ohio practice with good intentions to serve weight management patients, but within a couple of months, he was serving pain management patients on a biweekly basis and on a cash-only basis. His practice thrived for all of the wrong reasons. Ms. Unver stated that Dr. Nucklos misused his medical license over and over again by inappropriately prescribing controlled substances for patients, primarily OxyContin, a schedule II drug that has a high potential for addiction and abuse. His prescribing methods were indicative of either a reckless disregard for the health and safety of his patients or an intentional means to sell prescriptions for scheduled drugs to support his patients' addictive drug habits. Ms. Unver stated that, either way one interprets the facts of this case, it is clear from the evidence that Dr. Nucklos inappropriately prescribed controlled substances to patients 1 through 28 in a manner inconsistent with minimal standards of care and without a legitimate medical purpose.

Ms. Unver stated that the State's expert, Dr. Parran, testified that Dr. Nucklos' patient care for Patients 1 through 28 was below the standard of care for similarly situated practitioners and was not even close to being in compliance with the intractable pain rules in the Ohio Administrative Code. Over a period of the roughly 16 months that Dr. Nucklos was treating these patients, his patient records had no consults, no signed patient releases, no prescribing physician notes, or no pre-existing or new reports from doctors specializing in the area of the body involved in the treatment of intractable pain. Although Dr. Nucklos had handwritten notes in a few of the patient records, ordering medical tests or urine screen tests, there were no test results, except for one urine screen result. There was no follow-up request information. Ms. Unver stated that the urine screen tests should have been done in order to verify that the patients were taking their prescribed medicine as directed, and were not diverting or abusing them.

Ms. Unver stated that a few of the patients were prescribed high doses of OxyContin, like 40 mg and 80 mg, on their very first visit. She noted that Dr. Parran pointed out that if a patient had no tolerance to that level, the high dose could have killed the patient. She continued that Dr. Parran also pointed out that there were various red flags found throughout the patient records that should have alerted Dr. Nucklos to follow up. There were a high number of non-drivers, which indicated patients who most likely had DUIs or some other addiction problem. There were indigent patients, who would have most likely qualified for Medicaid,

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but instead paid cash for their visits. There were repeated reports from patients concerning stolen, missing, and lost medications. There was an adult patient's parent, who insisted on attending appointments with the patient. Plus, there were patients who were jailed, and, in one instance, a patient who posed as another patient in order to try to get an appointment.

Ms. Unver stated that Dr. Nucklos consistently did not follow proper patient discharge procedures, and in one instance there was no proper workup or referral of a patient who reported to Dr. Nucklos on every visit that he was having fainting and blackout spells. She added that even Dr. Nucklos' own expert witness, Dr. Knott, acknowledged that Dr. Nucklos' patient records had inconsistencies and deficiencies in them, and that he would have utilized various treatment modalities besides the prescribing or controlled substances, as Dr. Nucklos did.

Ms. Unver stated that Dr. Nucklos filed objections to the Hearing Examiner's Report and Recommendation, but these can be disregarded in their entirety. She stated that the patient records presented by the State in this case were certified from the Ohio Supreme Court, and they contained the full patient records as maintained by Dr. Nucklos at the time that they were seized from his office in a criminal investigation. In addition, if Dr. Nucklos so chose, he could have taken the stand and talked about what was included in the patient records and whether they were accurate. He chose not to testify at this hearing.

Ms. Unver advised that Dr. Nucklos was also properly cited for violating the intractable pain rules, and it was not necessary to also cite him with a violation of ORC Section 4731.052.

Ms. Unver stated, in closing, that she would like to point out a particularly on-point quote from Dr. James Thompson, the President and CEO of the Federation of State Medical Boards. She stated that Dr. Thompson wrote in the forward to the book, *Responsible Opioid Prescribing: A Physician's Guide*, by Dr. Scott Fishman, as follows:

Physicians cannot singlehandedly eliminate the diversion and abuse of prescription opioids, but we have a solemn responsibility to our patients and to society to be vigilant in reducing these risks.

Ms. Unver stated that Dr. Nucklos failed in his duties as a physician that he owed to these patients and his actions were so egregious that the State agrees with the Hearing Examiner's Proposed Order for permanent revocation.

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

Mr. Albert left the meeting during the previous discussion.

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

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

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Dr. Egner stated that she would like to address a couple of issues in the record. Dr. Egner stated that she thinks that the records are legitimate for the Board to be reviewing. She stated that Dr. Nucklos had the opportunity to speak to that at the hearing and chose not to do so. Dr. Egner stated that no matter how you look at them, they are very poor records. They admit to not putting things in the chart that might be two years old. Dr. Egner stated that she doesn't think that there's a person on the Board who has ever had that kind of acceptance of maintaining a medical record in the office – not filing for two years.

Dr. Egner stated that as she read the Report and Recommendation, she found that there were a number of things that came out as fairly significant practice patterns of Dr. Nucklos:

1. He has a completely inadequate history and physical.
2. He rarely used diagnostic tests, and when they were ordered, no results are ever in the chart.
3. He never obtains previous medication records. He never verifies what the patient's medication history is with the pharmacy. On the initial visit with a patient, it almost always resulted in prescriptions for OxyContin, 20 to 40 mg, Percocet and Soma. Then, on subsequent visits, even if the patients stated their pain was controlled, the dosages would be increased and Ambien added. Urine screens were rarely ordered, and when they are, there is never a record of them in the chart. Dr. Nucklos never inquires as to why the patient uses a state ID instead of a driver's license. Dr. Egner stated that Dr. Nucklos really minimizes the importance of this. She stated that, if anything, she thinks that Board members see that as a really giant red flag. Dr. Egner continued that Dr. Nucklos doesn't inquire as to reasons a patient was incarcerated and missed a few visits. He knew the patients had been in jail, but he didn't think that it's appropriate in this pain management setting to look into that.
4. Needs for early refills or bogus excuses are given. Dr. Egner stated that one example is that of a patient who stated that his prescriptions flew out the car window. Dr. Egner stated that she does realize that Dr. Nucklos chose not to testify at the time of his hearing; but when he testified at his criminal trial, and that is a public record, that is where most of this information was then obtained and the Board can take that as reliable.
5. As Assistant Attorney General Unver noted, Dr. Parran testified that the initial doses of many of these prescriptions could be fatal for patients not tolerant to them. Dr. Egner stated that that is very, very frightening. She stated that she found that Dr. Parran's testimony was detailed, extremely thorough and thought-filled. He reviewed the details of every patient. Dr. Knott, on the other hand, either just supported Dr. Nucklos unconditionally, with very little reason; or, perhaps, he himself practices much the same way as Dr. Nucklos. Dr. Egner stated that if that is the case, Dr. Knott should probably be investigated also.

Dr. Egner stated that he is in agreement with the Report and Recommendation and for permanent revocation in this case.

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Dr. Steinbergh stated that she agrees with Dr. Egner. She stated that in the hearing record, there is a patient questionnaire that was presented, State Exhibit # 18. In response to questions asked, this patient advised that he had been a patient of Dr. Nucklos for a while. His illness or diagnosis was hip pain from a car accident when he was twelve years old. He advised that he paid \$125.00 for his initial visit, \$75.00 for subsequent visits, and if he asked for nerve pills he paid \$15. Dr. Steinbergh stated that this demonstrates the value that was placed on the patients wanting these medications. She stated that in the questionnaire, the patient advises that he couldn't use the medical card and he was told by Dr. Nucklos that he had to pay cash for his prescriptions. The patient also advises that he sells prescriptions. Dr. Steinbergh stated that from this, she gets the sense that this physician was overprescribing, malprescribing. Dr. Steinbergh stated that in over 20 years of practice, she has never seen such prescribing by abandon by a psychiatrist, a neurologist or neurosurgeon. She noted the combinations of medications, and too many medications. The medical records demonstrated no real clinical decisions. There wasn't a thoughtful process going on about the complaint that the patient had versus a physical examination, and an assessment and taking in of laboratory or x-ray findings, or findings from other physicians.

Dr. Steinbergh stated that one of the obvious problems with the medical records was that even if Dr. Nucklos did get a study or did ask for medical records, these were never filed and two years later they had never been filed, so they couldn't have really been assessed by this physician. Dr. Steinbergh stated that she agrees with the proposed recommendation of permanent revocation.

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

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

The motion carried.

EUGENE ALLAN BREWER, M.D.

Dr. Varyani directed the Board's attention to the matter of Eugene Allan Brewer. He advised that objections were filed to Hearing Examiner Davidson's Report and Recommendation and were previously distributed to Board members.

Dr. Varyani continued that a request to address the Board has been timely filed on behalf of Dr. Brewer.

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Five minutes would be allowed for that address.

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

Mr. Byers advised that he would make a couple of comments and then Dr. Brewer would address the Board.

Mr. Byers stated that he thinks that it's obvious that Dr. Brewer sits here in stark contrast to some of the other cases this Board has adjudicated today, though he wouldn't necessarily be unhappy having been in a position to have a hearing someplace and defend his clinical care, such as Drs. Leak, Griffin and Nucklos had. Dr. Brewer didn't have that opportunity. This is a bootstrap case of a supposed Veterans Administration (V.A.) action against his clinical privileges where he practiced for over eight years in Texas. The problem is that there is no evidence in the record that there was ever a final decision by the V.A. There are lots of allegations in this record. There are discussions and clinical observations of about 32 patient cases that they went through a retrospective review with. There's also an expert report on Dr. Brewer's behalf in this record. The problem is that there was never the hearing to put on the expert testimony at the administrative level in front of the V.A.

Mr. Byers referred the Board to paragraph 17 of the Hearing Examiner's Summary of Evidence, which reads, as follows:

All information will be forwarded to the Medical Center Director for decision. The Director will make, and document, a decision based on the record. If you disagree with the facility Director's decision, a hearing may be requested.

Mr. Byers stated that the hearing was never requested because the final decision was never made. There was a subsequent action, which apparently triggered the Ohio Board action, which was called a State Licensing Determination. Mr. Byers stated that somebody at the V.A. determined that Dr. Brewer should be reported to state medical boards where he might be licensed, but that doesn't become a final action of the medical director. Mr. Byers stated that there is nothing in the record showing finality. Mr. Byers stated that he would submit that, legally, the Board cannot bootstrap something that has not come to fruition.

Mr. Byers stated that this brings up the second point, i.e., Dr. Brewer's failure to submit quarterly declarations after February 2005. Mr. Byers stated that, coincidentally, that is the time when Dr. Brewer stopped showing up for personal appearances because he was released from the personal appearance obligation. Mr. Byers stated that he thinks that Dr. Brewer just thought, "Oh, I'm essentially done with the Board until I go back for a final exit interview." Mr. Byers stated that that's the simplest and the honest explanation. He thought his obligation to report to the Board was done. It was not. Dr. Brewer was not released from quarterly declarations. Mr. Byers stated that, given that misunderstanding, and Dr. Brewer's explanation, it would be appropriate for the Board to simply continue Dr. Brewer under probationary terms and add any restrictions or additional requirements the Board would deem appropriate, given his failure to submit quarterly declarations after the time he was released from personal appearances.

Mr. Byers stated that he would at this time turn the rest of the time over to Dr. Brewer.

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Dr. Varyani advised Dr. Brewer that he has two minutes to address the Board.

Dr. Brewer stated that he appreciates the opportunity to speak to the Board today. He stated that he feels sorry for the members of the Board that they're being asked to ratify an incomplete process by the V.A., one where they have very clearly defined policies and procedures. Dr. Brewer stated that, as the chief of surgery at the V.A. where he practiced, he knows what those policies are and they weren't followed in this case.

Dr. Brewer stated that, with regard to his compliance with Mr. Albert and Ms. Bickers, he has continued to send those quarterly reports in. He commented that he dropped one in the mail the previous day and Ms. Bickers probably received it today. He stated that once he understood his mistake in that regard, he's done everything he could to come back into compliance with the Board.

Dr. Brewer stated that he doesn't want to speak for the Board or offer that his intelligence on this is greater than the collective intelligence of the Board, but if he were in the Board's position, he would strongly consider tabling this and allowing Dr. Brewer and his lawyers get back with the V.A. and press them to let him have the hearing that he's been denied. Dr. Brewer stated that he has an expert's report, he has his own clinical summaries of each patient's care, he has documents from the National Surgery Quality Improvement Program to document that his practice was not outside the bounds of normal for that practice in the V.A., and he has outstanding performance reports during the time that he practiced at the V.A., and peer recommendations from the people with whom he worked every day.

Dr. Brewer again stated that he appreciates the Board allowing him to speak today.

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

Mr. Wilcox stated that he does have a few brief comments to make. Mr. Wilcox stated that Dr. Brewer was disciplined by the Board for some serious allegations in July 1996. These allegations involved practice below the standard of care and failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease. Dr. Brewer's certificate to practice was suspended at that time for a minimum of three months. Several terms of probation were imposed, including the requirement to submit quarterly declarations of compliance with the probationary terms to the Board. Mr. Wilcox stated that Dr. Brewer did not apply for reinstatement of his license to practice medicine in Ohio until 2003. At that time he was placed under the probationary conditions required by the July 1996 Order. As Dr. Brewer admitted at the hearing in this matter, he ceased providing the Ohio Board with the quarterly declarations of compliance in 2005. Dr. Brewer did so without permission, and this is a violation of the Board's Order, and, subsequently, a violation of the Medical Practices Act.

Mr. Wilcox stated that, to touch briefly on some of the legal arguments the Board has heard today regarding the so-called incomplete process by the V.A. in Texas, the Ohio Board needs to pay no attention to that. The fact that the Texas V.A. took action itself in summarily suspending Dr. Brewer's license in 2003 is enough for this Board to take action. The Ohio Board does not have to wait for any due process concerns in another state. Under R.C. Section 4731.22(B)(24), the action by the V.A. to suspend

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Dr. Brewer's license was enough for this Board to take action.

Mr. Wilcox stated that he would agree with the Report and Recommendation as proposed. Dr. Brewer has not demonstrated that he can competently practice medicine without getting into disciplinary problems, either in Ohio or other places, and therefore he should not be licensed in this state.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF EUGENE ALLAN BREWER, M.D. DR. EGNER SECONDED THE MOTION.

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

Dr. Egner noted that in 1996 Dr. Brewer had a Board Order that he was practicing below minimal standards. He did a fellowship. Dr. Egner stated that, from reading the record, the fellowship, and the feeling that he would be re-educated, was really the reason why Dr. Brewer's license was only suspended for three months and then placed on probation for three years. Dr. Egner stated that in reference to her comments earlier today on why people practice minimal standards, it's out of greed, out of that cowboy mentality, and out of lack of knowledge. In Dr. Brewer's case, it seems to have been a lack of knowledge and that he improved his knowledge.

Dr. Egner continued that, unfortunately, in the V.A. system, he had the same kind of clinical situation and problems that he'd run into initially with this Board in 1996. Dr. Egner stated that she doesn't at all disagree with the Report and Recommendation because she thinks that Dr. Brewer is still suffering from the same minimal standards problems, and they are definitely serious and putting patients at risk who may have or are diagnosed with prostate cancer.

Dr. Egner stated that, as far as the V.A. hospital not going through their whole process, the Board did have evidence put before it, and the Board members can make their own judgments. Dr. Egner added that she's not really sure what to say about Dr. Brewer's not sending in his quarterly declarations. She stated that she's a little bit concerned that it took the Board so long to realize that they weren't arriving, but she feels that it shows a pattern of a person who doesn't follow good standard of care in their practice, doesn't probably see a lot of importance in the work the Board does, and it just kind of perpetuates itself. Dr. Egner stated that she is very much in favor of permanent revocation in this case.

Dr. Steinbergh stated that she is in favor of permanent revocation in this case. She stated that she doesn't know that she would personally pass judgment about the probationary terms, adding that she thinks that the Board has evidence that the Supervising Member told him that he didn't need to come in for the regular appearances, and perhaps he misunderstood and also didn't do the quarterly declarations. Dr. Steinbergh stated that she'll write that off to inappropriate communication. She stated that it's really not what she's basing her judgment on. Her judgment really is on the record in regard to minimal standards.

Dr. Steinbergh noted that the Board charged Dr. Brewer with minimal standards violations in 1996. It thought that he was going to retrain, and it believed that he did retrain. The V.A. action clearly demonstrates that they had enormous concerns about patient care and suspended his privileges.

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Dr. Steinbergh stated that she believes that the Board has reason to take action in Ohio to protect Ohio's patients. Dr. Steinbergh again stated that she agrees with the Report and Recommendation and permanent revocation.

Dr. Madia agreed with Dr. Egner and Dr. Steinbergh. He noted that, for every patient Dr. Brewer examined, his standard report indicated "30 grams without nodularity." Dr. Madia stated that this means that Dr. Brewer either didn't examine the patient or he just posted in the record the same thing over and over again. Dr. Madia stated that this is way below the minimal standard. He spoke in support of the Report and Recommendation.

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

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

The motion carried.

PARISA KHATIBI, M.D.

Dr. Varyani directed the Board's attention to the matter of Parisa Khatibi, M.D. He advised that no objections were filed to Hearing Examiner Petrucci's Report and Recommendation.

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

Dr. Khatibi was accompanied by her attorney, William Mann.

Mr. Mann advised that he and Dr. Khatibi are very grateful for the Board's time and attention. He stated that he has filed no objections to the Hearing Examiner's Report and Recommendation. He asked that the Board adopt the Hearing Examiner's recommendation. Mr. Mann stated that Dr. Khatibi would like to make a few short comments to the Board.

Dr. Khatibi thanked the Board for taking time to consider her application. She stated that it would be a professional honor for her to be licensed in the State of Ohio. She stated that she would be happy to

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answer any question Board members might have.

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

Ms. Unver stated that she did not.

MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF PARISA KHATIBI, M.D. DR. VARYANI SECONDED THE MOTION.

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

Dr. Steinbergh stated that the Proposed Order is to grant Dr. Khatibi a license. She noted that Dr. Khatibi came before the Board because she had passed all three of her steps of the USMLE within a ten-year period, but not within a seven-year period. Dr. Steinbergh stated that the record demonstrated that Dr. Khatibi passed all three steps in ten years, that she was current in her medical knowledge at the time of her application, and she had demonstrated good cause for why she did not complete the examination sequence in a seven-year period. Dr. Steinbergh noted that the record included a list of supporting evidence and conclusions. The Hearing Examiner has found that the Board should grant Dr. Khatibi a license, and she agrees with that.

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

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

The motion carried.

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PROBATIONARY APPEARANCESCHARLES B. BERTANI, D.O.

Dr. Bertani appeared before the Board pursuant to his request for release from the terms of his November 12, 2003 Consent Agreement.

Ms. Bickers advised that, should the Board grant Dr. Bertani's request for release from probation, release would be effective upon receipt of the monitoring physician's report.

In response to Board members' questions, Dr. Bertani stated that his practice was decimated due to the cost of malpractice insurance. He advised that malpractice insurance is almost impossible to get now.

Dr. Bertani stated that he tried it for one year, but insurance Companies are putting tails on of \$80 thousand or \$90 thousand. He stated that he hopes that when he's released from probation he may be able to get in with one of the insurance companies. Dr. Bertani stated that he'll probably go to work for somebody because he turned his practice over to his brother. There's nothing left there after this amount of time. He advised that his family support is fine.

DR. STEINBERGH MOVED TO RELEASE DR. BERTANI FROM THE TERMS OF HIS NOVEMBER 12, 2003 CONSENT AGREEMENT, SUBJECT TO RECEIPT OF A REPORT FROM HIS MONITORING PHYSICIAN, AND SUBJECT TO PERMANENT RESTRICTIONS FROM PRESCRIBING, ADMINISTERING, OR PERSONALLY FURNISHING CONTROLLED SUBSTANCE ANORECTIC MEDICATIONS OR DIURETICS FOR WEIGHT LOSS.

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

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

The motion carried.

SCOTT M. CAMPBELL, M.D.

Dr. Campbell appeared before the Board pursuant to his request for release from the terms of his August 13, 2003 Consent Agreement.

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In response to Board members' questions, Dr. Campbell stated that he's an emergency medicine physician in Sandusky, Ohio. He's been in the same practice there for 16 years. His recovery is part of his life. He stated that it's a whole new world, and he's just thankful that this has happened. Dr. Campbell stated that his practice is wonderful, his kids are wonderful, he got the teaching award at the residency program this year. Dr. Campbell stated that he's more involved in the hospital than he ever would have been otherwise. Dr. Campbell stated that it's been very positive. His partners and people that have been with him through the entire thing have been very supportive, and he believes that they have all learned from it as well.

DR. MADIA MOVED TO RELEASE DR. CAMPBELL FROM THE TERMS OF HIS AUGUST 13, 2003 CONSENT AGREEMENT. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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

The motion carried.

PETER FRAGATOS, M.D.

Dr. Fragatos appeared before the Board pursuant to his request for release from the terms of his August 15, 2003 Consent Agreement. If approved, release would become effective August 15, 2008. Ms. Bickers noted that the Board is still waiting for one saliva test result for Dr. Fragatos.

In response to Board members' questions, Dr. Fragatos stated that he's doing fine. He stated that he had thought his life was in order; but being on this program, he's feeling terrific. Dr. Fragatos stated that he should have done this 20 years ago. He's happy and relaxed. He's working well, training residents at the clinic. He's been taking Depakote for bipolar disorder since March 2002. Dr. Fragatos stated that his practice is in neurosurgery, and he trains orthopaedic residents to do spine work. He does this at South Pointe Hospital and at Huron Road Hospital.

DR. STEINBERGH MOVED TO RELEASE DR. FRAGATOS, EFFECTIVE AUGUST 15, 2008, FROM THE TERMS OF HIS AUGUST 15, 2003 CONSENT AGREEMENT, SUBJECT TO RECEIPT OF ALL OUTSTANDING DOCUMENTATION. DR. MADIA SECONDED THE

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MOTION.

Mr. Albert asked that the Board release Dr. Fragatos without the proviso about receipt of outstanding documentation. He stated that Dr. Fragatos has been giving screens for six years without any problems. He's been a good probationer. Mr. Albert stated that he would like to release Dr. Fragatos without any further requirements.

DR. STEINBERGH AMENDED HER MOTION TO ELIMINATE THE "SUBJECT" CLAUSE.

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

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

The motion carried.

RYAN P. HANSON, M.D.

Dr. Hanson appeared before the Board pursuant to his request for release from the terms of Board's Order of June 11, 2003.

In response to Board members' questions, Dr. Hanson stated that he works at the Student Health Center at Ohio State University. Everything is going very well in his practice.

Dr. Steinbergh noted that Dr. Hanson's record has been expunged. She asked whether Dr. Hanson was getting any kind of psychiatric care or assessment during that time. Dr. Hanson stated that he was not.

DR. AMATO MOVED TO RELEASE DR. HANSON FROM THE TERMS OF THE BOARD'S ORDER OF JUNE 11, 2003. DR. MADIA SECONDED THE MOTION. A vote was taken:

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

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| | |
|----------------|-------|
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Mahajan | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

ADAM S. MARTIN, M.D.

Dr. Martin appeared before the Board pursuant to his request for release from the terms of his August 13, 2003 Step II Consent Agreement.

In response to Board members' questions, Dr. Martin stated that he is doing well. He stated that he was in a residency in Cleveland and he moved to the Mansfield/Ashland, Ohio area about a year ago. His recovery there is going well. He got a new sponsor and attends meetings. Dr. Martin stated that it's a smaller town, but the A.A. there is like anywhere else, so everything is good there.

Dr. Martin stated that he got married about two months ago, but he and his wife have been together for four years. Everything is going very well.

When asked whether he has ever sponsored physicians in his community, Dr. Martin stated that he's aware of one other physician in the area who is in recovery. He stated that he believes this physician used to have a consent agreement with the Board. He added that he is unaware of any other physicians in the area. Dr. Martin stated that it's not like Cleveland where there are a lot of groups with physicians in them. He stated that there's one physician that he knows in the Mansfield area, and he sees him at a meeting about once a week. Dr. Martin stated that it's a smaller town with a different environment.

DR. STEINBERH MOVED TO RELEASE DR. MARTIN FROM THE TERMS OF HIS AUGUST 13, 2003 STEP II CONSENT AGREEMENT. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:

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|--------------|-------|
| Mr. Albert | - aye |
| Dr. Egner | - aye |
| Dr. Talmage | - aye |
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |

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Dr. Mahajan - aye
Dr. Steinbergh - aye
Dr. Varyani - aye

The motion carried.

JAMES E. STURMI, M.D.

Dr. Sturmi appeared before the Board pursuant to his request for release from the terms of his November 10, 2005 Step II Consent Agreement.

In response to Board members' questions, Dr. Sturmi stated that he's doing very well. He has a great, wonderful and supportive family. He's happily remarried from the time that he first appeared before the Board. He has wonderful children. He has two sponsors in A.A., one's a retired electrician and the other is an ER doctor. He talks to at least one of them every day. He prays every day and he attends at least three meetings a week. Dr. Sturmi advised that he's trying to keep his exercise program up, and, since his reprimand, he's adjusted his schedule to make it easier for him to get to meetings.

Dr. Sturmi stated that he's been in Mt. Vernon, at Mt. Vernon Sports and Family Medicine for five years now. It's going very well, and he's very busy. He has a lot of patients. Dr. Sturmi stated that he's actually looked into some other opportunities that might put him in a different situation and allow him to be closer to his children because they live with their mother two-thirds of the time here in Columbus. He's currently investigating some of those options. He's also still the team physician for Dennison University. Dr. Sturmi commented that he's been doing that for a while.

DR. STEINBERGH MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORT OF CONFERENCE ON JULY 8, 2008, AND TO RELEASE DR. STURMI FROM THE TERMS OF HIS NOVEMBER 10, 2005 STEP II CONSENT AGREEMENT. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:

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

The motion carried.

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At this time Dr. Sturmi thanked the Board for the reprimand it gave him. He stated that at the time he thought it was a little stern, but looking back on it, it was very appropriate and has been very helpful to him.

MATTHEW H. EVENHOUSE, M.D.

Dr. Evenhouse made his initial appearance before the Board, pursuant to the terms of his April 9, 2008 Step I Consent Agreement.

In response to Board members' questions, Dr. Evenhouse stated that he underwent treatment for his Percocet addiction at the Cleveland Clinic. He ended up back in the Cleveland Clinic towards the end of May with a diagnosis of depression. He spent several days in the psychiatric unit during that time. Dr. Evenhouse stated that he believes that a Superseding Step I Consent Agreement will be brought to the Board soon for ratification. Dr. Evenhouse advised that he is currently taking Tofranil and then Trazodone at night.

Concerning what he does each day for his recovery, Dr. Evenhouse stated that his days usually start at 6:30 a.m., when he attends a meeting at a church near his house. His sponsor attends that meeting, so he gets to see him every day. Then he goes home and takes care of his kids, while his wife goes to work. They try to have activities during the day. He takes them to the zoo, or they do crafts, or they go to the pool. Dr. Evenhouse stated that he has three daughters, ages 7, 5 and 2. He stated that he thinks that his 7-year-old has ideas of what's been going on, but it's not real clear for her. She just knows that he was in the hospital.

In response to questions about his goal in terms of practice, Dr. Evenhouse stated that he's re-evaluating that at this point. He stated that he was on a career path that was getting very cluttered. He was practicing emergency medicine, he was the tactical physician for the Cleveland police, he was on the Mayor's Advisory Panel, he was doing all these things and he was spread very thin. Now he's come to realize that he wasn't really putting the required time and energy into his family. He's still taking some time to decide how the future will look.

In response to further questions, Dr. Evenhouse stated that he thinks the causes of his addiction are selfishness and arrogance. He stated that about two years ago he had an experience with viral meningitis and was on pain pills for the headaches for several weeks. Then over the course of the next two years he had kidney stones and was on medications. He unfortunately thought that those medications were helpful to his scheduling and sleep problems, even beyond the fact that he didn't have the pain anymore. He had not ever had any addictions prior to this.

DR. STEINBERGH MOVED TO CONTINUE DR. EVENHOUSE UNDER THE TERMS OF HIS APRIL 9, 2008 STEP I CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE, WITH HIS NEXT MEETING IN TWO MONTHS. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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

The motion carried.

BRIAN E. LEVE, M.D.

Dr. Leve made his initial appearance before the Board, pursuant to the terms of his July 9, 2008 Step II Consent Agreement.

In response to Board members' questions, Dr. Leve stated that his health is good. Today he went into the office in the morning. He then went swimming with his children. He's attending his meetings, talking with his sponsor. Dr. Leve stated that he was just having a little bit too much fun this year and not being responsible. That's why he's here.

Noting that Dr. Leve was wearing scrubs to this meeting, Dr. Egner asked what thought process he went through to determine that that would be appropriate dress.

Dr. Leve apologized, and stated that, from talking to people in his Caduceus meetings, he didn't realize that it was as formal a meeting as it is. He stated that it won't happen again.

Dr. Egner stressed the importance of the Board's work. She advised that Board members take a lot of time and do a lot of work preparing for the meeting. She indicated that it might be understandable had Dr. Leve come to the meeting from the delivery room.

Dr. Steinbergh commented that it makes the Board members wonder about the seriousness with which Dr. Leve is taking his recovery.

Dr. Stephens commented that her sister is an OB/GYN and wears scrubs everywhere. She stated that she knows what Dr. Egner is saying because she thought the same thing, but the younger generation wear scrubs all the time.

Dr. Steinbergh asked Dr. Leve whether he understands the terms of his consent agreement. He advised that he does.

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Referring to a statement Dr. Leve made earlier in his appearance, Mr. Browning asked what having “too much fun” has to do with anything.

Dr. Leve stated that what he was trying to say is that he wasn't being responsible.

Mr. Browning asked Dr. Leve whether he is an alcoholic.

Dr. Leve stated that he was abusing alcohol. He stated that he hasn't had an issue with not drinking since his April 18 car accident. When he went to treatment, he realized that when you get to Parkside, you have a problem. He stated that he's okay saying he's an alcoholic, but to this point he's not had any problems not drinking or being around people who drink.

Mr. Browning stated that his sense is that he wouldn't be sitting here if he were just having “too much fun.” Mr. Browning stated that this kind of goes to the seriousness of the situation again. The Board has sat here for years and watched people relapse. If they relapse too many times, they disappear and they never practice again, here or anywhere else. Mr. Browning encouraged Dr. Leve to take this very seriously.

Dr. Leve stated that he definitely understands the seriousness.

DR. STEINBERGH MOVED TO APPROVE JOHN E. STEVENSON, M.D., TO SERVE AS DR. LEVE'S MONITORING PHYSICIAN, WITH TEN CHARTS REVIEWED ON A MONTHLY BASIS. SHE FURTHER MOVED TO CONTINUE DR. LEVE UNDER THE TERMS OF HIS STEP II CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

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

The motion carried.

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ZEV R. MAYCON, M.D.

Dr. Maycon made his initial appearance before the Board, pursuant to the terms of his May 14, 2008 Step I Consent Agreement.

In response to Board members' questions, Dr. Maycon stated that he is doing really well. He finished his 28-day inpatient treatment program about two weeks ago and has been attending meetings for himself, not for his contract. He exercises more, spends more time with his children. He'll have another child in a couple of months. Dr. Maycon stated that he has two children and his fiancée has two children, so they will be raising five children shortly.

Dr. Maycon advised that he has been abusing drugs for about three years. He stated that the drugs made him feel good. They made things go away and made it so he didn't have to deal with all of life's stresses. Eventually it just got out of control and out of hand. He stated that he honestly can't remember what initiated the start of his use. He added that he's sure that there were pills lying around his house that maybe his parents had, and he maybe experimented with them, but that was years ago. He didn't use for a while. When things got out of control three years ago, when he started doing this inappropriate behavior, it just kind of snowballed and he couldn't stop himself. He wrote prescriptions under someone else's name, and this person didn't know about it. He would go pick up the prescriptions. He also called in prescriptions for himself under his partner's name, and his partner didn't know about it either. Dr. Maycon stated that he got caught when one of the pharmacists called to clarify a prescription that Dr. Maycon had called in in his partner's name. The pharmacist called because he was a patient of Dr. Maycon's partner and the voice didn't sound familiar to him. He then learned that the partner was not in the office that day. Dr. Maycon stated that he then got a call from the Board of Pharmacy and he met with them the following day.

Dr. Steinbergh asked whether Dr. Maycon is glad this happened.

Dr. Maycon stated that he's very happy it happened because he couldn't stop himself and he was heading for a bad time. It's over and done with. Dr. Maycon stated that it was in October when things got stopped and to this point everything has been positive. Dr. Maycon commented that it's really never going to be over and done with, that this is a lifelong process.

DR. STEINBERGH MOVED TO CONTINUE DR. MAYCON UNDER THE TERMS OF HIS STEP I CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:

| | |
|--------------|-------|
| Mr. Albert | - aye |
| Dr. Egner | - aye |
| Dr. Talmage | - aye |
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |

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| | |
|----------------|-------|
| Dr. Stephens | - aye |
| Dr. Mahajan | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

PAUL D. REIKOWSKI, JR., L.M.T.

Mr. Reikowski made his initial appearance before the Board, pursuant to the terms of his May 14, 2008 Step I Consent Agreement.

In response to further questions, Mr. Reikowski stated that he feels good today. He completed his 28-day program at the Cleveland Clinic, and found that it was very enlightening. He now attends A.A. meetings on a regular basis. He had attempted to do 90 meetings in 90 days, but he had to get a job in a plastics factory in order to help his wife pay the bills and that takes away two meetings on weekends. He's looking to pick them back up by attending morning meetings. Mr. Reikowski stated that he enjoys attending the meetings. He advised that he is very comfortable with what has been happening. He's feeling better and thinking better.

DR. VARYANI MOVED TO CONTINUE MR. REIKOWSKI UNDER THE TERMS OF HIS STEP I CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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

The motion carried.

JON BERKLEY SILK, JR., M.D.

Dr. Silk made his initial appearance before the Board, pursuant to the terms of his May 14, 2008 Step I Consent Agreement.

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Dr. Silk apologized to Board members for the manner of his dress today.

Dr. Egner accepted Dr. Silk's apology.

In response to Board members' questions, Dr. Silk stated that he feels really well. He attended 120 meetings in 120 days, he has a sponsor, he just finished his fifth step, it's a new way of life for him. He added that he says the Third Step Prayer every morning. Dr. Silk stated that he'd considered going into addiction medicine before, but now he's certain that that's what he wants to do. He advised that he was in the first year of a psychiatric residency, but the department has let him go. He was diagnosed with depression and is currently being treated for it. He takes Wellbutrin and Celexa.

Dr. Silk stated that he has been seeing psychiatrists for over seven years now, and he's always been forthright about his drinking, the amounts, what happens when he does drink. He wasn't given a diagnosis of alcohol dependence until December 2007. Actually, his drinking pattern has very much decreased over the years. Dr. Silk stated that he knows the criteria as well as anyone else and he can hedge his way, one way or another, but that's not what this is about. He admits that he's an alcoholic and now he can start recovering. Dr. Silk advised that he's been seeing a new psychiatrist since January.

In response to further questions, Dr. Silk stated that his plan is to finish his psychiatry residency and then go into addiction medicine, but he's kind of in a "Catch 22." He can't get a license without being in a residency. He does feel that he will be able to find a residency program, as psychiatry is pretty open, but he doesn't know that that program will be in Ohio. He's called all of the programs in Ohio and none are currently accepting transfer physicians.

Dr. Silk stated that he was a victim of his own ignorance and of advice he followed. He had been sent to an outpatient treatment center, which this Board did not recognize. He attended treatment three hours a day, three times a week and did not continue in his residency during that time. He missed many months and that, in addition to the fact that he didn't have a license, was their reason for letting him go.

Dr. Egner stated that Dr. Silk subsequently relapsed.

Dr. Silk stated that that depends on the Board's definition.

Dr. Egner stated that he went through an outpatient treatment program and gave up drinking. Then he drank again and was arrested for public intoxication. She asked what he calls that.

Dr. Silk stated that he would say that it's a relapse, but he would also say that it's unfortunate that he didn't get the proper treatment to begin with. He added that he wishes he would have self-reported to the Board instead of going to his department with his problem.

Mr. Albert advised that now Dr. Silk is on his way back. He needs to do what the terms of his consent agreement require and he'll be on his way back.

DR. STEINBERGH MOVED TO APPROVE RONALD A. SACHS, M.D., TO PERFORM THE

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PSYCHIATRIC ASSESSMENT REQUIRED FOR REINSTATEMENT. DR. STEINBERGH FURTHER MOVED TO CONTINUE DR. SILK UNDER THE TERMS OF HIS STEP I CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. MADIA SECONDED THE MOTION. A vote was taken:

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

The motion carried.

MARK HENSON, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

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

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

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

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Dr. Varyani - 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.

ALEXIS D. PARKS-MYTON, M.D. – CONSENT AGREEMENT

MR. BROWNING MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. PARKS-MYTON. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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

The motion carried.

RANDALL GREGORY WHITLOCK, JR., P.A. – STEP II CONSENT AGREEMENT

MR. BROWNING MOVED TO RATIFY THE PROPOSED STEP II CONSENT AGREEMENT WITH MR. WHITLOCK. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

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

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

The motion carried.

SCOTT ROBERT WELDEN, M.D. – SUPERSEDING STEP I CONSENT AGREEMENT

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

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

The motion carried.

MATTHEW HENRY EVENHOUSE, M.D. – SUPERSEDING STEP I CONSENT AGREEMENT

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

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

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Dr. Varyani - aye

The motion carried.

DIRK I. RODRIGUEZ – CONSENT AGREEMENT**DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. RODRIGUEZ. DR. MADIA SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

MARK A. RHODEBACK, L.M.T. – STEP II CONSENT AGREEMENT**DR. STEINBERGH MOVED TO RATIFY THE PROPOSED STEP II CONSENT AGREEMENT WITH MR. RHODEBACK. MR. BROWNING SECONDED THE MOTION.** A vote was taken:

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

The motion carried.

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ROBERT LOUIS ROSS, M.T. – SURRENDER OF CERTIFICATE TO PRACTICE MASSAGE THERAPY

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED PERMANENT SURRENDER WITH CONSENT TO REVOCATION OF MR. ROSS'S LICENSE TO PRACTICE MEDICINE AND SURGERY. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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

The motion carried.

ALADDIN ZAFAR SYED, M.D. – CONSENT AGREEMENT

DR. MADIA MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. SYED. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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

The motion carried.

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MICHAEL D. DURBIN, M.D. – SURRENDER OF CERTIFICATE TO PRACTICE MEDICINE AND SURGERY

DR. MADIA MOVED TO RATIFY THE PROPOSED PERMANENT SURRENDER WITH CONSENT TO REVOCATION OF DR. DURBIN'S LICENSE TO PRACTICE MEDICINE AND SURGERY. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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

The motion carried.

STEVEN H. SUESS, M.D. – STEP I CONSENT AGREEMENT

MR. BROWNING MOVED TO RATIFY THE PROPOSED STEP I CONSENT AGREEMENT WITH DR. SUESS. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

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

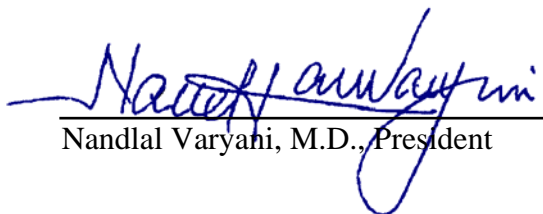
The motion carried.

At this time, Dr. Varyani adjourned the meeting.

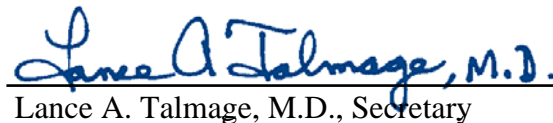
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Thereupon at 5:33 p.m. the August 13, 2008 session of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on August 13, 2008, as approved on September 10, 2008.



Nandlal Varyani, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)



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MINUTES**THE STATE MEDICAL BOARD OF OHIO****August 14, 2008**

Nandlal Varyani, M.D., President, called the meeting to order at 8:00 a.m., in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes State Office Tower, 30 E. Broad St., Columbus, Ohio 43215, with the following members present: Dalsukh Madia, M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Marchelle L. Suppan, D.P.M.; R. Gregory Browning, Ph.D.; W. Frank Hairston; Jack C. Amato, M.D.; Susan E. Stephens, M.D.; Darshan Mahajan, M.D.; and Anita M. Steinbergh, D.O. The following joined the meeting at a later time: Carol L. Egner, M.D.

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

Dr. Egner arrived at some point during the following discussion.

REPORTS AND RECOMMENDATIONS**SHELLY BADE, M.D.**

Dr. Varyani directed the Board's attention to the matter of Shelly Bade, M.D. He advised that objections were filed by both Dr. Bade and Assistant Attorney General Wilcox to Hearing Examiner Petrucci's Report and Recommendation and were previously distributed to Board members.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF SHELLY BADE, M.D. MR. HAIRSTON SECONDED THE MOTION.

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

Dr. Steinbergh stated that this is a case of the emergency room physician in Bucyrus who was accused of some aggression in regards to intubating children. Dr. Steinbergh stated that it was felt that she intubated too quickly, and that her reasons for intubating in these three cases was that she was preparing the patients

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for transport. Dr. Steinbergh stated that the first child died and the parents sued both Dr. Bade and the hospital, and Dr. Bade was exonerated in that case. Dr. Steinbergh stated that during her review, she really did have a lot of questions as to whether or not Dr. Bade rushed to judgment on these children who, under most circumstances, had good oxygen saturation levels and were not in respiratory distress.

Dr. Steinbergh stated that she did have some difficulty with this case. She stated that Dr. Bade's records did not justify her actions. Dr. Steinbergh stated that she would like to hear from anesthesiologists on the Board who intubate quite often and see what their feelings were about this case.

Dr. Madia stated that, regarding Patient 1, the child Dr. Bade attempted to intubate to facilitate the transport of the child from Bucyrus to Columbus Children's Hospital (CCH), the drug she used, Vecuronium, is a long-acting drug. If you cannot intubate, the patient stops breathing and they cannot breathe for 20 to 30 minutes. According to testimony, it seems that Dr. Bade did not know that the drug lasts 20 to 30 minutes. Dr. Bade stated that the drug works for three to five minutes, which is wrong. Dr. Madia stated that there was no urgent situation that required Dr. Bade to intubate right then and there. Even if the child needed to be intubated for transport, he questioned why Dr. Bade didn't wait for the transport to come to intubate. Dr. Madia stated that if she would have waited for transport to come, she would have had some experts' help from the trauma team with the helicopter. Dr. Madia stated that, in his judgment, she rushed to intubate and she didn't know how long the medicine she used lasts.

Dr. Madia continued that it is very difficult to intubate a small child. He stated that in the emergency room, anesthesia staff will always make sure that they have help in case they get into trouble. In some cases, the anesthesiologist will take the child into the operating room to intubate.

Dr. Varyani stated that there were three experts who testified in this case: one expert was from northwest Ohio and two were from CCH. Dr. Varyani stated that whenever Dr. Bade referred children, they were referred to CCH. Dr. Varyani stated that not only were the dosages of the drugs Dr. Bade used inappropriate, but it is not uncommon that the first attempt at intubation fails. He added that there are short-acting medications and long-acting medications. The one drug, succinylcholine, anesthesiologists no longer try to use because of the side-effects. If you're going to intubate in a hurry, it takes one minute to come on and five minutes to come off and you're breathing again in case you're not successful.

Dr. Varyani stated that Patient 1, who was a few months old, did not need intubation; however, intubation was justified because the experts at CCH wanted the baby to be intubated. Dr. Varyani stated that there were two other children she was also told to transport and neither of them required intubation. Dr. Varyani stated that Dr. Bade justified the intubation on the basis of transport only.

Dr. Varyani stated that in all three cases, when Dr. Bade intubated, the drugs that she used for the facilitation of intubation were inappropriate. Concerning the sedation medications used for all three cases, Dr. Varyani stated that Dr. Bade used dosages that were way beyond the normal dosages used for the patients' ages.

Dr. Varyani stated that Patient 1 did not need intubation, but you could argue for intubation for transport

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purposes. He stated that he doesn't believe that either Patient 2 or Patient 3 should have been intubated, even for transport.

Dr. Varyani added that his particular concern was with Patient 3. Patient 3 was over ten years old, and had come to the emergency room after a motor vehicle accident. Patient 3 was doing fine, but was a little dazed. Dr. Varyani stated that, according to the records he reviewed, the Glasgow coma scale, which initially was 15, went down to 12. Dr. Bade then decided to intubate. Once again, CCH also says that they wanted Dr. Bade to intubate the patient. Dr. Varyani stated that he really doesn't feel that this patient should have been intubated.

Dr. Varyani again stated that his concern in this case was that the medications used for the facilitation of intubation and sedation for intubation were way out of proportion.

Dr. Steinbergh stated that the concept that Dr. Bade has this discussion with physicians at CCH was, in her mind, still questionable. She didn't feel that the record reflected it. She stated that that was Dr. Bade's testimony at hearing, but the records didn't reflect that

Dr. Steinbergh stated that one of the things that she didn't particularly like is that one of Dr. Bade's experts, Dr. McTague, who is also an attorney, represented her at the civil trial. He then came to this hearing, took off his J.D. hat and put on his M.D. hat, and was an expert witness for Dr. Bade. Dr. Steinbergh stated that she felt that this was a conflict, and she didn't like that.

Dr. Steinbergh stated that the other question she has has to do with Dr. Bade's background and training, and why she was in the emergency room to begin with, doing that kind of care and making those kinds of judgments, and whether or not she was providing the minimal standard of care "for that area," as one of Dr. Bade's experts stated. Dr. Steinbergh stated that the Board knows that the standard of care is the same throughout the state of Ohio, and its expectations are that physicians will provide care in the same way throughout the state. Dr. Steinbergh noted that one of Dr. Bade's witnesses felt that Dr. Bade did the best that she could under her circumstances. Dr. Steinbergh stated that Dr. Bade trained at Ohio State and was in her second ER year, when they did not offer her a third-year position and, therefore, she could not become board certified. Dr. Steinbergh stated that she felt that that was significant. There was no evidence that Dr. Bade intended to go back for a third year so that she could get board certified. Instead, with those two years of training she went to work as a solo practitioner, although not a solo practitioner in the literal sense of those words, but she was working alone in the emergency room of a small town. Dr. Steinbergh stated that patients expect the same kind of care in that emergency room as they would expect if they came to Columbus, Cincinnati or Cleveland. Dr. Steinbergh stated that she doesn't think that Dr. Bade was trained enough to handle some of these cases. She added that it's interesting that Dr. Bade now resides in Florida, and her goal is to work in an urgent care center, and she indicates that she'd like to study hyperbaric medicine. Dr. Bade indicates that she has no plans to work in an emergency room or to return to Ohio.

Dr. Steinbergh stated that those were issues she had in mind as she reviewed Dr. Bade's case, and she doesn't feel comfortable dismissing charges in this case. She indicated that she thinks that there is a

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question of minimal standards here.

Dr. Egner arrived during the previous discussion.

Dr. Egner stated that she feels differently than Dr. Steinbergh. Dr. Egner stated that it's not that Dr. Bade worked in an emergency room with absolutely no training. She was two thirds of the way through a residency. Dr. Egner stated that she's not saying that it doesn't give some cause for concern why she didn't finish or go back to a different program, but Dr. Bade is in a different situation than an ER doctor in Columbus, Cincinnati or Cleveland in that these really sick kids had to be airlifted or taken by ambulance to Columbus. Dr. Egner stated that to take that responsibility at the time they leave your ER, that you are still responsible for them until they hit Ohio State, takes a different mindset in that you want them to be as stable as possible. If you're talking to the transport team at the hospital you're going to send the patient to, and you told them what the situation is, and you feel that the most stable thing to do is to intubate these kids so that their airways and their breathing is not a problem on a helicopter – Dr. Egner stated that she would much rather the ER doctor be a little more aggressive in keeping an airway open and that the child is breathing than the risk of having to intubate in air. Dr. Egner stated that she doesn't see clearly that the intubations were unindicated.

Concerning Dr. Bade's decision to not practice as an ER physician any more, Dr. Egner asked, why would she? She stated that Dr. Bade has been sued for a terrible case in which she wasn't at fault. Now she's before the Medical Board. Dr. Egner stated that she would say "I'm not putting myself in such a high liability position anymore, I'm going to go work at an urgent care." Dr. Egner stated that she doesn't think that that's unreasonable.

Dr. Egner stated that she agrees with the Report and Recommendation. She doesn't think that what Dr. Bade did is at the level of a violation or that she practiced below minimal standards.

Dr. Stephens asked the anesthesiologists to address the dosage of the medicines Dr. Bade used.

Dr. Varyani stated that he believes that in the first case Dr. Bade used 3 mg of Vecuronium, which is a non-depolarizing muscle relaxant that usually lasts between 20 and 30 minutes. She also used about 3 mg of Versed in a child a few months' old.

Dr. Varyani stated that in the next case, an adolescent, she used Pavulon, which he uses once a year. Dr. Varyani commented that he works five days a week. He stated that Pavulon is a muscle relaxant that starts in about three to five minutes and the paralysis lasts at least an hour and a half.

Dr. Varyani stated that, concerning Patient 1, the airlift was justified. Dr. Varyani added that, despite the testimony of the expert from a metropolitan area, who said that the patient did not need to be intubated, he does not fault Dr. Bade for intubating the patient. He indicated, however, that he did have a problem with the doses used. He agreed with Dr. Egner that, if he needed to transport a few-month-old child, and if he was comfortable with intubation, he would have used a lower dose of Vecuronium and a lower dose of Versed. Dr. Varyani stated that it is true that you're not always successful intubating the first time.

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Unfortunately, that's what happened to the baby. Dr. Bade was not able to intubate the first or second time. That little baby was intubated by the flight team anyway. There was too long a time when the baby was not oxygenated. Dr. Varyani stated that he won't fault anyone because he wasn't there. Dr. Varyani stated that the intubation of one of the babies was justified because of a CT scan or MRI.

Concerning Patient 3, Dr. Varyani noted that the patient was transported by an ambulance, not a helicopter. The patient was in an accident, lost consciousness and was a little dazed. Dr. Varyani stated that the Glasgow coma scale is going to go down by three points. Dr. Varyani stated that he doesn't think that intubation was justified in this case. The patient was breathing fine and everything was fine. The patient was transported from Bucyrus to CCH in a van. Why would that patient be intubated? Dr. Varyani stated that whenever you intubate, especially someone who is not an anesthesiologist who intubates every day, it is very hard and there is always a chance that you're going to miss the airway. If you don't have oxygenation for three minutes, bad things are going to happen. Dr. Varyani stated that this was three attempts.

Dr. Varyani concluded by stating that the intubation of Patient 1 was justified, he could reconcile for intubation for Patient 2, but he cannot for Patient 3. Dr. Varyani stated that he knows that Dr. Bade is at the level where she's giving up her career, and he understands Dr. Egner's argument, but he's kind of mixed because the dosages used were way out of whack and Dr. Bade didn't know what she was doing.

Dr. Stephens commented that she remembers when she, personally, was given two mg of Versed, and she weighed a lot more. She suggested that three mg for a baby is too much.

Dr. Varyani stated that it is a lot and it was very inappropriate.

Dr. Stephens stated that that is black and white, it's science.

Dr. Varyani added that he couldn't justify using Pavulon in the operating room.

Dr. Amato stated that he agrees, partially, with Dr. Steinbergh that the standard of care should be the same throughout the state, no matter where you are. However, in some situations, the rural hospitals deserve a much higher degree of physician in that ER. He stated that in any major city in the state, if the ER doctor gets into a little bit of trouble and needs help, he or she has a multitude of residents available to help out. The rural hospitals do not have that. Dr. Amato stated that Dr. Bade was in a situation where she should have recognized that she was over her head and that she didn't have the backup. Even if Dr. Bade's not going to return to Ohio or work in an ER, if it's a mindset of working above one's level of knowledge or comfort, will she do it again, perhaps not in an intubation environment, but in a similar situation?

Dr. Madia stated that the way he looks at it, the doses of muscle relaxant and sedation were out of whack. In one case she gave the patient eight mg of Versed and 10 mg of Valium.

Dr. Madia stated that his second concern is that none of those cases needed intubation "right now." He is familiar with Bucyrus Hospital and knows that it has an anesthesiologist on call and available. Dr. Bade

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had enough time to ask for the anesthesiologist on call to help. Dr. Madia stated that, with small children, sometimes anesthesiologists even ask for help. That's a judgment issue. Did the patient need intubation right then and there? No, all three of them did not. If she felt intubation was necessary, she had help available and she didn't ask for that help.

Dr. Madia stated that the doses that Dr. Bade used shows that she doesn't know what kind of dosage she should be using.

Dr. Varyani stated that he has worked in ERs. When you have a child with an airway emergency, the ER would call the anesthesiologist on call, and the anesthesiologist would see the child. If it was a case of respiratory distress or strider, he would call an ENT surgeon, get the operating room ready, and the tracheotomy set would be ready. Dr. Varyani stated that the standard of care is that, if you have a child in respiratory distress, who does not need to be intubated right away, call for help, prepare things, and then you attempt. You don't just go ahead and do it and hope for the best.

Dr. Varyani stated that he's not the one who was there, so he's not the one to make that decision. Maybe when she called CCH and they told her to intubate the child, he would have said that he's not good at intubation in adults. In pediatrics, he would have asked for help. Two hands sometimes cannot do an intubation properly. There are fluids and blood. If you try to intubate once and fail, there is so much swelling, so much fluid in the throat, that it just becomes hard. Even in adults it's hard, but in pediatrics, it's unbelievable.

DR. MADIA MOVED TO TABLE THE REPORT AND RECOMMENDATION IN THE MATTER OF SHELLY BADE, M.D., TO PREPARE AN ALTERNATIVE ORDER. DR. STEINBERGH SECONDED THE MOTION. All members voted aye. The motion carried.

Dr. Egner asked whether it would be brought off the table today. Dr. Steinbergh stated that it should. She stated that she will talk to Ms. Debolt about crafting an alternative order.

When the matter was removed from the table, copies of a proposed amendments were distributed to Board members to review prior to the discussion and vote.

Dr. Varyani noted a typographical error in the second paragraph of paragraph (b) of the alternative Findings of Fact.

Dr. Egner at this time apologized for arriving late for the discussion. She asked whether or not the Board discussed whether the antibiotic treatment was delayed and whether that made a difference.

Dr. Varyani stated that the Board did not discuss that. It discussed mostly intubation.

Dr. Egner stated that she would take that out. She stated that she thought that Dr. Bade's explanation for that was perfectly reasonable. This patient was failing, and giving antibiotics takes on a lesser priority. The antibiotics were sent on the Medflight. The charge was that Dr. Bade did not provide timely antibiotic

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treatment, and she thinks that there's a reasonable explanation.

Dr. Steinbergh stated that that was one of the charges. She added that the explanation is included in the Findings of Fact. She felt that the Finding of Fact indicates that Dr. Bade did not unnecessarily delay.

Mr. Wilcox stated that he did find what he thinks is another clerical error. He referred to the alternative Conclusions of Law, noting that paragraph 1 of the Conclusions of Law should read as follows:

Dr. Bade's acts, conduct, and/or omissions in the treatment of Patients 1, 2 and 3, as set forth in Findings of Fact 1(a), 2, and 3 constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as set forth in Section 4731.22(B)(6), Ohio Revised Code.

Dr. Varyani agreed with Mr. Wilcox's correction.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER IN THE MATTER OF SHELLY BADE, M.D., BY SUBSTITUTING THE FOLLOWING:

FINDINGS OF FACT

1. On October 13, 2002, Patient 1, a four and one-half month old male infant, presented to the Emergency Department at Bucyrus Community Hospital [BCH] with symptoms of fever, vomiting, fussiness, decreased appetite, and a reported heart rate of 132 beats per minute. On October 14, 2002, Patient 1 expired.
 - (a) In her care of Patient 1, Shelly Bade, M.D., unsuccessfully attempted to orotracheally intubate Patient 1. At the time Dr. Bade attempted to intubate Patient 2, there were no emergency clinical indications to justify the attempted intubation. Dr. Bade had the time and should have obtained assistance from other, more experienced personnel at BCH or awaited arrival of the MedFlight of Ohio transport.
 - (b) In Dr. Bade's care of Patient 1, she did not administer appropriate treatment for supraventricular tachyarrhythmia [SVT], such as immediate electrical cardioversion or medication conversion with Adenocard. The State's evidence demonstrates that Patient 1 presented at the time of Dr. Bade's physical examination with an indication of SVT, which was an excessive heart rate of 250 beats per minute.

The testimony presented by both of Dr. Bade's experts convincingly established that, although Patient 1 presented at the time of Dr. Bade's physical

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examination with an indication of SVT, Patient 1 also presented with contraindications of SVT: (a) fever, which was documented in the medical record; (b) an arrival heart rate of 132 beats per minute, followed shortly thereafter with a heart rate of 250 beats per minute, which was documented in the medical record; (c) another heart rate in the “230s”, which was documented in the medical record; and (d) varying heart rates on the bedside heart rate monitor, which was supported by Dr. Bade’s testimony.

- (c) In Dr. Bade’s care of Patient 1, she did not provide timely antibiotic treatment for her presumed concern for possible sepsis. Dr. Bade did timely order the administration of antibiotic treatment for her concern for sepsis – that order, for rocephin, was made well within the first hour of Patient 1’s arrival at BCH at 9:12 a.m. and Dr. Bade’s initial examination of Patient 1. The administration of the antibiotic treatment was placed on hold. However, the testimony from all expert witnesses establishes that the lengthy resuscitation efforts (which includes administration of medications) took priority over the administration of the antibiotic treatment. Rocephin was sent with and administered after 12:40 p.m. by the MedFlight of Ohio crew, while transporting Patient 1 to Children’s Hospital in Columbus.

The evidence does not address any concern that Dr. Bade may have with respect to potential meningitis.

- (d) In Dr. Bade’s care of Patient 1, she did not evaluate and/or document considerations for incarcerated hernia, intussusception, and intestinal anomalies that can have similar presentations to those of Patient 1.

Patient 1’s medical record establishes that he presented with a history of “normal elimination”; a family history that did not suggest incarcerated hernia, intussusception, and/or intestinal anomalies; and the physical examination did not suggest them.

2. On April 3, 2002, Patient 2, a 17-month old male infant presented to the Emergency Department at BCH after a fall from a second-story window to the concrete ground. Patient 2 presented with a reported heart rate of 125 beats per minute, crying and alert, with a Glasgow coma scale of 15, with pulse oximetry of 96 percent on room air, and clear lung fields with good peripheral pulses.

In Dr. Bade’s care of Patient 2, she orotracheally intubated Patient 2. At the time Dr. Bade intubated Patient 2, the evidence is convincing that there were no emergency clinical indications to justify the intubation. Dr. Bade had the time and should have obtained assistance from other, more experienced personnel.

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3. On June 9, 2002, after having been involved in a three-car motor vehicle accident, Patient 3, a 12-year old female, presented to the Emergency Department at BCH with a Glasgow coma scale of 15 and no other serious injuries were initially noted.

In Dr. Bade's care of Patient 3, she orotracheally intubated Patient 3 on a second attempt. At the time that Dr. Bade first attempted to orotracheally intubate and at the time she successfully intubated Patient 3, there were no emergency clinical indications to justify the intubation. Dr. Bade had the time and should have obtained assistance from other, more experienced personnel.

CONCLUSIONS OF LAW

1. Dr. Bade's acts, conduct, and/or omissions in the treatment of Patients 1, 2 and 3, as set forth in Findings of Fact 1(a), 2, and 3 constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as set forth in Section 4731.22(B)(6), Ohio Revised Code.
2. Dr. Bade's acts, conduct, and/or omissions in the treatment of Patient 1, as set forth in Finding of Fact 1(b), 1(c) and 1(d) do not constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as set forth in Section 4731.22(B)(6), Ohio Revised Code. It was not a failure to conform to the minimal standards by not treating for SVT when SVT was contraindicated. Although Dr. Bade timely ordered the antibiotic treatment and it was not given until after 12:40 p.m., as set forth in Finding of Fact 1(c), the intervening resuscitation of Patient 1 properly delayed the administration of the antibiotic treatment for two hours. Also, it was not a failure to conform to the minimal standards to have sent the antibiotic treatment with the MedFlight transport for administration more than 30 minutes after resuscitation efforts ceased. It was not a failure to conform to the minimal standards by not evaluating or documenting considerations for incarcerated hernia, intussusception and intestinal anomalies given the history presented and the physical examination.

Nevertheless, because the Board did not previously have before it all of the information that was presented during the hearing, the Board was substantially justified in pursuing the allegations set forth in 1(b), 1(c) and 1(d) of the notice of opportunity for hearing.

PROPOSED ORDER

It is hereby ORDERED that:

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- A. The amended motion of Shelly Bade, M.D., to dismiss the allegations pertaining to Patient 1 (on the basis of res judicata and collateral estoppel) is denied.
- B. Dr. Bade is REPRIMANDED.

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

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

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

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF SHELLY BADE, M.D. DR. MADIA SECONDED THE MOTION. A vote was taken:

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

The motion carried.

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PROPOSED FINDINGS AND PROPOSED ORDERS

JOHN A. HALPIN, M.D.

Dr. Varyani directed the Board's attention to the matter of John A. Halpin, M.D. He advised that by letter of May 14, 2008, the Board notified Dr. Halpin that it intended to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio, based on allegations contained in the letter. The notice was mailed to Dr. Halpin's address of record and proper service was documented. No hearing request has been received from Dr. Halpin and more than thirty days have elapsed since the mailing of the notice. The matter was reviewed by Hearing Examiner Petrucci, who prepared a Proposed Findings and Proposed Order, and it is now before the Board for final disposition. Mr. Albert was supervising member. Dr. Talmage was secretary.

DR. STEINBERGH MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE MAY 14, 2008 NOTICE OF OPPORTUNITY FOR HEARING IN THE MATTER OF DR. HALPIN HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ADOPT THE PROPOSED FINDINGS AND PROPOSED ORDER. DR. EGNER SECONDED THE MOTION.

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

Dr. Egner stated that she would like to give a little historical perspective on continuing medical education CME violations. She stated that the old rule was to impose a 30-day suspension, which would give physicians time to make up those CME hours. The suspension period would also punish them for violating the CME requirement by not completing the hours and for signing the renewal application indicating that they did the required CME. The Board found that the consequences of the 30-day suspension to a physician's life were tremendous. It's just a snowball effect. Insurance companies don't want you on their panels. Dr. Egner commented that the Board hears from probationers all the time that a one-day suspension will interrupt a physician's life tremendously.

Dr. Egner stated that the Board weighs violations. Some things a licensee does are worse than others. She added that it's not that the Board doesn't see the importance of CME, and not that it doesn't see the importance of completing an application correctly; but in the scale of violations, CME violations aren't weighted as high. That's how it came to be that the Board has fining authority for this. She stated that fining has been on a graded system. If a physician had done 35 out of 40 hours, he'd probably get a \$1,000 fine. There's no set schedule for this, but that's kind of how the Board has done it since it got fining authority. Dr. Egner commented that she thinks that that's a fair way to do this.

Dr. Egner stated that in this case, Dr. Halpin did 7 out of 40 CME credits, and that's not very much.

Dr. Steinbergh commented that that's blatant disregard.

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Dr. Egner stated that she feels that Dr. Halpin deserves the maximum fine of \$5,000. However, she doesn't think that it's right when the Hearing Examiner says that, because he did so few, his license should be suspended for 30 days also. Dr. Egner stated that he should get the maximum fine because he did so few, but she's not in favor of the 30-day suspension. She stated that Dr. Halpin will have to make up the credits that he hasn't done, he will be watched for the next two bienniums, and he'll have to submit documentation of all of his CME credits. Dr. Egner stated that that's punishment enough and it ensures the Board that he will keep up with his CME over the next four years and, she would bet, the rest of his career.

Dr. Varyani stated that he doesn't disagree with Dr. Egner about the suspension, adding that he doesn't want to suspend Dr. Halpin's license. He added that the Board should look at the fact that CME is the only way that physicians keep up with their specialties. That's why CME is required. He stated that the public demands that physicians keep up-to-date. Dr. Varyani stated that the Board should have a better system of ensuring that all physicians are up-to-date. If you don't do your CME, how can you ensure the Board and the public that you are maintaining your skills. Dr. Varyani stated that he realizes that suspension isn't the way to go, but there should be some other thing attached.

Dr. Stephens stated that she totally disagrees with the amendment. She stated that she has a lot of friends and her husband is a lawyer, and she sees how lawyers are diligent about continuing legal education. They have to get their credits or their licenses are taken away. This physician only did 7 out of 40 CME.

Dr. Stephens stated that if she could just write a check to the Board and not have to bother with getting 40 CME credits, she thinks she would do that too. Dr. Stephens stated that this is a patient care issue. If a physician isn't bothering to do his or her CME, it reflects a character flaw. There's something wrong with this doctor.

Dr. Amato agreed with Dr. Stephens that a \$5,000 fine alone is not appropriate.

Mr. Browning stated that the problem is what's already been stated. With a suspension, the Board will go from a \$5,000 fine to a \$50,000 fine. The Board starts this ball rolling and suddenly there are all kinds of problems. The physician will have problems with insurance panels. Mr. Browning stated that it's hard to size the punishment. Is this the case where the Board should impose a bigger punishment. It's a financial punishment when you take someone out of practice for 30 days. It won't end at 30 days. It might, but it might not. It's not just about a 30-day suspension. It's about a pile of money and a pile of trouble for the physician. Do you protect the public in a substantially better way by doing that? Mr. Browning stated that he thinks that that's questionable.

Dr. Stephens suggested that he deserves a pile of trouble.

Mr. Browning stated that that's a different issue, but the problem is the sizing of the punishment. It's hard to control. Mr. Browning stated that a lot of Board members probably agree with Dr. Stephens' point, but is it sized proportionally when you go down this road. You open up a whole other arena when you do this.

Dr. Stephens stated that the suggestion is that, hypothetically, the Board can be bought. Someone could come in and say, "I didn't do my CME, here's a check for \$10,000."

Dr. Egner stated that he can't just pay the Medical Board \$5,000 on a biennial basis and not do his CME. He will be monitored over the next two biennial periods. If he doesn't do his CME then, it's not like he can just write a check the next time. He'll be cited and the punishment will be much greater because now it's not just a CME issue, it's also not following through on a Board order.

Dr. Egner stated that it's not that Dr. Halpin never did CME. He had 32 hours earned from a course he attended in 2004. He had 31 hours earned from a course he attended in 2006. They didn't fall within the right time, but it's not that he never does CME. For this period, he had very few CME credits. For that, he should pay the fine.

Dr. Suppan stated that the only thing about that is that sometimes a person may get less CME during a biennium because there's some kind of an upset in their life, a financial issue, a partner leaves a practice and it's difficult to find time to get out. She stated that CME is expensive. Dr. Suppan acknowledged that there is computer CME you can do, but it is expensive. To go to a course, you'll pay for the course, your lodging, and you may have \$2,000 to \$3,000 in the course, easily.

Dr. Suppan stated that the whole goal is to get the doctor to get educated. If the Board imposes a financial sanction, it just kind of layers on that additional financial obligation and might further constrain the ability to get the course work. Dr. Suppan suggested that, when a person is identified, they receive a warning from the Board with a timeframe that says that they must complete the CME within a certain amount of time, and if they don't, their licenses will be suspended. She stated that that will push or force the physician into a decision. They're either going to get it done and get the education, or they're not going to and then at the point, she would say to suspend.

Dr. Talmage asked the Board to keep in mind that in these cases there are two issues: 1. They didn't do the CME they were supposed to have done; and 2. They signed a card saying that they did the CME that they were supposed to have done. So there's a fraud issue and a lack of education issue. The education is that which keeps them current in their specialty.

Dr. Suppan agreed, but stated that she thinks that there's a little bit of a gap there in that you not only have to do the CME, but you have to be able to produce the certificate and show that you signed in.

Dr. Varyani stated that these days, certificates are issued the same day you complete the course.

Dr. Steinbergh stated that, for her, it's the false statement that says the physician did it. There have been cases where physicians have the right number of credits, and maybe they didn't get enough Category 1 credits. This case is really quite blatant, and it concerns her that physicians sign these applications as if they mean nothing, certifying that they, in fact, did the CME they are expected to do.

Dr. Varyani asked whether a stayed suspension carries the same weight.

Dr. Steinbergh indicated that she doesn't know the actual answer to that.

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Dr. Mahajan suggested that the Board could lengthen the probationary period if it decides to stay the suspension.

Dr. Varyani stated that if you're going to be light in these cases, then don't have the rules. Every physician knows when he or she gets a license what the CME requirements are. He stated that he always keeps track of his CME credits because he knows that his license is dependent upon them. The reasons the rules were made was to ensure that physicians keep up with their knowledge. Dr. Varyani stated that the Board needs to look at this case carefully before it lets Dr. Halpin off.

Dr. Steinbergh suggested that the Board could reprimand Dr. Halpin, fine him, and require him to document his CME for the next two biennial periods.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF DR. HALPIN BY SUBSTITUTING THE PROPOSED SUSPENSION WITH AN ORDER OF REPRIMAND. DR. STEPHENS SECONDED THE MOTION.

Dr. Steinbergh stated that the fine and documentation requirement would remain the same.

Mr. Hairston asked what the next step after that is.

Dr. Steinbergh stated that it would be a suspension.

Mr. Browning noted that Dr. Halpin is 72 years old. He added that, to his knowledge, Dr. Halpin has never come to the Board's attention before. He's been licensed in Ohio for 32 years. To the Board's knowledge, he's never done anything wrong.

Dr. Stephens asked whether the Board is supposed to ignore a red flag.

Mr. Browning stated that he has a problem saying that a \$5,000 fine is irrelevant. It's being described as though it's a nickel. That's not what it is; it's the highest fine the Board can impose. He stated that it's an economic sanction. He added that, if you're 72, it's "goodbye."

Dr. Steinbergh stated that sometimes that's the best thing. There's no question that, as one ages, one pays less attention to education and updating, and that's a red flag.

Dr. Varyani spoke against the non-suspension. He stated that he doesn't think that the Board should amend the original Proposed Order.

Dr. Steinbergh stated that she agrees with Dr. Stephens that the Board can't ignore a red flag. She stated that there's no question that Dr. Halpin didn't do the required CME and falsely stated that he did. A reprimand tells Dr. Halpin and others that he shouldn't do this. The fine and reprimand is appropriate.

Dr. Mahajan agreed with Dr. Steinbergh.

Dr. Varyani stated that he feels that a 72-year old physician needs more training, not less. He's looking at the public safety angle, adding that that's his job as a Board member. Dr. Varyani expressed doubt that the fine would make much of an impact on a physician who has been practicing 40 years. Dr. Varyani stated that you can get about 25 CME credits for \$1,000 without doing anything more than showing up and signing in. If you're a physician, you should be learning, keeping up with technology. If the physician gets in trouble because the Board suspends his license, he should have known that.

Dr. Mahajan stated that he personally gets more than 100 hours every two years, and one year his manager came to him and informed him that he hadn't calculated correctly. He had to scramble to get the hours.

Dr. Varyani stated that Dr. Mahajan did scramble and get them.

Dr. Mahajan stated that what Mr. Browning is getting at is that this physician is 72 years old, never came before the Board in the past, and the Board is still fining him and giving him a reprimand.

Dr. Varyani stated that he's not interested in the fine. He's interested in the principle. He suggested that Dr. Halpin's getting into trouble after so many years of practice without problem may be indicative of other problems.

Dr. Steinbergh stated that, at his age, if the Board suspends Dr. Halpin's license for 30 days, it will be devastating to his career. The Board doesn't know anything more about this doctor. He's not charged with anything but a CME violation. A reprimand is fair.

Dr. Suppan stated that one thing that keeps red flagging in her mind is every time the Board talks about age. Her concern about that is that it seems that in every other walk of life, every other kind of business, age is a protected class and you can't make a decision based strictly on age. In this proceeding, can age even be a factor?

Dr. Varyani stated that age is only a factor because the physician has been practicing for over 30 years and knows what the rules are. Why would the Board let him go? Dr. Halpin knows the importance of the rules.

Dr. Steinbergh stated that she doesn't think that the Board is age discriminating. She's not making this decision based on his age. The Board has no evidence of practice below minimal standards.

Mr. Hairston asked whether there has been any investigation, or whether anyone has talked to Dr. Halpin.

Dr. Varyani stated that the Board can't go beyond the record before it.

Dr. Egner called the question.

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

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

The motion carried.

DR. STEINBERGH MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE MAY 14, 2008 NOTICE OF OPPORTUNITY FOR HEARING IN THE MATTER OF DR. HALPIN HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ADOPT THE PROPOSED FINDINGS AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF JOHN A. HALPIN, M.D. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Mr. Albert commented that he's the oldest person in the room, and he wouldn't want anyone to cut him any slack.

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FRANK MURRAY STRASEK, D.P.M.

Dr. Varyani directed the Board's attention to the matter of Frank Murray Strasek, D.P.M. She advised that by letter of May 14, 2008, the Board notified Dr. Strasek that it intended to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice podiatric medicine and surgery, or to reprimand him or place him on probation, based on the allegations contained in the letter. The notice was mailed to Dr. Strasek's address of record and proper service was documented. No hearing request has been received from Dr. Strasek and more than thirty days have elapsed since the mailing of the notice. The matter was reviewed by Hearing Examiner Davidson, who prepared Proposed Findings and Proposed Order, and is now before the Board for final disposition. Mr. Albert was supervising member. Dr. Talmage was secretary.

DR. STEINBERGH MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE MAY 14, 2008 NOTICE OF OPPORTUNITY FOR HEARING IN THE MATTER OF DR. STRASEK HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ADOPT THE PROPOSED FINDINGS AND PROPOSED ORDER IN THE MATTER OF FRANK MURRAY STRASEK, D.P.M. DR. MADIA SECONDED THE MOTION.

Dr. Steinbergh noted that the Proposed Order extends the length of the probationary period imposed by the Board's Order of July 12, 2006 by six months. She stated that he has not practiced since July 2007. If he's out of practice for two years, he will need to be examined again, if the language of the July 2006 Order so allows.

Dr. Steinbergh was advised by staff that the previous Order does include such language.

Dr. Suppan at this time stated that she has known Dr. Strasek for a number of years and will recuse herself from this case.

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

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

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The motion carried.

FINDINGS, ORDERS AND JOURNAL ENTRIES

Dr. Varyani advised that in the following matters, the Board issued Notices of Opportunity for Hearing, and documentation of service for each was received. There were no requests for hearing filed, and more than 30 days have elapsed since the mailing of the Notices. The matters are therefore before the Board for final disposition. He added that Dr. Talmage and Mr. Albert may participate in the discussion and vote, as these as cases are not disciplinary in nature and concern only the individuals' qualifications for licensure.

BRUCE EUGENE ABRAHAM, P.A. APPLICANT

DR. STEINBERGH MOVED TO MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE JUNE 25, 2008 NOTICE OF OPPORTUNITY FOR HEARING IN THE MATTER OF MR. ABRAHAM HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, DENYING MR. ABRAHAM'S APPLICATION FOR A LICENSE TO PRACTICE AS A PHYSICIAN ASSISTANT. DR. SUPPAN SECONDED THE MOTION. A vote was taken:

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

The motion carried.

VIDYA R. DEVARAJAN, M.D.

DR. MADIA MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE JUNE 25, 2008 NOTICE OF OPPORTUNITY FOR HEARING IN THE MATTER OF DR. DEVARAJAN HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE, AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, APPROVING DR. DEVARAJAN'S APPLICATION FOR A LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO, SUBJECT TO HIS PASSING THE SPEX OR SPECIALTY BOARD RECERTIFICATION EXAMINATION WITHIN SIX MONTHS OF JUNE 25, 2008. MR. HAIRSTON SECONDED THE

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MOTION. A vote was taken:

ROLL CALL:

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

The motion carried.

JOSE ANGEL RAMIREZ, M.D.

DR. MADIA MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE MAY 22, 2008 NOTICE OF OPPORTUNITY FOR HEARING IN THE MATTER OF DR. RAMIREZ HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, DENYING DR. RAMIREZ' APPLICATION FOR A LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF OHIO.

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

ROLL CALL:

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

The motion carried.

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CARLOS FERNANDO BURGOA RIO, P.A.

DR. STEINBERGH MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE MAY 14, 2008 NOTICE OF OPPORTUNITY FOR HEARING IN THE MATTER OF MR. BURGOA RIA HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, DENYING MR. BURGOA RIA'S APPLICATION FOR A LICENSE TO PRACTICE AS A PHYSICIAN ASSISTANT IN OHIO. DR. MADIA SECONDED THE MOTION. A vote was taken:

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

The motion carried.

CITATION LETTERS AND LETTERS OF PROPOSED DENIAL

RAFAEL A. BADRI, 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. BADRI. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|--------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |

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Dr. Mahajan - aye
Dr. Steinbergh - aye
Dr. Varyani - aye

The motion carried.

ERIN KAYE BALL, MASSAGE THERAPY APPLICANT – LETTER OF PROPOSED DENIAL

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

**DR. MADIA MOVED TO SEND THE LETTER OF PROPOSED DENIAL TO MS. BALL.
MR. HAIRSTON SECONDED THE MOTION.** A vote was taken:

ROLL CALL:

| | |
|----------------|-----------|
| Mr. Albert | - abstain |
| Dr. Egner | - aye |
| Dr. Talmage | - abstain |
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Mahajan | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

AKELLA CHENDRASEKHAR, M.D. – CITATION LETTER

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

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

ROLL CALL:

| | |
|--------------|-----------|
| Mr. Albert | - abstain |
| Dr. Egner | - aye |
| Dr. Talmage | - abstain |
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |

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

The motion carried.

VENKANNA KANNA, 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. KANNA. DR. MADIA SECONDED THE MOTION. A vote was taken:

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

The motion carried.

SUBRAMANYA KRISHNASWAMY PRASAD, M.D. – CITATION LETTER

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

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

| | | |
|------------|-------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |

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| | |
|----------------|-------|
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Mahajan | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

LICENSURE, PROBATION AND REINSTATEMENT CONSENT AGENDA

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

Dr. Steinbergh asked that the Board consider the probationary request of Michael B. Burghardt, M.D. separately.

MR. BROWNING MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES ON JULY 7-8, 2008, WITH: MOHAMMAD A. ADAS, M.D.; RICHARD G. DAY, M.D.; PATRICK R. DENNISON, D.O.; DIXIE A. DOOLEY, D.P.M.; JANICE ELECTA GREEN DOUGLAS, M.D.; PAUL E. DUNCAN, M.D.; MARK E. GOLDSMITH, M.D.; ANTHONY GRAY, M.D.; JONATHAN L. HAIMES, M.D.; SANDRA K. HAREWOOD, M.D.; PAUL F. HEYSE, M.D.; WILLIAM WAYNE HOLLIFIELD, M.D.; MICHAEL ERIN (DONAHUE) HULL, M.T.; MELANIE E. JUNGBLUT, M.D.; BOBBY C. LENOX, JR., D.O.; LARRY J. LITTLE, M.D.; ROBERT E. MARSICO, JR., M.D.; FLORENCE B. MATYAS, M.D.; THOMAS R. PICKETT, P.A.; NYKOLAI VASIL PIDHORODECKYJ, M.D.; ROBERT S. REEVES, JR., M.D.; DAVID P. SPEARS, D.O.; FRANK M. STRASEK, D.P.M.; SUSAN GAIL SWEDA, M.D.; AND RICHARD ALLAN ZINNI, D.O.

MR. BROWNING FURTHER MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES AND THE SECRETARY AND SUPERVISING MEMBER'S RECOMMENDATIONS AS FOLLOWS FOR BOTH PROBATIONARY REQUESTS AND REINSTATEMENT REQUESTS:

- **TO GRANT STEVEN R. ALLEN, SR., M.D.'S REQUEST FOR APPROVAL OF CLAUDIA F. BALDASSANO, M.D., TO SERVE AS HIS NEW TREATING PSYCHIATRIST, AND APPROVAL OF JOSEPH H. WRIGHT, PH.D., TO SERVE AS HIS NEW MENTAL HEALTH PROFESSIONAL;**

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- **TO GRANT CRAIG L. BIERER, D.O.’S REQUEST FOR APPROVAL OF BRUCE C. GRAY, M.D., TO SERVE AS HIS NEW MONITORING PHYSICIAN;**
- **TO GRANT JOHN D. BROWNLEE, M.D.’S REQUEST FOR A REDUCTION IN APPEARANCES TO EVERY SIX MONTHS, AND A REDUCTION IN DRUG SCREENS TO TWICE PER MONTH;**
- **TO GRANT DANIEL H. BRUMFIELD, M.D.’S REQUEST FOR APPROVAL OF PAUL E. FREDERICK, LISW., TO SERVE AS HIS NEW MENTAL HEALTH PROFESSIONAL;**
- **TO GRANT JASON V. CHURCH, M.D.’S REQUEST TO DISCONTINUE HIS REQUIRED PSYCHIATRIC SESSIONS;**
- **TO GRANT RICHARD DAVID GRECZANIK, D.O.’S REQUESTS FOR APPROVAL OF ERIC M. LAYNE, M.D., TO SERVE AS HIS TREATING PSYCHIATRIST, AND TO APPROVE AZARIA AKASHI, PHD., TO SERVE AS HIS TREATING MENTAL HEALTH PROFESSIONAL;**
- **TO GRANT GEORGE JAKYMENKO, M.D.’S REQUEST FOR APPROVAL OF A PROFESSIONAL ETHICS COURSE TAILORED FOR THE DOCTOR BY DONNA F. HOMENKO, PHD, AND APPROVAL OF DOUGLAS W. BEECH, M.D., TO PERFORM THE PSYCHIATRIC ASSESSMENT REQUIRED PRIOR TO REINSTATEMENT;**
- **TO GRANT BYRON C. LEAK, M.D.’S REQUEST FOR APPROVAL OF MICHAEL J. MCFARLANE, M.D., TO SERVE AS HIS MONITORING PHYSICIAN, WITH ALL CHARTS REVIEWED DURING HIS RESIDENCY;**
- **TO GRANT DONALD C. MANN, M.D.’S REQUEST FOR APPROVAL OF MICHAEL I. KAGAN, M.D., TO SERVE AS THE MONITORING PHYSICIAN, WITH 10 REVIEWED CHARTS PER MONTH;**
- **TO GRANT JAMES M. MCGINNIS, D.O.’S REQUEST TO ELIMINATE HIS CONTROLLED SUBSTANCE LOG REQUIREMENT;**
- **TO GRANT LLOYD S. NARAMORE, D.O.’S REQUESTS FOR APPROVAL OF DONNA R. JACKSON, PHD., TO SERVE AS HIS PSYCHOLOGIST; APPROVAL OF JOHN P. LUTZ, M.D., TO SERVE AS HIS TREATING PSYCHIATRIST; AND APPROVAL OF KATHLEEN A. MACK, PSYD., TO SERVE AS HIS ASSESSING AND SUBSEQUENT TREATING, IF NECESSARY, NEUROPSYCHOLOGIST; AND**
- **TO GRANT MICHAEL J. O’BRIEN, D.O.’S REQUEST FOR A REDUCTION IN HIS DRUG**

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**AND REHABILITATION MEETING REQUIREMENT TO TWO MEETINGS PER WEEK,
WITH A TOTAL OF 10 PER MONTH**

MR. BROWNING 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," AND THE ACUPUNCTURE APPLICATIONS LISTED IN EXHIBIT "C;" THE ANESTHESIOLOGIST ASSISTANT APPLICANTS LISTED IN EXHIBIT "D;" AND TO GRANT CERTIFICATES OF GOOD STANDING TO THE SCHOOLS OF MASSAGE THERAPY, LISTED IN EXHIBIT "E."
MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

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

The motion carried.

MICHAEL B. BURGHARDT, M.D.

Dr. Steinbergh stated that Dr. Burghardt is requesting that the Board discontinue his requirement to maintain continued compliance with the advocacy agreement entered into with OPHP. She asked who would supervise his screens.

Ms. Bickers stated that Dr. Burghardt would nominate someone separately or will sign up with FirstLab. She advised that OPHP charges \$45 to \$50 per screen, while FirstLab charges \$35.

DR. STEINBERGH MOVED TO GRANT MICHAEL B. BURGHARDT, M.D.'S REQUEST TO DISCONTINUE HIS REQUIREMENT THAT HE MAINTAIN CONTINUED COMPLIANCE WITH THE TERMS OF THE ADVOCACY AGREEMENT ENTERED INTO WITH THE OHIO PHYSICIANS HEALTH PROGRAM. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
|------------|------------|-------|

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| | |
|----------------|-------|
| Dr. Egner | - aye |
| Dr. Talmage | - aye |
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Mahajan | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

REINSTATEMENT REQUESTS

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

At this time the Board considered Dr. Coleman's application for reinstatement of his license to practice medicine and surgery, which was suspended by Board Order of March 12, 2008.

DR. STEINBERGH MOVED THAT THE APPLICATION FOR THE REINSTATEMENT OF THE LICENSE OF ROBERT S. COLEMAN, JR., M.D., TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF OHIO BE APPROVED, SUBJECT TO THE PROBATIONARY TERMS AND CONDITIONS AS OUTLINED THE MARCH 12, 2008 BOARD ORDER. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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

The motion carried.

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DAVID GOTHAM, JR., D.O.

At this time the Board considered Dr. Gotham's application for reinstatement of his license to practice osteopathic medicine and surgery in the state of Ohio, which was suspended by the terms of his January 10, 2007 Consent Agreement with the Board.

Dr. Steinbergh noted that one of the requirements for reinstatement is that he complete a course in personal and professional ethics. She stated that he has not totally completed the course, nor has he submitted a written report on the course. Dr. Steinbergh stated that the Agreement requires that Dr. Gotham demonstrate successful completion of the course. Documentation that Dr. Gotham submitted indicated that the completion of the course includes the longitudinal follow-up at six and twelve months. Dr. Steinbergh stated that she doesn't mind so much about that, but the Agreement requires that he submit a report to the Board demonstrating what he's learned from the program. The Board does not have that yet.

Ms. Bickers stated that, generally, such matters aren't placed on the Board agenda until all necessary documentation is in. She stated that she would check his file to make certain he has submitted this documentation.

Mr. Browning suggested moving to approve subject to receipt of the report.

MR. BROWNING MOVED THAT THE APPLICATION FOR THE REINSTATEMENT OF THE LICENSE OF DAVID GOTHAM, JR., D.O., TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF OHIO BE APPROVED, SUBJECT TO THE PROBATIONARY TERMS AND CONDITIONS AS OUTLINED THE JANUARY 10, 2007 CONSENT AGREEMENT, AND SUBJECT TO RECEIPT OF ALL NECESSARY DOCUMENTATION. DR. MADIA SECONDED THE MOTION. A vote was taken:

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

The motion carried.

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LICENSURE

ALADDIN ZAFAR SYED, M.D.

Dr. Syed's application for a license to practice medicine and surgery in the state of Ohio was considered by the Board at this time. It was noted that the Board ratified a consent agreement with Dr. Syed the previous day.

DR. EGNER MOVED TO APPROVE DR. SYED'S APPLICATION FOR LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

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

The motion carried.

REPORT ON JULY 2008 PUBLIC RULES HEARING

Ms. Debolt stated that, at this point in time, staff is requesting that the Board refer the rules 4731-1-11, 4731-11-03 and 4731-11-04 back to the appropriate committees for their consideration of the testimony received at the hearing.

DR. STEINBERGH MOVED TO REFER THE NOTED RULES TO THE APPROPRIATE COMMITTEES FOR FURTHER CONSIDERATION. MR. HAIRSTON SECONDED THE MOTION. All members voted aye. The motion carried.

ADMINISTRATIVE REPORT

Mr. Whitehouse referred the Board members to his written report, a copy of which shall be maintained in the exhibits section of this journal. Items noted for particular attention included the following:

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- Sallie Debolt has been promoted to General Counsel for the agency. Mr. Whitehouse stated that this is a role for which he has seen a need for some time. He added that he was surprised to find that a Board this size didn't have that position. He stated that he feels that there's a need to centralize many of the legal and administrative functions within the office.
- The State Auditor's office has completed its FY07-FY08 financial review of the agency. Mr. Whitehouse stated that there has not been an exit interview, nor has the Board been sent the final findings. He stated that he believes that nothing substantial will be reported. He anticipates having a report for the Board's review in September.
- The Board obtained approval from the Controlling Board to carry over funds from FY08 to FY09 for contract Hearing Examiners.

Mr. Whitehouse asked Ms. Loe to report to the Board concerning budgetary matters. He noted that because of State budgetary problems, the Board's funds will be tight for the time being. He advised that he was unsuccessful in getting approval for an additional full time hearing examiner, even though he could explain the need for one. He advised that he will continue to work with contract examiners in order to not fall behind again after eliminating the backlog identified last year.. Mr. Whitehouse advised that the Enforcement staff is currently moving more complex cases through the system more quickly. These will add to the demands of the Hearing Unit.

Ms. Loe stated that the handout that was distributed to Board members was discussed in Executive Committee. It included three language changes that the Board is proposing to include in the budget bill. It includes two new fees for things the Board staff currently does without charge, for which other states charge a fee, and for which staff has identified that fees should be charged. One was the duplicate wallet cards. The staff proposes charging \$35 for replacing wallet cards. The other fee is for license verification letters sent to other states. Ms. Loe noted that staff currently processes about 600 of these letters a month. It was identified that other states charge between \$25 to \$50 for these letters. The previous day the Executive Committee approved proposal of a \$35 fee.

Ms. Loe stated that it is unlikely that the priorities the Board identified in June will be included in the State's budget, with the economic times being what they are and other agencies being held to budget cuts. Those include: full funding for all current positions; increase for the Attorney General fees that went up; doubling the expert witness hourly rates; and the addition of up to four new staff positions. Ms. Loe stated that, even if the Board is successful in adding all these things, its funds would still not be in a perilous position at the end of the biennium. If the new fees aren't approved, the Board will still project a three percent increase over the biennium, based on historical increases the Board has been getting.

MR. ALBERT MOVED TO APPROVE THE PROPOSED CHANGES IN THE BUDGET LANGUAGE. DR. MADIA SECONDED THE MOTION. All members voted aye. The motion carried.

Mr. Whitehouse stated that the Executive Committee discussed plans for the annual board retreat. Per

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discussions with the Board, the focus of the retreat will be to provide an opportunity for discussion between staff members and Board members on the fundamentals of licensure, the process of reviewing complaints, and what takes place from the initiation of investigation to the point of citation as well as from the point of citation through completion of the administrative hearing process. Mr. Whitehouse stated that the staff is looking at this as an opportunity to engage in a real dialogue with the Board and not simply put out information. This will ensure that staff is focused on doing what the Board sees as important. The afternoon will provide enough time to address one question some Board members have raised related to the question of seeking general fining authority. Another retreat involving strategic planning may be scheduled in the spring.

Mr. Whitehouse at this time invited any Board members who are interested to meet with him following the Board meeting to discuss the Board's current Strategic Plan.

At this time Mr. Whitehouse presented Ms. Schmidt with a State pin commemorating her 30 years of service to the Medical Board and the State of Ohio. Board members expressed appreciation for Ms. Schmidt's years of work on behalf of the Board.

REPORTS BY ASSIGNED COMMITTEES

LICENSURE COMMITTEE

Dr. Egner stated that Joy Ann Kondash, M.D., whose application for licensure was on the Committee's agenda, has indicated that she is not going to pursue licensure in Ohio. Therefore, the Committee has nothing to report this month.

SCOPE OF PRACTICE COMMITTEE

Dr. Steinbergh stated that the Committee met briefly to afford an opportunity for John Robert Beltz, D.C., of Ravenna, Ohio, and his attorney, Lucas Blower, to discuss the Board's policy statement on EMGs. Dr. Beltz and Mr. Blower are in disagreement with the Board's position paper that indicates that EMG is the practice of medicine. Dr. Steinbergh stated that the Chiropractic Board does allow chiropractors to do EMGs. That Board has specified that those performing this procedure have to demonstrate a certain level of education to the Chiropractic Board.

Dr. Steinbergh stated that Dr. Beltz came to the Committee because over the years he had been hired by neurosurgeons to do EMGs. The question was whether those physicians delegated the procedure or referred the patient to Dr. Beltz. Dr. Steinbergh stated that she thinks that it's clear that the neurosurgeons were referring patients to Dr. Beltz. Dr. Steinbergh stated that since this Board came out with its policy statement, the Chiropractic Board got an informal opinion from the Assistant Attorney General who serves that Board. That informal opinion indicates that the Medical Board was very wrong in its policy statement.

Dr. Steinbergh stated that after discussion the previous day, the Committee felt that if a neurosurgeon chooses to refer patients to Dr. Beltz because of his substantial training, which has been approved by the

Chiropractic Board, and which the Committee recognizes as different from the training of neurologists and physiatrists, and the neurosurgeon gets the report back and uses that in the determination of patient care, it was, in fact, the responsibility of the neurosurgeon to be certain that he felt confident and comfortable with the EMG reports to provide medical care to the patient. Dr. Steinbergh stated that Dr. Beltz' concern was that the Board's statement does not allow him to practice in a way that he was trained to do and, in fact, he's been harmed by this. Dr. Beltz felt that he could move forward through the Court system and prove that he'd been harmed by the Board's statement.

Dr. Steinbergh stated that the Board has not changed its statement, but has felt that it's the responsibility of the referring physician to choose to whom he or she was referring a patient for an EMG.

Dr. Mahajan asked how many physicians in the state refer to chiropractors for EMG.

Dr. Steinbergh stated that the Board doesn't know that information.

Dr. Varyani stated that, according to Dr. Beltz, there are three chiropractors trained in the procedure and three groups of neurosurgeons referring patients to them for EMG. He stated that that's all the information that the Board has. Dr. Varyani added that now there are only two chiropractors doing them because Dr. Beltz advised that he's not getting the referrals anymore.

Dr. Mahajan stated that many of his neurology colleagues do not want to do EMGs. It does take a lot of responsibility, a lot of training and a lot of upkeep. It's not just doing nerve conduction or needle testing. They need to know the other aspects of neuromuscular disease and general system disorders. Dr. Mahajan stated that he strongly feels that chiropractors should not be doing them, not even nerve conductions. Dr. Mahajan stated that some of the reports he's seen did not make any sense at all.

Dr. Steinbergh stated that the Board hasn't changed its opinion on that. The Board did meet with Dr. Pease, who represented the College of Physiatrists, and he stipulated the same. Dr. Steinbergh stated that Dr. Beltz purported that he is an exceptional person and had these abilities to do this procedure, that the neurosurgeons who used him for it were very pleased with him, and that the Medical Board was harming his business because of its statement.

Dr. Varyani stated that the Board only rules on the practice of medicine. The Board can't tell a chiropractor what to do or the Chiropractic Board how to educate chiropractors. He stated that he thinks that the Committee was able to get it across that this is the Board's position statement. If a physician refers a patient to a chiropractor, the Board cannot stop that referral. However, if there is a problem and a patient is harmed and a complaint is filed with the Medical Board, it will abide by the position statement.

Dr. Steinbergh stated that the onus is on the physicians making that referral. Anytime the physician sends a patient for testing, the physician has to feel, unquestionably, that he or she can rely on that test because they're making clinical decisions based on those tests.

Dr. Talmage commented that scope of practice issues are going to get more and more contentious as other

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regulatory boards advise their licensees that they can do things that the Medical Board feels is the practice of medicine. He stated that the Medical Board has not fared well in opposing other boards, and the State doesn't look well upon the Medical Board for opposing other boards.

PRESCRIBING COMMITTEE

Mr. Miller advised that the Committee has proposed amendments to Rules 4731-21-01 and 02, the intractable pain rules. A public hearing was held in December 2007, at which time both Ohio State University Pain and Palliative Medicine Program and Ohio Hospice & Palliative Care Organization raised concerns and asked for clarifying amendments.

Mr. Miller stated that, specifically, they asked that the Board clarify Rule 4731-21-01's definition for terminal condition. He stated that the previous definition had stated that it was untreatable, that there could be no recovery, and that death was likely to occur within a relatively short time if life-sustaining treatment was not administered. They asked that the Board recognize that terminal conditions can be treated and can go into periods of remission, even though, at the end, death is the most likely occurrence.

Mr. Miller stated that in Rule 4731-21-02, regarding individuals who can make assessments for substance abuse and addiction, the Board had previously suggested allowing psychologists and independent chemical dependency counselors and chemical dependency counselor IIIs to be able to do these assessments. Mr. Miller stated that they've asked that the Board recognize that psychologists should be clinical health psychologists, as they have more knowledge in substance abuse issues.

Dr. Varyani stated that he has a problem with that. In the rural areas they may not have a clinical psychologist available.

Mr. Miller stated that the Board had expanded the rule as previously written. He stated that before patients couldn't go to these individuals. They had to meet certain economic standards before they could go to them.

DR. EGNER MOVED TO APPROVE THE PROPOSED REVISIONS TO RULES 4731-21-01 and 4731-21-02. MR. HAIRSTON SECONDED THE MOTION. All members voted aye. The motion carried.

EXECUTIVE SESSION

DR. STEINBERGH MOVED THAT THE BOARD DECLARE EXECUTIVE SESSION TO CONSIDER THE EMPLOYMENT OF A PUBLIC EMPLOYEE. DR. MADIA SECONDED THE MOTION. A vote was taken:

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| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Varyani | - aye |

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| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Dr. Amato | - aye |
| Dr. Robbins | - aye |
| Dr. Steinbergh | - aye |
| Dr. Talmage | - aye |
| Dr. Kumar | - aye |

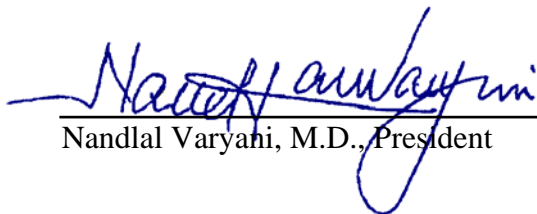
The motion carried.

Pursuant to Sections 121.22(G)(1), Revised Code, the Board went into executive session. The Board came out of executive session at 11:05 a.m.

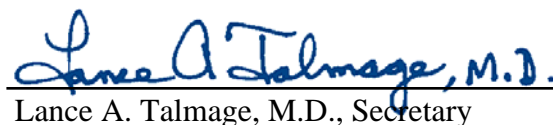
DR. STEINBERGH MOVED TO ADJOURN. DR. MADIA SECONDED THE MOTION. All members voted aye. The motion carried.

Thereupon at 11:06 a.m. on August 14, 2008, the August 13-14, 2008 meeting of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on August 13-14, 2008, as approved on September 10, 2008.



Nandlal Varyani, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)

